

# **CURRENT PROBLEMS OF POLITICS**



**Edited by**

**Arkadiusz Modrzejewski & Tatiana Tökölyová**

### **Authors**

Mgr. Michaela Chládková  
Zhivka Deleva, PhD.  
George Gamkrelidze, MA  
Dr. Sylwia Górzna  
Mgr. Antonín Mikeš  
Dr. Arkadiusz Modrzejewski  
Michael Siman, PhD.  
PhDr. Tatiana Tökölyová, PhD.  
PhDr. Lucia Tuleková Henčelová  
Mgr. Karolina Tichá

### **Reviewers**

JUDr. PhDr. Lucia Mokrá, PhD.  
Mgr. Zhivka Deleva, PhD.  
JUDr. Milan Jančo, PhD.

Language and content of the individual papers are in responsibility of the authors.

© Europe Our House Press and Authors

**ISBN 978-9941-0-5398-6**



Tbilisi 2013

## **CONTENTS**

**Karolina Tichá, Current Status and Regulation Options of Lobbying In EU (4)**

**Michaela Chládeková, Political and Legal Perception of Protocol No. 30 on the Application of the EU Charter (13)**

**Michael Siman, La position des avocats dans les systèmes juridiques de l'Union et nationaux/The position of lawyers in the legal systems of the European Union and its Member States (25)**

**Antonín Mikeš & Živka Deleva, Migratory Streams in Central Europe: Highly Educated Slovak Nationals Employed in the Czech Labor Market (33)**

**Lucia Tuleková Henčelová & Tatiana Tökölyová , Historical and political roots of the Middle East conflict and their impact on the Palestinian community (55)**

**Tatiana Tökölyová , Norman Kirk'S Role in Formation of Independent New Zealand'S Foreign Policy (71)**

**George Gamkrelidze & Arkadiusz Modrzejewski, Georgien Als Bestandteil Energetischer Sicherheit Europas (84)**

**Sylwia Górzna, Catholic Fundamentalism (92)**

# CURRENT STATUS AND REGULATION OPTIONS OF LOBBYING IN EU

Karolina Tichá

## Abstract

The article addresses the concept of lobbying regulation in the EU context. Its objective is to map the existing regulatory efforts, both in the EU institutions as well as in the selected Member States. Its purpose is to compare different approaches and reveal the most contentious points. The aim of further description and comparison of the Canadian and American experience is to notice the positives and negatives that come with the regulation of lobbying in practice, and to consider them as potential sources of inspiration in the frame of Euro-lobby regulation.

**Key Words:** lobbying, lobby regulation, lobbyists' register, code of conduct, European Union, United States of America, Canada.

Lobbying, which is a legal device of public policy used in each democratic system, is being seen very ambivalently. The modern society is characterised by the diversity of its opinions, the heterogeneity of interests, etc. That is why the lobbying, which reflects directness and the stage of the civil community development, is necessary for contemporary democracy at least because it operates as combination of civil and political rights through which it reinforces the citizen possibility of bigger participation in the policy, not just in the elections. Lobbying affords the opportunity of representation on the level of decision-making process and those particular interests which could be achieved very hard in different circumstances. Even, we can make discussion about its positive role in decreasing of democratic deficiency on the EU level. Despite of these facts, the public and some policy-makers see increasing negative connotations which complicate its entire system functioning.

The attitude of mass media is also pointed out in the recentness of submitted topics which inform us about the each lobbyist's activities very fractionally, very often with negative undertone. I would claim that some of journalists like forming the expression lobbying in connection with corrupt scandals and sordid practices which makes its picture deform in the view of the public and some policy-makers.

There is an evidence that for the determination of lobbying expression is negative difference from the subject definition of corruption insufficiently (legal regulation determines what the corruption is – everything other what does not fill the subject matter and serve to influence on public policy is lobbying). The role of lobbying is unchangeable in present making of the public policy. It still develops and is common profession for many people. If we do not want to think automatically about the expression of „lobbying“ in negative way of „corruption“, it is necessary to concentrate on its legal activation in current life and to set up the rules of using it. Evidently, it is not as easy as it looks.

Each concept of regulation has its strong and weak sides, proponents but opponents, too. These ambivalences are intensified from the fact that lobbying as profession comes out of the public or third sector but it is directed at making public policy. It creates the bridge between the government and citizens. This relation with the policy-makers is based on intercommunity. During a try to regulate the lobbying, there are created many points of

controversy which are conditioned by an effort to reach the highest level of possible transparency and to strengthen the democratic decision-making process. I tried to identify the most problematic areas during the lobbying regulation in confrontation of theoretical knowledge and practical experiences in selected states.

The first of them, which is the most distinct in EU context than wherever, is the ability to involve heterogeneity of lobbying agents and to choose sufficient definition corresponding to its character as the basis for regulation. This problem disappears in case of the self-regulation concept because the subjects are registered and undertaken to fill the particular commitments and rules.

Lobbying in EU is dated to the first day of the EEC establishment. European-wide groups and trade unions interested in this field have existed, especially, in the branches of industry and agriculture since the beginning of 1950s. Till 1970 it was able to identify more than 300 all-union groups. In the 1980s the clerks of the community created the register of all formally accepted euro-groups, which were counted into 439 in that time. Although, the European institutions were the subject of interests of lobbyists since its establishment, this interest changed in 80s when the number of lobbying subjects was ten times increased to compare with 70s (Andersen, Eliassen, 1993).

Nowadays, we can speak about explosive rise of lobbyists who pay attention to EP and EC. The alarming need to provide the transparency of making-decision process and European structures follows from this growing (Pitrová, Kubová, 2010).

As the number of groups and lobbyist is increasing in Brussels so there is directly proportionally provided their professionalization, intensifying activities and greater aggression. There is made an endless pressure on European policy-makers.

The institutionalism of lobbying itself means confirmation of its important and strong position. Despite of that, there was not controlled cooperation between EC and lobbyists from the beginning of 90s. EC was resisting it for a long time, it took from reserved to negative stand to the system of regulation and it relied on the self-regulation in order not to break relations with groups of interests. It wanted to keep the “door open” and therefore to bring the responsibility to the lobbyists themselves. It had no out of choice to accept more resolute steps – it was forced to do that by the pressure of EP.

But EP was also characterized in 90s by the lax attitudes towards the determination of the expression who the lobbyists are and their access into the building of parliament were given according to the application. The first change happened after the agreement of Ford’s announcement (1995) which was successful to avoid the necessity of the lobbyist definition. It opened the registry for persons who applied for repeating access to EP. The Contemporary (the same for EC and EP) Register of EU Transparency has the similar definition, but it is just based on division of actively lobbying subjects into 6 categories:

- (1) Professional lobbyists and lobbying legal subjects,
- (2) In-house lobbyists,
- (3) Non-governmental organizations,
- (4) Groups of experts – type „think tank“ (also research and academic institutions),
- (5) Organizations represented churches and religious communities,
- (6) Organizations represented local, regional and municipal agencies and others public or mixed subjects.

It was shown that the determination of the lobbyist became repeating subject of restatement of legal regulations about lobbying in the USA and Canada or the reason for in efficiency of regulation in Lithuania, Hungary and Poland. The missing of in-house lobbyists, lobbying legal subjects, non-profit association was the most common problem or the regulation was referred only to professional lobbyists.

The individual used definitions (the most often inspired with the American model) are divided according to the geographic location of the state, democratic traditions, politic culture, institutional environment or attitude to the management of public affairs, etc. The most common problem is that their extend is either wide so the definition does not contribute to the transparency or is too narrow and it happens that a big part of the relevant subjects is missed. But the “good definition” is a primary precondition for purposeful, functional and successful regulation.

A part of the definition is also often enumerating of professions, which are not allowed to lobby (there are usually lobbying addressees) in order to prevent a conflict of the interests as well as to keep them from the mechanism called “revolving doors”. The term of protection is settled by the law (in Canada it is 5 years), after its lasting the ex-public agents (the most often they are the members of legislation and execution, their advisors and assistants) cannot come back to the public life as lobbyists. An effort to limit their return is the expression of creating obstacles between uncontrolled interconnection the lobby and making the public policy.

Now when we know approximately who the lobbyists and addressee of their activities are we have directions of some regulation tools: registry and announce commitment, ethic codex, system of legal sanctions, authority performing surveillance and the best to cover everything into the system of valid legal standards.

The registration is not usually the problem. On the level of theory there are some opponents who compare creating mandatory registries to the making obstacles of social community participation and also to the breaking equality of approach to the policy-makers. We can expect that introducing of registration brings also increasing of costs for lobbying itself and that can be hardly fulfilled by the small groups or new organizations. By the opponent dictionary interpreting, the regulation of lobbying helps to identify solvent lobbyists and also politically lucrative proposals.

The OECD researches prove that over-half of majority, who are lobbying subjects in EU now (the most represented by non-profit associations), does not see any complications in required registration. The wave of displeasure rises with the announce requirement and the catalogue of data which are demanded to report and to open to the public (OECD, 2009). The purpose of collecting information would always be achieving the greatest overview or transparency, but also there is a need to care of the case when the lobby coming out of a private sector does not break the competitive environment.

The chapter itself is discovering of financial data or incomes and outcomes for lobbying which is usually the problem between professional lobbyists and non-profit associations. In case of professional lobbyists or representatives of the private sector interests and the opening financial information to the public is the breach of the client privacy protection which follows from the agreement between the client and supervisor. So there is a difficult choice for lobbyists – in case of client privacy protection they are not able to open the financial data to the public and that is why they might be suspected of providing illegal activities and they might lose their clients or clients-to-be. If they decide to open these

financial transactions they will break the terms of contract about the private information of client.

The existence of registers relates to itself the necessity of clear setting the conditions when there is an obligation to register. It can be done between lobbyist and client while they are forming obligation of contract or after concrete amount of lobbyist activities, eventually, after reaching financial limits related for lobbying. Thanks to those settings it can be regulated the access to the lobbying itself or to its concrete activities.

In the USA, which is titled to be the cradle of lobbying and where the name was established according to the entrance of the hotel in Washington where the members of Congress were meeting the representatives of businessmen and different groups of interests, the regulation is concentrated mainly in the lobbyists' activities than in the access to the profession as in Canada and also the financial limits are the great importance. According to the last legal regulations of HLOGA (Honest Leadership and Open Government Act) from 2007, the previous financial bounds were decreased in 50%, in which there is a financial commitment and there was established to report regularly the summary of contributions allowed for election campaigns on federal level.

Using the description of the Canadian regulation model, which represents the most integrated system of the rules on federal level, it is possible to demonstrate implementing of single and mandatory system of registration concentrating mainly on the access to the lobbying itself, not to its financial situation. The great importance is the lobbyists' obligatory to report quiet extensive and detailed information about the purpose of their activities which were toughened for the last time by the LA (Lobbyists Act) amendment in 2008. To be specific, it means that lobbyists have to report the name of their client (and each subject which can prosper directly or indirectly thanks to the lobbying), explicit title of an act (decisions, politics, grants, etc.) in whose intentions they want to lobby as well as possible existence of the state supply or grants directed for organizations which are represented by them, where the lobbyists have to work, and also public authorities who will might been contacted (LA in Müller, Laboutková, Vymětal, 2010).

The Registry of EU Transparency, which still has voluntary character and there is just for few months in its present form, requires yearly from the all registered subjects to submit financial declarations from the each activity aimed at authorities, agencies or EU institutions and their clerks, officers and other employees as well as the entire financial sources received from EU authorities in the last year term since the date of registration.

In general, the registries and access into them can be filled up by the professional and ethic caudexes or the code of conduct. They are the main pillars of self-regulated concept. They can influence quiet purposefully or not. The caudexes have mainly educational character and they should contribute to the better reputation of lobbyists in the view of the public and policy-makers like professionals who are subjected to the ethical rules. They should be also the manual of behaviour policy which should be followed or not in concrete daily situations by the representatives of the groups of interests. The code of conduct is the matter of the prestige of the profession. In case of EU the clear formulation and forming of moral rules for lobbyists is unthinkable part of transparent and democratic creating of union policy. That is why the code of conduct became the condition of registration into the Registry of EU Transparency. In EU there are caudexes with their traditions. Lobbyists habituate to them and through these habits they are responsible and reliable in their work and is the next splendid principle which contributes to the general status of their profession. And more each organization providing lobbyists (SEAP, EPACA, AALEP etc.) conditions its

membership by the commitment to follow clearly determined ethical standards. Nowadays, we are just talking about the professional lobby in the context.

The establishment of registries and the caudexes validity is not enough. Not being self-pragmatic tools, they need to fill up with a sufficient sanction system as well as the authority providing surveillance over its keeping. For example, institutions in the USA on central level, which would take control about lobbying, are still missing. On the other hand, there is an independent Commissioner Office for lobbying in Canada, which has been operating since 2008. This office manages registry administration and is allowed to start investigation if there is any suspicion that the law or rules connected to registration were broken. There are directly set the contraventions which the lobbyists can commit (to bear false, inaccurate or distorted information as well as not to bear information at all) and according to them to sanction it from the financial punishment to being imprisoned for several years. (Lobbying Act, 2008).

On the level of member states the lobbying can be in dual direction – either to pursue the interests in the international decision-making process, or to influence on the implementation of European norms and their forms in domestic law.<sup>1</sup> Lobbyists acquire the various practical experiences which they carry from arena to arena (from Europe home and vice versa). That is a diffusion of knowledge. It was shown for several times that the form of lobbying is affected by the political and institutional system, history of the country, political culture, and also for example, by the level of civil community development. That is why the European and national lobbying come out of another environment and it is built on the different bases.

It is possible to identify several main differences for lobbying according to particular arenas. On the national level the political division of power as well as the relation between the majority government and opposition is more important than the technical lobbying in EU. (Gueguén, 2007)

It is also reflected into different depth of relation between sender and receiver of lobbying. On the European level there are not sponsored political parties what is common way of arranging for the influence or support for the own interests in electoral programme and following during the creating of public policy. The great difference is possibly to see in the measure of dependence on the surroundings. In case that EU is not depend on or do not compete with others multinational group of companies. Naturally, the potential dependence and competition exist on the domestic front, abroad, as well as in private and public sector, too.<sup>2</sup> The relations between the private and public sector are other differences.

In national states (in different measure and time) the common borderline is smudged or directly overlapped.<sup>3</sup> If there are the differences in cooperation with lobbyists on the union level and on the state level, we meet the different attitudes between member states.

---

<sup>1</sup> The regulations determine the result, which is necessary to reach, but concrete using forms and methods are yielded the competence on the decision of the each state, which implements them into national legislation.

<sup>2</sup> Each national ministry can be in opposition, as in the case of tobacco lobby – Ministry of Finance which profits explicitly from the advertisement and media publicity of smoking (as well as in the importance of purchase tax as the earner item of the state budget) versus Ministry of Health which uses the great amount of money to cure harmful damages of smoking and its priority is the health of population (Source: Tabac, retenezvotresouffle!, Documentary film, 2006).

<sup>3</sup> The central government more infringes upon the operating of private organization in France than in Ireland. Vice-versa the private organizations more influence on German and Netherland government than on Portugal or Great Britain. In Sweden or Austria there was formed the strong corporation in which the Employee and Employer Association has the right to express opinions on economical and social questions on the central office



EU has the same understatement of the necessity of groups of interests and unchangeable role of lobbying in the pluralistic democratic system in common with some of their members, especially with Finland, Sweden, Netherlands or Denmark. The new member states joining in 2004 have the problems to understand it. These states due to its historical development miss the independent civil activities or meet the clientism, the early total economical know-how. The representatives of small and medium business did not have experiences how to promote their interests. Because of these facts the representation of various interests seemed to be suspicious and threaten of democratic political system. (Coen, 2007).

One of the aims of the article was to consider if the attitudes and accesses accepted in member states are weaker, equal or exceeded status of regulation applicable in the EU institutions. If there are 27 member states, I am able to say that each of the member state has its own attitude towards lobbying and its regulation. In the measures of EU the regulation of lobbying is more complicated about the amount of particular attitudes towards it. This variety shows that EU nor its member states are not careless of the lobbying problem. They want to fight for greater transparency, against the corruption and clientism. For the easier orientation and possibility to compare there is possible to choose a division into three groups: (1) states without any legal regulation or the regulation of lobbying, (2) states with indirect form of the regulation and (3) states, which passed a statute about the lobbying.

Although, the first group is indicated as a state where explicit form of law regulation (or self-regulation) of lobbying does not exist. The statement that there is no existence of any form of regulation is not relevant for 100 % because the lobbying is based on civil and political laws guaranteed by the constitution. Moreover, there is no law regulation which does not mean that the lobbying is not operating. To be concrete there are Belgium, Bulgaria, Estonia, Ireland<sup>4</sup>, Italy, Cyprus, Luxembourg, Malta, Netherlands, Portugal, Greece, Slovakia<sup>5</sup>, Slovenia, Spain and Sweden<sup>6</sup>.

The states which agreed with using of voluntary registries, the code of conduct or at least the controlling of access of groups of interests to the policy-makers are in the groups of states with indirect form of regulation, namely Czech Republic<sup>7</sup>, Denmark<sup>8</sup>, Finland, France<sup>9</sup>, Latvia<sup>10</sup>, Germany<sup>11</sup>, Austria<sup>12</sup>, Romania and Great Britain<sup>13</sup>.

---

level. It is possible to notice a private interventionism that means there is an overlapping of private companies with civil community which following create the strong pressure on the government in case of the protection and push forward their interests (Schendelen, 2004).

<sup>4</sup> Public Service Ethics Law which is responsible for ethic behavior in relation between the representatives of the groups of interests and public agents is valid since 1995.

<sup>5</sup> In June 2005 Ministry of Justice laid a bill about the lobbying which National Council discussed and passed into the second reading. Later, this bill was withdrawn because of the great amount of changes in the bill

<sup>6</sup> In past there was a registry of lobbying subjects for Swedish parliament purposes which was abandoned by the parliament itself.

<sup>7</sup> The Voluntary Code of Conduct by MP in Czech Republic in 2005.

<sup>8</sup> The name of lobbyists are reported in announcement of councils and published in parliamentary journal.

<sup>9</sup> The standing orders of both Houses of Parliaments include items in regard to consultations of the groups of interests with the MPs and senators.

<sup>10</sup> The Law for Prevention of cross-liability interests in the activities of public agents from 2002, The Code of Conduct for the political members of Lithuania from 2006 and in 2008 Lithuanian cabinet executed a draft of the lobbying regulation.

<sup>11</sup> The compulsory registration of the groups of interests according to the Annex II. Of the standing order Bundestag (registry is not valid, it just collects information and creates the summary of lobbying subjects for

Some of the states still wait for the steps of EU, but the others “took the courage” and did the first steps in the field of the lobbying regulation. They seem to be potential motivation source for EU.

The very interesting fact is that the states with direct form of the lobbying regulations are just Lithuania and Poland. Hungary accepted the Act XLIX on Lobbying Activities in 2006, but in 2011 it was declined. There are relatively young member states with the totalitarian history which do not have so many experiences with lobbying and it can be expected that the meaning of lobbying is explicitly different (more problematic) than in EU. The law regulation did not have the required effect due to its strict character and it is a bearer of many mistakes and gaps in legislation. Despite of the taken pains the situation of lobbyists has been getting worse than the lobbying has been saved from the grey zone.

As the more effective form in member states is indirect regulation and the setting of the rules which is used in Germany or Great Britain. This attitude is expected to have the suitable level of political culture development based on the liberal and plural values and morality as well as the conviction of the open dialogue benefits between policy-makers and the representatives of different interests who are known (also in the society) as the specialist with the contribution of quality information and are not corrupt. There is a need not to forget that the setting of too strict or incompatible rules can make from the lobbying the elite profession which would only operate in particular interests so the lobbying would lose its origin function and break the meaning of the policy decision-making legitimacy.

In the other words, it is possible to create elite pluralism or institutionalism of the strong competitive environment where the access to the policy-makers is limited by the number of players whose participation is required for the strategic purposes. The system is still open, but it is restrict. It means that lobbying subjects are strictly required to keep the prescribed rules for behaviour or another claims which are not able to be filled by everybody. The fear from this effect and the following damage of relations with the representatives of the groups of the interests was the most significant in EC which visibly supports the regulation efforts of EP, but EC keeps staying in preference model of self-regulation. EC itself favourites bigger and more stable groups of interests in order to avoid increasing number of lobbyists during the database CONNECS operating (the last version in 2001). The following result was the development of secondary lobbying when non preferred groups of interests were lobbying those who have better access to EC.

In free explanation the lobbying for EU institutions represents the cheap labour thanks to which they get necessary information. That is a truth that there are more open possibilities for strong financial players in agriculture industry. The organizations which are

---

the needs of parliament), The Administrative Procedure Law from 1977 (the state administration is owing to consultate the preparing legislation with the parties and to inform the public)

<sup>12</sup> Federal Council and Austrian National Council have provisions about admitting experts or representatives of the groups of interests in the council sessions. The Law of cross-liability interests is valid from 1983, but in the last years the personal responsible of public agents was getting stronger.

<sup>13</sup> The cooperation of policy-makers and the representatives of the group of interests has the long tradition like in Germany. The biggest problem is the determining and accurate defining who the lobbyist is. The easier and more acceptable way is to pass the responsibility to the public agents – in 2002 it became the part of the Code of Conduct in the Lower House. The registries of journalists and assistants of MPs, who have the automatic access to enter the building of parliament, had been established earlier, in 1985. Despite of that, there is no official list of lobbyists. There is a similar situation – the responsibility is passed to the lords themselves in the House of Lords.

materially or personally weak but are indispensable representatives of specific (mostly non lucrative) interests are financially supported to survive.

We find the question if there is any system which is related to the each various subjects of lobbying in EU (in specific circumstances there can be particular states or parliamentary groups) and which is compatible to the heterogeneous spectrum of pursuing interests. We are followed in order not to prevent elite pluralism and to decline the access to some interests. The regulation should be concentrated on concrete applied tools, techniques and working strategies which are used in the lobbying – or everyday practices of the groups of interests and professional lobbyists. For increasing transparency and legitimacy of decision-making process there are applied the regulations in both parties – senders and addressees of the lobbyist activities.

The practice shows that any model of regulation nor American (where is the longest lobbying tradition) was without the mistakes for the first try. We can say without any doubts that the lobbying and its regulation is the running for the long distance. We cannot forget that whatever accepted form of regulation will be influenced by the lobbyists themselves.

To summarize, for better description of ambivalence of the lobbying topic, I recommend thinking about the problems coming out of Friedman's Freedom of choice. Lobbying as itself is not dangerous and there is no need to regulate it. Its present growing is just the way how to extend the state power and increase the amount of funds redistributing by the states which creates the space for the groups of interests which want to obtain the biggest essence from the funds. From this point of view, the lobbying regulation is just symptomatic treatment and the only way how to satisfy the demands for the regulations is to get the most possible amount of funds from the state and re-division of functions.

## **Bibliography**

### **Monographs**

ANDERSEN, S. – ELIASSEN, K. 1993. *Making Policy in Europe: The Europeification of National Policy*. London: Sage, 1993. 284 s. ISBN 0-8039-8970-9.

BERRY, J. – WILCOX, C. 2009. *The interest group society*. 5. vyd. New York: Pearson/Longman, 2009. 240 s. ISBN 0205604803.

CLAYBROOK, J. (ed.). 2005. *History of the Lobbying Disclosure Act*. [online]. Washington D.C.: Public Citizen, 1995. 8 s. [cit. 2012-03-03]. Dostupné na internetu: <<http://www.cleanupwashington.org/documents/LDAhistory.pdf>>.

FRIEDMAN, M. – FRIEDMAN, R. 1992. *Svoboda volby*. Liberální institut, 1992. 318 s. ISBN 8085467852.

GUEGUÉN, D. 2007. *European Lobbying*. Brussels: Europolitics, 2007. 140 p. ISBN 2930409061.

CHARRAD, K. *Lobbying the European Union*. [online]. Westfälische Wilhelms-Universität Münster. [cit. 2012-02-15]. 25 s. Dostupné na internetu: < [http://nez.uni-muenster.de/download/Charrad\\_Literaturbericht\\_Lobbying\\_mit\\_Deckblatt.pdf](http://nez.uni-muenster.de/download/Charrad_Literaturbericht_Lobbying_mit_Deckblatt.pdf)>.

CHARI, R. – HOGAN, J. – MURPHY, G. 2011. *The Legal Framework for the Regulation of Lobbying in the Council of Europe Member States*. [online]. Strasbourg: Council of Europe, 2011. 32 s. [cit. 2012-03-03], available online at: <<http://www.venice.coe.int/docs/2011/CDL-DEM%282011%29002-e.pdf>>.

MAZEY, S. - RICHARDSON, J. 1993. *Lobbying in the European Community*. Oxford: Oxford University Press. 263 s. ISBN 9780198277897.

MÜLLER, K. - LABOUTKOVÁ, Š. - VYMĚTAL, P. 2010. *Lobbing v moderních demokraciích*. 1.vyd. Praha: Grada, 2010. 256 s. ISBN 978-80-247-3165-0.

PITROVÁ, M. - KUBOVÁ, R. 2010. Regulace procesu prosazování zájmů v Evropské unii. Lobbistické kodexy chování. In *Mezinárodní vztahy*, 3/2010. Str. 30 – 54. ISSN 0323-1844.

## Documents

2010/2291(ACI): 2011: *Zpráva o uzavření interinstitucionální dohody mezi Evropským parlamentem a Komisí o společném rejstříku transparentnosti*. [online]. Brusel: Evropský parlament, Výbor pro ústavní záležitosti, 2011. [cit. 2011-11-25]. Dostupné na internetu: <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2011-0174+0+DOC+XML+V0//CS#title1>>.

*Lobbying Act*, 2008. [online]. [cit. 2012-01-30]. Dostupné na internetu: <<http://laws.justice.gc.ca/eng/acts/L-12.4/>>

*Lobbyists Registration Act: Annual Report*, 2005-2006. [online]. [cit. 2012-01-30]. Dostupné na internetu: <<http://www.oecd.org/dataoecd/18/13/38944265.pdf>>

OECD, 2009. GOV/PGC(2009)9. *Lobbyists, government and public trust: Promoting integrity by self-regulation*. [online]. Paris: OECD, 2009. [cit. 2012-02-06]. Dostupné na internetu: <<http://www.oecd.org/officialdocuments/displaydocumentpdf?cote=gov/pgc%282009%299&doclanguage=en>>.

## Contact:

**Karolina Tichá**

***karolina.ticha@umb.sk***

PhD. Candidate

Department of Political Science

Faculty of Political Sciences and International Relations

University of Matej Bel, Slovakia

# **POLITICAL AND LEGAL PERCEPTION OF PROTOCOL NO. 30 ON THE APPLICATION OF THE EU CHARTER**

**Michaela Chládková**

## **Abstract**

The present article aims at introducing the circumstances surrounding the adoption of the Protocol on the application of the Charter of fundamental rights of the European Union to Poland and to the United Kingdom, at analysing the Protocol from the legal point of view and at assessing its impact on the level of human rights protection in the European Union. The author also refers to and extracts parts of the recent case law of the Court of Justice of the European Union concerning the status of the Protocol and concludes by information on the current political climate that is partially the outcome of the Court's case law and the prevailing opinion of the academic community.

## **Key words:**

Protocol no.30, Charter of fundamental rights of the European Union, opt-out, United Kingdom, Poland, Czech Republic

## **Introduction**

The EU Charter of fundamental rights that acquired binding force along with the ratification of the Lisbon Treaty in 2009 is empowered to fill the gaps left by EU legislators and the Court of Justice of the EU in the field of human rights protection, to make the rights more visible and predictable. It is also seen as a source of crystallization of EU competences.<sup>1</sup> On the other hand, the Charter runs the risk of becoming a source of differentiation and paradoxically, a source of legal uncertainty. It is caused by the Protocol No. 30<sup>2</sup> which allows for the "opt-out" of two Member States and therefore allows for the same rights to be applied differently among Member States within the European Union. Or does it not?

## **On the interpretation of the Protocol**

At the European Council in June 2007, the UK government secured an 'opt-out' from the legal enforceability to be given to the Charter as part of the Reform Treaty agreed on by the Council. According to the presidency conclusions issued at the end of the European Council, two other Member States – reportedly Ireland and Poland – "reserved their right to join in this protocol"<sup>3</sup>. Poland took advantage of this right and joined the UK. The Czech Republic followed the same idea but in order to be a Party to the Protocol, it was required to wait until the next Accession treaty is drafted (presumably with Croatia).

---

<sup>1</sup> For example by Jean-Paul Jacqu , Abdelhaleq Berramdane

<sup>2</sup> OJEU 9.5.2008 (C 115/313-314): Protocol (No 30) on the application of the Charter of fundamental rights of the European Union to Poland and to the United Kingdom

<sup>3</sup> Available at [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/94932.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/94932.pdf). See a footnote no. 20. (last visit on 16th January 2013)

According to the Lisbon treaty wording, the Charter acquires "the same legal value as the Treaties" (Article 6 Treaty on European Union - TEU). In spite of the affirmation that "the Charter reaffirms the rights, freedoms and principles recognised in the Union and makes those rights more visible, but does not create new rights or principles"<sup>4</sup>, Member States mentioned above "desirous of clarifying the application of the Charter in relation to the laws and administrative action and of its justiciability"<sup>5</sup>, had fought for being excluded of its binding force to secure a full opt-out.

Protocol is an international treaty, and according to Article 51 TEU the protocols and annexes to the Treaties shall form an integral part thereof. They enjoy *lex specialis* status, and therefore they may serve to secure exceptions from the rule. The development brought by the Lisbon treaty highlights the mechanism of the opt-out in general terms. The Protocol becomes a part of the primary law and is of the same binding force.

Article 1 paragraph 1 of the Protocol no.30 that reads as follows:

*The Charter does not extend the ability of the Court of Justice of the EU, or any court or tribunal of Poland or of the UK, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the UK are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.*

specifies an interpretation of the Article 51 of the Charter concerning the field of application of the Charter:

*1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.*

*2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.*

The aim of the Article 1 par. 1 of the Protocol therefore seems to merely confirm that Member states are obliged to apply the provisions of the Charter only when implementing the EU law and not when applying purely national rules, procedures, and provisions. The latter had not been in Court's power before the entry into force of the Lisbon Treaty, and the objective of the Article 1 par.1 was *inter alia* probably to confirm that it is still the case even though the Charter acquired a binding force. Even if the Court had examined the national provisions, by doing so it would have exceeded its powers, and therefore the Member State would not have to respect such *ultra vires* decision.<sup>6</sup>

The second paragraph of Article 1 of the Protocol is of an explanatory character and a concretisation of par.1:

---

<sup>4</sup> Preamble of the Protocol n.30

<sup>5</sup> Preamble of the Protocol n.30

<sup>6</sup> KRÁLOVÁ, J.: K vlivu tzv. Britsko-polského protokolu a tzv. českých „záruk“ k Listině základních práv EU na uplatňování základních práv v těchto státech. In *Jurisprudence*. 2010, no. 3, 3-7 p. ISSN 1802-384. p. 5.

*In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the UK except in so far as Poland or the UK has provided for such rights in its national law.*

The Title IV of the Charter is headed Solidarity and consists mainly of economic and social rights. In 1966, adoption of two International covenants (the International Covenant on Civil and Political Rights – ICCPR - and the International Covenant on Economic, Social and Cultural Rights - ICESCR) reflected a long-lasting dichotomy of the human rights regime – civil and political rights on one hand and social and economic rights on the other. According to Advocate General Trstenjak the "title, entitled 'Solidarity', is regarded as one of the most controversial areas in the evolution of the Charter. There was dispute not only over the fundamental question whether social rights and principles should be incorporated into the Charter, but also how many social rights should be included, how they should be organised in detail, what binding force they should have, and whether they should be classified as fundamental rights or as principles"<sup>7</sup>. Although the EU Charter of fundamental rights encompasses both areas in one document, De Witte declares that we should not be deceived by rhetorical support given to the indivisibility of rights because in spite of the fact that social rights are along side of other rights in the Charter and the Court in its case law did not draw distinction between them neither, their position remains quite distinctive.<sup>8</sup> Protocol no. 30 supports the dichotomy.<sup>9</sup>

Not all the rights in Title IV are directly justiciable. Considering some of them it is not clear if it is a principle or a subjective right. Paragraph 2 is a safety catch against an extensive interpretation of the Charter and aims to prevent the Court from declaring a provision justiciable regardless of the applicable law of the EU which states the opposite.<sup>10</sup> The differences in social and economic rights in the Member States might be, however, considered by the Court as an obstacle for functioning of the EU internal market which may create a conflict between the fundamental rights and the four market freedoms.

The term "for the avoidance of any doubt" suggests that the issue of the EU competences in the area of Title IV of the Charter is dependent on Article 51 par. 2 of the Charter, and therefore it is merely an interpretation rule with declaratory effects important to all the Member States.<sup>11</sup>

Article 2 serves to specify the interpretation of those Charter provisions which refer to the national laws and practices<sup>12</sup>, and these national provisions create borders of application of the given right:

---

<sup>7</sup> Opinion of Advocate General Trstenjak delivered on 22 September 2011 concerning the Case C-411/10 N. S. v Secretary of State for the Home Department (§172).

<sup>8</sup> DE WITTE, B.: The Trajectory of Fundamental Social Rights in the European Union. In: DE BÚRCA, G. - DE WITTE, B. (eds.): *Social Rights in Europe*. Oxford, 2005. ISBN 9780199287994. p. 153

<sup>9</sup> Similarly, the state of ratification of the Optional protocol that would establish an individual application mechanism with regard to ICESCR confirms that social and economic rights are not to be easily recognised as the self-executing and directly applicable.

<sup>10</sup> KRÁLOVÁ, J.: K vlivu tzv. Britsko-polského protokolu... p. 6

<sup>11</sup> SCHWARZ, J.: Protokol o uplatňování Charty základních práv Evropské unie. In *Jurisprudence*. 2010, no. 2. 16-23 p. ISSN 1802-384. p. 22

<sup>12</sup> E.g. article 9 (right to marry and right to found a family), article 10 par.2 (freedom of thought, conscience and religion), article 16 (right to conduct a business), article 28 (right of collective bargaining and action), etc.

*To the extent that a provision of the Charter refers to national laws and practices, it shall only apply to Poland or the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of Poland or of the United Kingdom.*

Simultaneously, it interprets Article 52 par. 6 which states that “full account shall be taken of national laws and practices as specified in this Charter.”

While some authors accept the Protocol as an exception capable of limiting the effects of the Charter, others point out that it actually is not an opt-out protocol but either a useful clarification, an interpretative protocol or even a political tool and the Protocol is widely misreported. When discussing the character of the opt-out protocols, we must not forget to mention other ways of human rights protection stemming from the primary law applicable in all Member States:

- Firstly, the Court of Justice opened the door for human rights protection by declaring the fundamental rights part of the **general principles** of EU law. Thus, even before the codification of fundamental rights, general principles had been directly applicable on the territory of Member States and enjoyed primacy over the national laws as a consequence of the wording of Article 6 TEU. The range of rights accorded by the Charter would logically seem to be destined to substitute the references to the European

Convention as well as to the general principles and national constitutional traditions contained in Article 6 TEU, but that is not the case. The development resulted in the multiplicity of sources which leads to the question on what their role is. Jacqu  argues that “suppression of the reference to general principles would in any case be inoperative because the recourse to that has never been founded on an express authorisation accorded by the Treaties.”<sup>13</sup> There is a great coincidence existing between the rights included in the Charter and the rights protected by virtue of their character as general principles of law.

According to Jacqu , preservation of the reference to general principles should play essential role in a short term. General principles serve the Court to interpret certain provisions of the Charter. Except for the interpretative function, general principles constitute a way of recognition of new rights by the Court. Common constitutional traditions are not fixed, the rights they grant may be subject to extension and in that case, “the vector of the general principles permits to incorporate these innovations into the law of the Union.”<sup>14</sup>

- Secondly, there are number of provisions with human rights dimension enshrined in the **founding treaties**. Since the Treaty of Maastricht and its Article 6 (now Article 2 and Article 6 of the TEU) have come into force, the European Union is bound to respect the human rights in a very wide context. It is worth mentioning Article 2 TEU which actually names all the spheres covered by the Charter as common values of all Member States. One of the purposes of this Article is to set standards for membership itself. Article 2 TEU does not exclude anyone from its scope. The Lisbon treaty reformed this provision by making it possible for the accession to the European Convention and by elaborating on the values the Union is founded on. First line of the Preamble to the Protocol reminds that in Article 6 TEU the Union recognises the rights, freedoms and principles set out in the Charter. According to Schwarz this recognition cannot be

---

<sup>13</sup> JACQU , J.P.: Le trait  de Lisbonne. Une vue cavali re. In: *Revue trimestrielle de droit europ en*. 2008, vol. 44, no. 3, pp. 439-483. ISSN 0035-4317. p. 450

<sup>14</sup> JACQU , J.P.: Le trait  de Lisbonne..., p. 451



affected by the Protocol and as the Member States may file the action for annulment by arguing incompatibility with the fundamental rights, nationals and legal persons of the UK, Poland and possibly Ireland and Czech Republic may use the same argument on the grounds of Article 263 par. 4 TFEU if it is against a regulatory act which is of direct concern to them and does not entail implementing measures. Moreover, the national courts in the countries in question may request the Court to provide a ruling if they suspect that the act is not in accordance with the Charter.

- Thirdly, reference to the **European Convention** for the protection of human rights and fundamental freedoms and the future EU accession to the Convention further enforces the human rights dimension, culture and commitment of the EU. Article 6 par. 3 declares the respect to the European Convention and constitutional traditions as general principles and it must be interpreted as a guarantee of a high standard of human rights protection and not a minimum common indicator.

### **A glance back...**

The **United Kingdom** government praised the declaration of the Charter in 2000. A few years later, the UK signed the Constitutional Treaty without making any reservation concerning the inclusion of the Charter. Whilst the Charter sets out desirable improvements in the field of human rights, the later concern of the UK has been the threat to the national sovereignty. Even after the inclusion of par. 5 of Article 52 of the Charter on the incitation of the UK in 2004<sup>15</sup>, the government maintained that the Charter gave the EU new reasons to intervene, especially concerning the protection of the environment, workers, or the right to asylum.

The Protocol especially concerns Title IV of the Charter and the elevation of the degree of the justiciability of social rights. In the field of the employment law (Title IV), it covers workers' rights in the areas such as information and consultation within an undertaking; collective bargaining and industrial action; protection in the event of unjustified dismissal; fair and just working conditions; maternity and parental leave.

The resistance in the UK towards the EU social policy can be traced throughout its whole history. UK is not a signatory to the "Community Charter of the Fundamental Social Rights of Workers". Moreover, under the UK influence, provisions on social policy were not included in the Maastricht Treaty but added in the form of the Protocol n. 14 on social policy signed by all the members except the UK. It was only in 1997 when the Labour Party won the elections that the social policy became acceptable. Soon after that the Charter was adopted.

The UK is an example of a country where employee representatives and employees do not participate in the policy shaping. "The "striking" example of a conflict between the legal system of the United Kingdom and the provisions of the Charter is the right to take a collective action including the right to strike (Article 28 of the Charter). The British see strikes as impediments to the rights of those whose lives would be hindered or endangered by the strikers. The right to strike has been restricted in the UK since the 1980s and there are also rules about ballots and picketing. However, none of these restrictions is mentioned in the Charter."<sup>16</sup> And indeed by the Treaty of Lisbon "the primary law enshrinement of the right to

---

<sup>15</sup> SCHWARZ, J.: Protokol o uplatňování Charty základních práv Evropské unie... p. 21

<sup>16</sup> JIRÁSEK, J.: Application of the Charter of Fundamental Freedoms of the EU in the United Kingdom and Poland according to the Lisbon Treaty. In: *Europeanization of the National Law, The Lisbon Treaty and Some Other Legal Issues. Sborník příspěvků z konference Cofola 2008 13.-14.5.2008*. Brno: Masarykova univerzita, 2008. 1-9 pp. ISBN 978-80-210-4630-6

bargain collectively was strengthened by the fact that Article 6 TEU declares the Charter of Fundamental Rights of the European Union to have binding legal force. By that general reference to the charter, the right to bargain collectively, described in Article 28 of that charter, is now expressly incorporated in primary law."<sup>17</sup>

Another provision that raised discussion was Article 30 on the protection in the event of unjustified dismissal. They are both formulated as rights, not principles and thus their direct application cannot be excluded.

The UK opt-out was met with mixed responses by a part of trade unions, politicians, and the EU law scholars. The misunderstanding on the effects the Charter might have strengthened the UK resistance towards the Charter. As for the political and social partners' reactions, the opt-out was praised by the representatives of the Confederation of the British Industry as well as the Federation of Small Businesses.

On one hand, there was a fear that relevant Charter rights might damage the UK's flexible labour market and a fear of widening the EU social policy competence more generally. Thus, the Conservative Party called for even stronger guarantees concerning the opt-out. On the other hand, the Trade Union Congress was disappointed because the opt-out indicated fewer rights enjoyed by workers and employees. Similar point was made by the Liberal Democrats.<sup>18</sup>

As for **Poland**, the principle concern, raised by the Polish political party "Law and Justice", was the scope of the principle of non-discrimination with regard to sexual minorities, impact on privacy concerning abortion and family planning. The main preoccupation of Poland was therefore the recognition of equality of homosexual partnership and heterosexual marriage as well as legislation on voluntary abortion. In other words, a fear that the EU might impose "moral standards" on Poland. It is not clear, therefore, to what extent the Protocol responds to the Polish preoccupations since it focuses on Title IV, and does not particularly cover aspects of family rights which are already covered by ECHR to which Poland is a Party.<sup>19</sup> Other explanation may be grounded in the concern about the possibility of German claims on the Polish land.

As the intergovernmental conference that took place in 2007 with the aim to sign the Lisbon treaty allowed for declarations to be made by the Member States, Poland adopted two declarations related to the adoption of the Protocol. Declaration of Poland No. 61 on Charter of the fundamental rights of the EU states the following:

*"The Charter does not affect in any way the right of Member States to legislate in the sphere of public morality, family law, as well as the protection of human dignity and respect for human physical and moral integrity."*

By Declaration No. 62 on the Protocol Poland declares in even more puzzling way that even though it joined the UK in the Protocol which refuses to follow Title IV of the Charter a full respect to these rights:

*Poland declares that, having regard to the tradition of social movement of "Solidarity" and its significant contribution to the struggle for social and labour rights,*

---

<sup>17</sup> Advocate General Trstenjak opinion delivered on 14 April 2010 concerning the case C-271/08

<sup>18</sup> Available at <http://www.eurofound.europa.eu/eiro/2007/07/articles/uk0707049i.htm> (last visit on 16th January 2013)

<sup>19</sup> See JACQUÉ, J.P.: Le traité de Lisbonne...

*it fully respects social and labour rights, as established by European Union law, and in particular those reaffirmed in Title IV of the Charter of Fundamental Rights of the European Union.*

Third country that fought for being included in the Protocol is the Czech Republic. In spite of the prompt application of the Charter by the Czech Constitutional court in less than 6 months after its declaration in 2000<sup>20</sup> and Agreement on inclusion of the Charter in the Treaty in Constitution, **the Czech Republic** made an unexpected turnaround.

The Czech Republic also decided to make a Declaration on the Charter of Fundamental Rights of the European Union at 2007 EU summit:

- 1. The Czech Republic recalls that the provisions of the Charter of Fundamental Rights of the European Union are addressed to the institutions and bodies of the European Union with due regard for the principle of subsidiarity and division of competences between the European Union and its Member States, as reaffirmed in Declaration (No 18) in relation to the delimitation of competences. The Czech Republic stresses that its provisions are addressed to the Member States only when they are implementing Union law, and not when they are adopting and implementing national law independently from Union law.*
- 2. The Czech Republic also emphasises that the Charter does not extend the field of application of Union law and does not establish any new power for the Union. It does not diminish the field of application of national law and does not restrain any current powers of the national authorities in this field.*
- 3. The Czech Republic stresses that, in so far as the Charter recognises fundamental rights and principles as they result from constitutional traditions common to the Member States, those rights and principles are to be interpreted in harmony with those traditions.*
- 4. The Czech Republic further stresses that nothing in the Charter may be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective field of application, by Union law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' Constitutions.*

In paragraph 1 of the Declaration no.53 it is basically repeated and stressed what the field of application is as stated in Article 51 of the Charter and it further stresses Article 51 par. 4 concerning the interpretation in harmony with constitutional traditions of the Member States and the level of protection as it can already be found in Article 53.<sup>21</sup>

Two years later the President of the Czech Republic Václav Klaus made another declaration as part of the national ratification procedure concerning the Lisbon Treaty and conditioned the ratification by arranging for the same "opt-out! as the Great Britain and Poland. The

---

<sup>20</sup> Decision of 12th July 2001 (11/2000)

<sup>21</sup> Article 53 – Level of protection - Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions

government therefore negotiated for the accession to the Protocol which would in comparison to the Declaration no.53 was of a binding force.<sup>22</sup> The reason for the sudden refusal of the binding Charter is connected to the series of laws enacted by the Czechoslovak government in exile during the Second World War (Beneš Decrees) that gave rise to claims over the property from deported Germans and Hungarians. Article 17 of the Charter on right to property, however, does not create new rights or new obligations. The same right can be found in the Czech or Polish constitution and other international documents. Although, there is no interdiction of retroactivity amongst the Charter Articles, it can be derived from Article 28 of the 1969 Vienna convention. Even the European Parliament Committee on Constitutional Affairs is of the opinion that "the Charter has no effect whatsoever, in terms of Czech, Union or international law, on the validity of the Beneš Decrees concerning the expropriation of property after the Second World War."<sup>23</sup>

In any case a promise was given to the Czech Republic at Brussels European Council which took place on the 29th and 30th October 2009 that at the next accession Treaty the protocol will be amended so as to include the Czech Republic.

Even though **Ireland** abandoned the idea to take advantage of joining the UK and Poland as a party to Protocol N. 30, it did find its way to acquire an exception, a special position in connection with the application of the Charter. After the first referendum held in June 2008 by which the Irish people rejected the Lisbon treaty, Ireland managed to obtain some reservations at the summit of the European Council in Brussels held a year later. The details are recorded in the Presidency Conclusions decided on by the heads of states or governments on 18-19th June 2009<sup>24</sup>, and therefore these reservations do not have the force equal to the primary law as the Protocol does.<sup>25</sup>

As it is stated in the Presidency Conclusions, the concerns presented by the prime minister of Ireland relate to taxation policy, the right to life, education and the family, and Ireland's traditional politics of military neutrality. A high importance is simultaneously attached to a number of social issues, including workers' rights. The European Council agreed to take the measures in order to reassure Ireland of the mutual satisfaction of Ireland and the other Member States. These measures include the Decision<sup>26</sup> enclosed to the Conclusion in the form of Annexe 1 which focuses on securing the following issues. Firstly, nothing in the Treaty of Lisbon attributing a legal status to the EU Charter or in the provisions of that Treaty in the area of Freedom, Security and Justice affects in any way the scope and applicability of the protection of the right to life, family and education provided by the Constitution of Ireland. Secondly, nothing in the Treaty of Lisbon makes any change of any kind, for any Member State, to the extent or operation of the competence of the European Union in

---

<sup>22</sup> KRÁLOVÁ, J.: K vlivu tzv. Britsko-polského protokolu..., p. 3.

<sup>23</sup> Third draft report on the draft protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic (Article 48(3) of the Treaty on European Union) (00091/2011 – C7-0385/2011 – 2011/0817(NLE)) Committee on Constitutional Affairs Rapporteur: Andrew Duff 2011/0817(NLE)11.12.2012

<sup>24</sup> Available at [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/108622.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/108622.pdf) (last visit 16th January 2013)

<sup>25</sup> BONČKOVÁ, H. - SMEKAL, H.: Fragmentace společných hodnot? Výjimky z Listiny základních práv Evropské unie. In *Současná Evropa*, 2010, no.2, p.61-81. ISSN1804-1280. p. 64

<sup>26</sup> Decision of the Heads of State or Government of the 27 Member States of the European Union, meeting within the European Council, on the concerns of the Irish people on the Treaty of Lisbon (Annex 1)

relation to taxation. The third part provides for several guarantees concerning the military neutrality of Ireland.

Although the Decision is not a part of the primary law, the Heads of governments declared that it is legally binding and would take effect on the date of entry of the Treaty of Lisbon into force. Moreover, it will be attached to the TEU and TFEU in the form of Protocol at the time of the conclusion of the next accession Treaty, similarly as in the Czech model.

### **A look ahead...**

As far as the recent examples of case law are concerned, in the joined cases C-411/10 N.S and C-493/10 M.E., the Court was asked to rule on the relevance of the Protocol no 30 in the matter related to asylum procedures regulated by the Dublin regulation and to treatment of asylum seekers including alleged violations of human rights guaranteed by the Charter. Since the preliminary questions were raised in respect of the obligation of the UK, the Court of Appeal sought to find out whether the Protocol should be taken account of. To put it differently, whether the provisions of the Charter of Fundamental Rights which are relevant to the present case can take full effect in the legal order of the United Kingdom, whether it can be regarded as a full "opt-out" from the Charter. The Court identified its ruling with the opinion of the Advocate General and declared that:

*"Protocol (No 30) does not call into question the applicability of the Charter in the United Kingdom or in Poland, a position which is confirmed by the recitals in the preamble to that protocol. (...) Thus, according to the third recital in the preamble to Protocol (No 30), Article 6 TEU requires the Charter to be applied and interpreted by the courts of Poland and of the United Kingdom strictly in accordance with the explanations referred to in that article. In addition, according to the sixth recital in the preamble to that protocol, the Charter reaffirms the rights, freedoms and principles recognised in the Union and makes those rights more visible, but does not create new rights or principles. In those circumstances, Article 1(1) of Protocol (No 30) explains Article 51 of the Charter with regard to the scope thereof and does not intend to exempt the Republic of Poland or the United Kingdom from the obligation to comply with the provisions of the Charter or to prevent a court of one of those Member States from ensuring compliance with those provisions."*

Thus, the Court concluded that there was no need or a ground to take the Protocol into account.

As stated above this was equally the essence of the Advocate General Trstenjak opinion delivered on 22 September 2011 as well as the Commission, the Polish Government, the United Kingdom Government, the appellant in the main proceedings, the United Nations High Commissioner for Refugees, the Equality and Human Rights Commission, Amnesty International Limited and the AIRE Centre who submitted their observations.

By applying the grammatical (linguistic) method of interpretation of the Protocol preamble and articles, Advocate General Trstenjak is very firm in her opinion and says that the question can be easily answered in negative.

Similarly the Advocate General Trstenjak issued her opinion in Polish case C-489/10, *Prokurator Generalny v Łukasz Marcin Bonda* concerning the ne bis in idem principle enshrined in Article 50 of the Charter:

*"Article 1(1) of that protocol (...) does not distinguish itself by great clarity. However, Protocol No 30 does not signify an opt-out from the Charter of Fundamental Rights for the United Kingdom and the Republic of Poland. On the contrary, recitals 8 and 9 in the preamble to the protocol point in favour of the protocol not containing any derogation from the Charter for the two countries cited but having merely a clarifying function, serving as a guide to interpretation. Article 51(2) of the Charter itself establishes that it does not extend the field of application of European Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties. Since the prohibition of double penalties laid down in Article 50 of the Charter had however already been recognised as a general European Union law principle, and according to the previous case-law such a principle would also have been applicable to the case at issue, and since even on a narrower understanding of Article 51 of the Charter, the Charter is applicable, as explained above, an extension of the ability of the Court of Justice within the meaning of the protocol cannot come into question."*

Unfortunately, the Court did not rule on the interpretation of Article 1 (2) due to the fact that Solidarity rights were not referred to in these cases. The Advocate General Trstenjak, however, did pay attention to this aspect of the Protocol in her Opinion delivered on 22 September 2011:

*"Under Article 1(2) of Protocol No 30, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as such rights are provided for in their respective national laws. With the statement that Title IV of the Charter of Fundamental Rights does not create justiciable rights applicable to Poland or the United Kingdom, Article 1(2) of Protocol No 30 first reaffirms the principle, set out in Article 51(1) of the Charter, that the Charter does not create justiciable rights as between private individuals. However, Article 1(2) of Protocol No 30 also appears to rule out new EU rights and entitlements being derived from Articles 27 to 38 of the Charter of Fundamental Rights, on which those entitled could rely against the United Kingdom or against Poland. Because the contested fundamental rights in the present case are not among the social fundamental rights and principles set out in Title IV of the Charter of Fundamental Rights, however, there is no need to examine in any greater detail here the question of the precise validity and scope of Article 1(2) of Protocol No 30. It is sufficient to refer to the 10th recital in the preamble to Protocol No 30, according to which references in that protocol to the operation of specific provisions of the Charter are strictly without prejudice to the operation of other provisions of the Charter."*

The result is that although there is no complete opt-out from the Charter, the effect of the Charter might be limited in the UK and Poland regarding social rights. Article 2 of the Protocol is also only relevant, in effect, as regards social rights."The question would then arise whether those social rights were in any event granted by the 'general principles of EU law' – which pre-existed the Charter, which are still preserved in force by Article 6(3) of the Treaty on the European Union, and which do not appear to be restricted by the Protocol as regards the UK and Poland."<sup>27</sup>

---

<sup>27</sup> PEERS, S.: Court of Justice: The NS and ME Opinions - The Death of "Mutual Trust"? Statewatch analysis ISSN 1756-851X. Available at: <http://www.statewatch.org/analyses/no-148-dublin-mutual-trust.pdf> (Last visit on 21 January 2013)

Could the exception granted to the UK and Poland (and eventually to the Czech Republic) be overcome by the Court of Justice of the EU using the indirect ways in the future? While the Charter is limited to the EU institutions and Member States applying the EU law, the Court's case law has no such limitation. "Moreover, the ECJ is a well-known protector of the single market and the four freedoms. Thus if some human rights (particularly the solidarity rights) are more restricted in one Member State than in others, the ECJ could regard it as a hindrance to the single market or infringement of the said freedoms and promote the protection of such rights only on the basis of the provisions of the fundamental Treaties without any regard to the Charter."<sup>28</sup>

However, should the current UK readiness to quit the European Union project become more than rhetoric, the Protocol will remain only one of the manifestations of British Euroscepticism. As the UK gradually admitted "despite the rhetoric of various British politicians (including former Prime Minister Tony Blair) the Protocol simply does not read as an opt-out as it seeks to clarify the application of the EU Charter. The judgment in N.S. simply confirms that plain reading"<sup>29</sup>. Calling the Protocol an opt-out was more of a political manoeuvre than a legal argument and it may be seen as a concession to British Euroscepticism.

On the other hand, Croatia will become a full member of the EU in July 2013 which may or may not restir the fading interest in the Protocol on behalf of the Czech Republic, although with the current CJ EU case law track even the Czech may be discouraged in its pursuit. Moreover, the Czech Parliament is said to be unlikely to ratify the Protocol with the necessary qualified majorities and the Protocol may remain the president Václav Klaus initiative only. Doubts persist about the willingness of the Czech Parliament to complete ratification of the new protocol aimed at extending the application of Protocol No 30 to the Czech Republic.<sup>30</sup> The Czech Parliament ratified the Treaty of Lisbon without any reservations or qualification concerning full adherence by the Czech Republic to the Charter and the Czech Senate opposed the application of Protocol No. 30 on the grounds that it would reduce standards of protection of fundamental rights and freedoms of Czech citizens.<sup>31</sup> The Czech Republic is actually currently considered to be in a trap - firstly, it expects European Council to keep its promise, secondly it does not wish to step back and appear indecisive. The exclusion of the Czech Republic from the application of the Protocol was backed up also by the Czech Helsinki Committee.<sup>32</sup>

---

<sup>28</sup> JIRÁSEK, J.: Application of the Charter of Fundamental Freedoms of the EU in the United Kingdom and Poland according to the Lisbon Treaty. In: *Europeanization of the National Law, The Lisbon Treaty and Some Other Legal Issues. Sborník příspěvků z konference Cofola 2008 13.-14.5.2008*. Brno: Masarykova univerzita, 2008. 1-9 pp. ISBN 978-80-210-4630-6

<sup>29</sup> MURPHY, C.: The EU on Asylum, Greece and the UK Protocol on EU Charter. Available at: <http://www.humanrights.ie/index.php/2011/12/28/nsjudgment/> (Last visit on 21 January 2013)

<sup>30</sup> Third draft report on the draft protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic (Article 48(3) of the Treaty on European Union) (00091/2011 – C7-0385/2011 – 2011/0817(NLE)) Committee on Constitutional Affairs Rapporteur: Andrew Duff 2011/0817(NLE)11.12.2012

<sup>31</sup> Resolution 330 of 6 October 2011

<sup>32</sup> See <http://www.helcom.cz/en/view.php?cisloclanku=2012040401>

As for Poland, the European Parliament Committee on Constitutional Affairs Rapporteur Andrew Duff in his report<sup>33</sup> stated that "subsequent to the entry into force of Lisbon, the Protocol appears to have been completely disregarded by the Polish judiciary. A constitutional mechanism has been devised whereby Poland could decide to amend or to withdraw from the Protocol. The possibility of withdrawal is now a matter of political debate in Poland."

Professor Niamh Nic Shuibhne is of the opinion that the formulation of the content of the protocol raises questions "beyond the substance of the fundamental rights. It highlights also (ab)use of the discourse or message of rights."<sup>34</sup> We may conclude along with the European Parliament Committee on Constitutional Affairs that "on the basis of academic evidence and case-law, Protocol No 30 does not exempt Poland and the United Kingdom from the binding provisions of the Charter, it is not an 'opt-out', it does not amend the Charter and it does not alter the legal position which would prevail if it were not to exist. The only effect it has is to create legal uncertainty not only in Poland and the United Kingdom but also in other Member States. (...) An important function of the Charter is to increase the prominence of fundamental rights and to make them more visible, but Protocol No 30 gives rise to legal uncertainty and political confusion, thereby undermining the efforts of the Union to reach and maintain a uniformly high and equal level of rights protection."<sup>35</sup> The future Court of Justice case law may unveil more about the role of the Protocol in the field of social rights.

---

<sup>33</sup> Third draft report on the draft protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic (Article 48(3) of the Treaty on European Union) (00091/2011 – C7-0385/2011 – 2011/0817(NLE)) Committee on Constitutional Affairs Rapporteur: Andrew Duff 2011/0817(NLE)11.12.2012

<sup>34</sup> SHUIBNE, N.N.: The reality to rights: From rhetoric to opt-out (Editorial). In: *European Law Review*. 2009, vol. 34, December. 815-816pp. ISSN p.816

<sup>35</sup> Third draft report on the draft protocol on the application of the Charter of Fundamental Rights of the European Union to the Czech Republic (Article 48(3) of the Treaty on European Union) (00091/2011 – C7-0385/2011 – 2011/0817(NLE)) Committee on Constitutional Affairs Rapporteur: Andrew Duff 2011/0817(NLE)11.12.2012



# LA POSITION DES AVOCATS DANS LES SYSTÈMES JURIDIQUES DE L'UNION ET NATIONAUX<sup>1</sup>

*The position of lawyers in the legal systems of the European Union and its Member States*

**Michael Siman**

## ABSTRACT

The different conditions for exercising the legal professions in Member States represent one of the major obstacles to the free circulation of European lawyers. This issue is discussed in terms of the position of lawyers in the legal systems of the European Union and its Member States. First, it is necessary to examine the role of lawyers in the legal system of the Union and then to analyse the role of the latter in national legal systems by analysing the three situations in the Member States: namely the uniqueness of the legal profession, the duality of the legal profession, and finally, the system of coexistence of the professions of lawyer and notary.

**Key words:** European Union - Member States - lawyers

Le problème de reconnaissance des diplômes et des reconnaissances professionnelles n'est que l'un des verrous de la libre circulation des avocats en Europe. Un autre obstacle majeur de la libre circulation des avocats européens sont les modalités d'exercice de la profession d'avocat dans les États membres. Cette question est analysée du point de vue de la position des avocats dans les systèmes juridiques de l'Union et nationaux. On examine d'abord le rôle des avocats dans le système juridique de l'Union et ensuite on analyse le rôle de ceux-ci dans les systèmes juridiques nationaux en examinant les trois situations existant dans les États membres, à savoir l'unicité de la profession juridique, la dualité des professions juridiques et, finalement, le système de coexistence des professions d'avocat et de notaire.

## Le rôle des avocats en droit de l'Union

D'un point de vue général, on peut constater que la relation entre les professions juridiques et judiciaires et la construction communautaire semble paradoxale. D'un côté, cette construction fondée sur le droit a besoin des professionnels de ce domaine. De l'autre, les professions du droit sont régies par des réglementations nationales qui les protègent et les isolent les unes des autres. La mobilité professionnelle, à titre permanent ou temporaire, se trouve verrouillée ou filtrée de différentes manières par des conditions fondées sur la nationalité des personnes ou la nationalité de leurs qualifications, qui constituent des obstacles que l'action de l'Union vise à éliminer. L'eupéanisation des professions du droit et la circulation entre les systèmes juridiques pourraient accompagner ou anticiper de manière dynamique les progrès de la construction de l'Union. Néanmoins, selon J. Perlek « on constate plutôt l'existence d'un décalage, un retard », ce qui ne permet pas aux membres des professions juridiques et judiciaires « de tirer avantage de leur droit à la libre circulation, sous ses différentes formes »<sup>2</sup>.

---

<sup>1</sup> Ce travail est le résultat du projet "L'impact de la jurisprudence de la Cour de justice à la législation nationale des États membres", financé par l'Agence de support à la recherche et au développement (contrat n. APVV-0754-07).

<sup>2</sup> PERLEK (J.), *op. cit. supra*, note n° 16, p. 625.

Les fonctions de l'avocat de l'Union se manifestent, tout d'abord, au niveau national. Le juge national est « le juge communautaire du droit commun », ainsi que l'affirme le Tribunal de première instance<sup>3</sup>. C'est à l'avocat qu'il appartient d'identifier et faire émerger les éléments du droit de l'Union de l'affaire dans laquelle il assiste ou représente une partie devant une juridiction nationale. Il lui appartient aussi de suggérer les solutions que commandent l'invocabilité des règles de l'Union, l'effet direct de certaines d'entre elles et la primauté du droit de l'Union. Il lui revient, quand c'est utile, de susciter l'intérêt des juges nationaux pour la saisine à titre préjudiciel de la Cour de Justice de l'Union européenne, que la juridiction concernée ait l'obligation ou, seulement, la faculté de procéder à un renvoi. En pratique, afin de renforcer sa capacité de conviction ou en conséquence de celle-ci, l'avocat sera amené à formuler lui-même la ou les questions préjudicielles qu'il propose au juge de soumettre à la Cour de Luxembourg. Enfin, sa mission peut se prolonger devant la Cour de Justice, dans les procédures sur renvoi préjudiciel.

Néanmoins, la compétence relative à la détermination du régime des professions, en général, et à la définition du statut des avocats, notamment, est essentiellement nationale. Ce n'est que l'exercice de cette compétence qui se trouve, à quelques égards, encadré pour les besoins du droit de libre circulation prévu par le droit primaire. Pour ce qui concerne le droit dérivé, il ne pourrait viser, tout au plus, qu'à la coordination des dispositions nationales relatives à l'accès aux activités ou à leur exercice<sup>4</sup>.

Dans cette situation paradoxale des avocats dans la construction de l'Union, il y a lieu de noter que l'espace juridique de l'Union est divisé par fortement des barrières entre les États membres ou bien à l'intérieur de ceux-ci, et entre les différentes professions d'avocat. Le droit est caractéristique des identités nationales, et aussi la formation des avocats repose fondamentalement, sur le droit national. De plus, la place du droit de l'Union, mais surtout du droit national étranger et du droit comparatif dans l'enseignement des avocats (ou bien des juristes en général) laisse encore beaucoup à désirer.

La formation au droit de l'Union des avocats et des futurs juristes est indispensable au bon fonctionnement des États de droit et de la Communauté de droit, et à la protection des intérêts des justiciables. De plus en plus nécessaire à la pratique des activités juridiques, elle est, de plus, nécessaire pour un exercice transfrontalier. Il y a lieu, sans doute, d'en tirer certaines conséquences quant au contenu des études de droit et quant à la formation continue des professionnels du droit. La formation de base doit permettre l'acquisition d'une connaissance suffisante du droit de l'Union. Des progrès sensibles ont été accomplis pour ce qui concerne la formation au droit institutionnel. Pour beaucoup d'étudiants, la part des enseignements dévolus au droit de l'Union matériel ou substantiel demeure encore limitée. Sont encore assez rares les enseignements disponibles, autrement que sous forme d'une option, les enseignements spécifiques portant sur les diverses branches du contentieux de l'Union<sup>5</sup>.

En Slovaquie, le droit de l'Union a été intégré dans les programmes d'études en droit pendant les années 90, plus ou moins inclus dans l'enseignement du droit international public et privé. La position du droit de l'Union institutionnel, matériel et procédural a été renforcée notamment en relation avec l'adhésion de la République slovaque à l'Union européenne en 2004. Aujourd'hui, le droit de l'Union est enseigné comme une matière individuelle, distincte du droit international, et obligatoire à toutes les facultés de droit en République slovaque, à savoir à la Faculté de droit de l'Université Comenius à Bratislava,<sup>6</sup> à la Faculté de droit de l'Université de droit de Bratislava,<sup>7</sup> à la Faculté de droit de

---

<sup>3</sup> Arrêt du Tribunal de première instance du 10 juillet 1990, aff. T-51/89, Tetra Pak Rausing SA contre Commission des Communautés européennes, Rec. 1990, p. II-39.

<sup>4</sup> PERTEK (J.), *op. cit. supra*, note n° 49, pp. 28-29.

<sup>5</sup> Voir PERTEK (J.), La formation des fonctionnaires et des juristes aux questions européennes, in *Revue du marché commun et de l'Union européenne*, 1993, pp. 746-753.

<sup>6</sup> Voir [www.flaw.uniba.sk](http://www.flaw.uniba.sk).

<sup>7</sup> Voir [www.uninova.sk](http://www.uninova.sk).

l'Université de Trnava,<sup>8</sup> de la Faculté de droit de l'Université Matthias Bellus à Banská Bystrica,<sup>9</sup> à la Faculté de droit de l'Université Pavol Jozef Šafárik à Košice<sup>10</sup> et de la Faculté de droit Janko Jesenský de l'Université de Sládkovičovo<sup>11</sup>. Néanmoins, le droit de l'Union ne fait pas habituellement partie des examens finaux des études de droit, ni des examens d'avocat organisés par la Chambre slovaque des avocats. Ainsi, depuis les années 90, les avocats acquièrent obligatoirement les connaissances fondamentales du droit de l'Union pendant leurs études de droit, mais l'approfondissement de ces connaissances n'est pas exigé ou contrôlé par la Chambre slovaque des avocats et dépend de leur propre motivation et initiative. Toutefois, la Chambre organise des cours facultatifs en droit de l'Union visant à améliorer les connaissances des avocats slovaques du droit de l'Union. Vu le fait que le droit de l'Union est partie de l'ordre juridique slovaque et l'ubiquité possible de la réglementation de l'Union, on peut supposer que les avocats seront de plus en plus motivés, voire tenus d'approfondir leurs connaissances concernant le droit de l'Union.

Ainsi, la formation des étudiants en droit, des « avocats européens en herbe », au droit de l'Union dans les États membres, et notamment dans les nouveaux États membres dont la République slovaque fait partie, laisse encore beaucoup à désirer.

Malgré toutes les considérations précédentes, il y a lieu de souligner que les avocats en Europe se trouvent dans une situation singulière : beaucoup de grands arrêts rendus par la Cour de justice dans le domaine de la libre circulation des personnes concernent les avocats ; de plus, la profession d'avocat est la seule profession dont la libre circulation est réglementée par trois directives, dont deux sont propres à cette profession, mettant en place des mécanismes qui se complètent.

### **Le rôle des avocats dans les systèmes juridiques nationaux**

La place des avocats dans le domaine des activités juridiques diffère suivant les États, selon, notamment, qu'ils connaissent ou non l'institution notariale et qu'ils aient ou non connu ou maintenu la profession particulière des avoués. Ainsi, on peut distinguer trois modèles d'organisation des professions juridiques dans les États membres: l'unicité de la profession juridique (A), la dualité des professions juridiques (B) et le système de coexistence des professions d'avocat et de notaire (C).

#### *A. Unicité de la profession juridique*

Le premier modèle d'organisation des professions juridiques repose sur l'unicité de la profession juridique : la profession d'avocat est la seule profession juridique et elle dispose du domaine de l'action le plus large. Il est ainsi notamment au Danemark, en Finlande, en Suède, en Norvège, en Islande et au Lichtenstein<sup>12</sup>.

D'après les informations disponibles sur le site du Réseau judiciaire européen en matière civile et commerciale<sup>13</sup>, en Suède, tous les avocats sont privés (les bureaux d'avocats publics ont été supprimés). Contrairement à de nombreux systèmes juridiques étrangers, la Suède autorise les citoyens à plaider personnellement devant un tribunal. Il n'y existe donc pas d'obligation de se faire représenter ou de recourir aux services d'un avocat. La Suède ne connaît pas non plus de monopole des avocats. Les conditions pour représenter une personne au tribunal ne dépendent pas du titre d'avocat, mais de certains facteurs, tels que le domicile, les connaissances linguistiques et les

---

<sup>8</sup> Voir [iuridica.truni.sk](http://iuridica.truni.sk).

<sup>9</sup> Voir [www.prf.umb.sk](http://www.prf.umb.sk).

<sup>10</sup> Voir [www.pravo.upjs.sk](http://www.pravo.upjs.sk).

<sup>11</sup> Voir [www.fpjj.sk](http://www.fpjj.sk).

<sup>12</sup> PERTEK (J.), *Les avocats en Europe*, Paris, LGDJ, 2000, p. 25.

<sup>13</sup> Professions juridiques – Suède. Réseau judiciaire européen en matière civile et commerciale ([ec.europa.eu](http://ec.europa.eu)).

aptitudes. Néanmoins, les avocats sont avantagés à certains égards. En général, ils sont les seuls, à pouvoir être commis d'office. Contrairement à de nombreux autres pays, il n'existe aucune différence de qualité entre un juriste exerçant la fonction d'avocat commis d'office et un avocat privé puisque, dans l'immense majorité des cas, tous deux sont avocats. En Suède, le terme « avocat » renvoie à l'appartenance à l'Association suédoise des avocats, rien de plus. Pour devenir membre de cette association, il faut se conformer à certains critères formels en matière de compétence, d'expérience et de qualifications. La fonction des exigences de compétence imposées pour l'exercice de la fonction d'avocat est de permettre l'accès à la profession aux seules personnes disposant de capacités suffisantes et généralement aptes (le titre d'avocat est une garantie de qualité). En Suède, n'importe qui peut ouvrir un bureau d'avocats. Le titre de juriste et l'activité de conseiller juridique à titre professionnel ne sont soumis à aucune exigence de formation ou d'expérience. La seule interdiction légale portant sur l'activité juridique concerne les personnes ayant commis une infraction grave alors qu'elles fournissaient une assistance juridique. Ces personnes sont passibles d'une interdiction d'exercer la fonction de conseiller juridique pendant une période jusqu'à 10 ans.

En Finlande, il n'existe pas de monopole des avocats, et d'autres personnes que des magistrats professionnels peuvent offrir des services juridiques. L'utilisateur du titre d'avocat doit être un magistrat accepté par l'ordre des avocats et répondre à certaines exigences en matière de compétences. L'ordre des avocats finlandais se charge du contrôle professionnel des avocats, des autres magistrats actifs dans les cabinets d'avocats et des conseillers juridiques publics. Néanmoins, les autres personnes offrant une aide juridique ne sont pas visées par le contrôle prescrit par la loi<sup>14</sup>.

### *B. Dualité des professions juridiques*

Dans les États de *common law*, l'Irlande et le Royaume-Uni, on trouve un autre modèle d'organisation des professions juridiques. Dans ces pays prévaut la dualité des professions de *barrister* (ou *advocate* en Écosse) et de *solicitor*. Le Royaume-Uni est, de plus, formé de trois entités (Angleterre et Pays de Galles, Écosse, Irlande du Nord), qui ont leur propre système juridique et leur dualité propre de professions juridiques et de leurs organisations professionnelles<sup>15</sup>.

En ce qui concerne les avocats en Irlande, d'après les informations disponibles sur le site du Réseau judiciaire européen en matière civile et commerciale<sup>16</sup>, la *Honorable Society of King's Inns* organise une formation juridique postuniversitaire sanctionnée par un diplôme d'avocat. La *King's Inns* est une organisation « sans but lucratif fonctionnant sous la supervision des conseillers de la *Honorable Society of King's Inns*, membres de la magistrature et avocats principaux ». L'accès à la formation est conditionné par un examen d'entrée pour les titulaires du diplôme d'études juridiques de *King's Inns* ou d'un diplôme en droit. De plus, les avocats doivent être membres de la Bibliothèque juridique (*Law Library*). La Bibliothèque juridique est un lieu permettant d'avoir accès et de consulter des documents juridiques en échange d'un droit d'inscription annuel. Avant de devenir membre de la Bibliothèque juridique, un avocat doit choisir un maître – un avocat chevronné justifiant d'une expérience minimale de cinq ans. Traditionnellement, un avocat devait recevoir des instructions d'un avoué et l'accès direct aux avocats était interdit. Cette pratique a été examinée par la Commission de la concurrence loyale, qui a recommandé dans son rapport de 1990 que « l'interdiction-cadre relative à l'accès direct constituait une pratique restrictive et devait être retirée du code de déontologie ». Néanmoins, la Commission a reconnu que « dans certains cas, l'implication d'un avoué était souhaitable ». La Commission a recommandé « qu'il n'y ait aucune règle, statutaire ou pas, exigeant la présence physique d'un avoué devant les tribunaux afin de donner des instructions à un avocat. Ces recommandations n'ont pas été intégralement mises en oeuvre, mais plusieurs amendements ont été

<sup>14</sup> Professions juridiques – Finlande. Réseau judiciaire européen en matière civile et commerciale (ec.europa.eu).

<sup>15</sup> Voir PERTEK (J.), *op. cit. supra*, note n° 12, p. 25.

<sup>16</sup> Professions juridiques – Irlande. Réseau judiciaire européen en matière civile et commerciale (ec.europa.eu).

apportés au code de déontologie afin de permettre un accès direct à certains corps professionnels agréés ». Les avocats sont « soit des avocats en second, soit des avocats principaux ». La tradition veut que les membres du barreau exercent en qualité d'avocat en second pendant plusieurs années avant d'envisager de devenir avocat principal. Il ne s'agit pas d'une promotion automatique, et certains avocats en second choisissent de ne jamais devenir avocat principal. En général, les avocats en second « rédigent et préparent les plaidoiries et plaident certaines affaires devant les tribunaux, généralement devant les tribunaux inférieurs, mais pas uniquement ». Les fonctions d'un avocat principal comprennent « l'examen des projets de plaidoirie préparés par un avocat en second ainsi que les plaidoiries des affaires les plus complexes devant la Haute Cour et la Cour suprême ». En ce qui concerne la position des avoués (*solicitors*), la *Law Society of Ireland* supervise l'enseignement des étudiants souhaitant devenir des avoués et jouit de pouvoirs disciplinaires applicables aux avoués qualifiés. Pour devenir avoué, il convient de suivre un apprentissage de trois ans, ainsi que des cours organisés par la *Law Society of Ireland*. Pour être admis à ce cycle de formation, il convient d'être titulaire d'un diplôme universitaire ou équivalent ou être avocat ou équivalent – il s'agit du critère de présélection. Une fois cette exigence satisfaite, il convient de réussir l'épreuve finale de la *Law Society*.

### C. Système de coexistence des professions d'avocat et de notaire

Le troisième modèle est répandu dans plus de dix États membres de l'Union européenne. Ces États ont en commun de connaître l'institution notariale. Dans la plupart d'eux, il s'agit du notariat latin, les notaires étant membres d'une profession libérale dotée de prérogatives de puissance publique, tandis que la situation est différente au Portugal, où les notaires sont des agents de l'État. En République fédérale d'Allemagne, la situation est variable, comme la profession d'avocat est compatible sur la plus grande partie du territoire national avec celle de notaire, et alors généralement exercée conjointement avec elle (l'*Anwaltsnotar* est un avocat et un notaire), tandis que ces deux professions sont mutuellement incompatibles sur l'autre partie du territoire (où le notaire est *Nurnotar*)<sup>17</sup>.

En Allemagne, les avocats exercent une profession libérale en qualité « d'organe indépendant de l'administration de la justice ». Ils doivent être admis au barreau. En ce qui concerne le monopole des avocats, « en matière civile par-devant les tribunaux cantonaux, il n'existe en règle générale aucune obligation de se faire représenter par un avocat ». Cependant, le recours à un avocat est obligatoire « pour toutes les procédures menées par-devant les tribunaux régionaux, tribunaux régionaux supérieurs et par-devant la Cour fédérale de justice ainsi que dans le cadre d'un grand nombre d'affaires familiales par-devant les tribunaux cantonaux ». En cas de litiges relevant de la juridiction du travail, les parties peuvent se représenter elles-mêmes par-devant le tribunal du travail. Devant les tribunaux du travail de grande instance (*Landesarbeitsgericht*) et la Cour fédérale du travail, les parties doivent, par contre, se faire représenter par des mandataires de procédure. En dehors des avocats, des représentants de syndicats professionnels ou d'associations d'employeurs ou encore de groupements d'associations de ce type peuvent également assumer le rôle de mandataire de procédure s'ils sont habilités à exercer une telle représentation en vertu des statuts ou d'une procuration générale et si le groupement, l'association ou ses membres sont parties à la procédure. Quant aux notaires, ceux-ci sont des « officiers publics indépendants » qui sont nommés à cette charge pour procéder à l'authentification d'actes juridiques et assumer un certain nombre d'autres tâches dans le cadre de l'administration de la justice préventive. Leur nomination est du ressort des services administratifs de la justice des *Länder*. Certaines régions de l'Allemagne appliquent le modèle de « avocats-notaires » (*Anwaltsnotare*), qui exercent leurs activités de notaire parallèlement à leur profession d'avocat. Dans d'autres régions, on

---

<sup>17</sup> Voir PERTEK (J.), *op. cit. supra*, note n° 12, p. 25.

applique le modèle de « notaires à titre exclusif » (*hauptberufliche Notare* ou *Nurnotare*), tandis qu'en Bade-Wurtemberg, les notaires sont en partie fonctionnarisés (notaire-fonctionnaire)<sup>18</sup>.

Le troisième modèle d'organisation des professions juridiques susvisé s'applique aussi en Slovaquie. La profession de notaire est une profession libérale, distinctement séparée de celle d'avocat, réglementée principalement par la Loi n° 323/1992 RL du Conseil national slovaque du 6 mai 1992 relative aux notaires et aux activités de notaire (Code notarial). Selon § 2 de cette loi, « le notaire est une personne désignée et autorisée par l'État à exercer les activités de notaire et d'autres activités selon cette loi ». Selon § 3 de la même loi, les activités de notaire comportent la rédaction et la délivrance de documents certifiant des actes juridiques, l'attestation des événements importants du point de vue juridique, les procédures relatives aux dépôts notariaux et les actes concernant les registres centraux notariaux. Les activités de notaire comprennent également d'autres activités énoncées par le Code de notaire ou par d'autres lois, telles que le Code de la procédure civile. La loi dispose que ne peut exercer les activités de notaire qu'un notaire<sup>19</sup>. Selon le § 10, premier alinéa, du Code notarial, les notaires sont désignés par le ministre de la justice.

Jusqu'à l'abrogation de la loi du 7 mars 1991 n° 129/1991 RL du Conseil national slovaque relative aux juristes de commerce, le monopole des avocats en Slovaquie était partagé avec la profession de juriste de commerce. Il s'agissait d'une profession libre dont les membres étaient dotés du pouvoir de prêter aide juridique aux personnes physiques et morales, notamment dans les matières liées à leurs activités commerciales, en les représentant dans les procédures par-devant les tribunaux, s'il n'en était stipulé autrement par une loi particulière, par-devant les notaires, les autorités d'État et d'autres entités juridiques ; de plus, les juristes de commerce prêtaient des conseils légaux, élaboraient des analyses juridiques et rédigeaient des contrats et d'autres documents.<sup>20</sup> La profession de juriste de commerce a été abrogée à partir du 1<sup>er</sup> janvier 2004 par la loi n° 586/2003 RL relative à la profession d'avocat. Selon le § 77, premier alinéa, de cette loi, les juristes de commerce sont devenus avocats conformément à cette loi et ont été inscrits sur la liste des avocats par la Chambre automatiquement. Désormais, les avocats (y inclus les juristes de commerce d' auparavant devenus avocats) jouissent d'une position de monopole absolu dans leur domaine des activités.

Conformément au § 1, deuxième alinéa, de la loi « profession d'avocat » l'exercice de la profession d'avocat constitue « la représentation des clients dans les procédures devant les tribunaux, les organismes du pouvoir public et devant d'autres entités juridiques, la défense dans la procédure pénale, la prestation de conseils juridiques, la rédaction de documents relatifs aux actes juridiques, l'élaboration des analyses juridiques, la gestion des biens des clients et d'autres formes de consultation juridique et d'aide juridique, pourvu que ceux-ci sont fournis de manière continue et contre rémunération » (dénommés « services juridiques »). Néanmoins, l'alinéa 4 du paragraphe précité dispose que le deuxième alinéa est sans préjudice du pouvoir des notaires, mandataires en brevets, conseillers fiscaux et huissiers ou d'autres personnes de prêter certains services juridiques conformément aux lois particulières, de l'employé d'une personne morale ou physique de prêter des services juridiques à la personne avec laquelle cet employé a conclu un contrat de travail ou un contrat similaire relatif au travail, si la prestation des services juridiques fait partie des obligations résultant de cette relation juridique ainsi que de la personne exerçant la gestion des biens conformément aux règles particulières.

Dans certains des États relevant du troisième modèle d'organisation des professions juridiques, « il existe aussi une profession particulière, à laquelle est accordée l'exclusivité de la représentation des parties, au moins devant certaines juridictions. Il s'agit de la profession d'avoué près les cours d'appel en France, et de celles de *procurador* en Espagne et de *solicitador* au Portugal. En Italie, la dualité traditionnelle *procuratore/avvocato* a progressivement évolué jusqu'à l'absorption, en 1997, de la

<sup>18</sup> Professions juridiques – Allemagne. Réseau judiciaire européen en matière civile et commerciale (ec.europa.eu).

<sup>19</sup> § 4 du Code notarial.

<sup>20</sup> § 2, alinéa 2, de la loi relative aux juristes de commerce.

profession d'avoué (*procuratore*) par celle d'avocat. De plus, la France connaît une profession distincte, celle d'avocat au Conseil d'État et à la Cour de cassation (ou avocat aux conseils), qui ne trouve pas de véritable équivalent dans les autres États. La capacité d'action des avocats devant une juridiction suprême peut être limitée au profit d'un barreau spécialisé, auquel l'accès dépend soit d'une nomination dans le cadre d'une limitation en nombre (Autriche, Belgique pour la Cour de cassation, RFA pour la Cour de révision), soit d'une certaine expérience et, éventuellement, d'un examen (Danemark, Grèce, Italie, Norvège).

La dualité ou la pluralité des professions juridiques dans un même État est susceptible d'emporter deux types de conséquences. Elle peut entraîner une limitation de l'étendue du monopole des actes attribué aux avocats, comme c'est le cas, à des degrés divers dans tous les États où elle existe. Dans ce cas, le monopole des avocats non spécialisés est limité par l'exclusivité accordée aux avocats spécialisés pour ce qui concerne la représentation des clients devant certaines juridictions supérieures. Alors le monopole des avocats non spécialisés existe seulement devant les autres juridictions, ce qui réserve la participation aux évolutions majeures de la jurisprudence aux avocats spécialisés. Ces activités les plus importantes échappent aussi aux avocats migrants, sauf à ce qu'ils deviennent avocat spécialisé, dans les conditions prévues par la réglementation nationale.

La dualité ou la pluralité des professions juridiques peut créer également un monopole partagé. Il s'agit des situations lorsque, dans un État spécifique, il existe une position concurrente des avocats et des autres juristes, tels que les notaires, les avocats spécialisés ou bien les avoués, notamment en ce qui concerne le domaine du conseil juridique, mais aussi dans le domaine de la représentation. Tel est le cas dans les États où un monopole renforcé est partagé entre les avocats et les autres professions juridiques, mais aussi lorsqu'un monopole simple est partagé par plusieurs professions juridiques, telles que les *solicitors* et les *barristers* en Irlande et au Royaume-Uni<sup>21</sup>.

Comme le remarque J. Pertek, « à un deuxième point de vue, l'hétérogénéité des situations nationales soulève de redoutables difficultés non plus seulement de comparaison des statuts professionnels, mais de correspondance de professions, dès lors tout au moins que l'on s'efforce de l'assurer entre deux pays utilisant des modèles différents »<sup>22</sup>.

#### Bibliographie:

- 1) ADAMSON, H. C. *Free movement of lawyers*. 2<sup>nd</sup> edition. London : Butterworths, 1998.
- 2) BEUVE-MERY, J.-J. L'exercice de la profession d'avocat dans l'espace communautaire : Le point de vue de la Commission. *L'Avocat et l'Europe des 12 et des 21*, 1988, pp. 237-245.
- 3) DE BANDT, P. La libre circulation des avocats à l'aube d'une nouvelle ère. *Liber amicorum Jean-Pierre de Bandt*, 2004, pp. 49-79.
- 4) LAGUETTE, S.-P. *L'avocat dans l'Union européenne*. Office des publications officielles des Communautés européennes, 2001.
- 5) PERTEK, J. Exercice permanent de la profession d'avocat dans un autre État de l'Union européenne. *La semaine juridique, Édition générale*, 2001, II 10367.
- 6) PERTEK, J. *Les avocats en Europe*. Paris : LGDJ, 2000.
- 7) PERTEK, J. Les professions juridiques et judiciaires dans l'Union européenne: libre circulation dans l'espace européen, reconnaissance mutuelle des qualifications, équivalence des autorisations nationales d'exercice. *Revue française de droit administratif*, 1999, pp. 622-644.

---

<sup>21</sup> Voir PERTEK (J.), *op. cit. supra*, note n° 12, pp. 25-27.

<sup>22</sup> *Ibid.*, p. 27.

Reviewed by: JUDr. Milan Jančo, PhD.

**JUDr. PhDr. Ing. Michael Šiman, PhD., D.E.A.** is a lecturer at the Institute of International and European Law at the Faculty of Law, Pan European University in Bratislava. He is the chairman of the Slovak Civic Association EUROIURIS - European Legal Center and also works as an advocate in Bratislava. He graduated from the Faculty of Law, Faculty of Finance and the Faculty of Political Sciences and International Relations at the University of Matej Bel in Banská Bystrica as well as from the Center of International and European Studies at the University of Nancy in France. He graduated doctoral studies in the European Union law from the University Robert Schuman in Strasbourg. He is an external lecturer of the Slovak Judicial Academy. In addition to the academic, publishing and lecturing activities, he teaches issues of European Union law for the judiciary, lawyers and public administration.  
**Contact:** siman@euroiuris.sk



# **MIGRATORY STREAMS IN CENTRAL EUROPE: HIGHLY EDUCATED SLOVAK NATIONALS EMPLOYED IN THE CZECH LABOR MARKET**

**Antonín Mikeš & Živka Deleva**

## **Abstract**

This paper is a result of a cooperative research project which focused on the experience of highly-skilled Slovak migrants in the Czech Republic, with a focus on the capitol region. The results presented here are based on a survey of a random sample of Slovak migrants (not all highly-skilled) collected via both a snowball sample and via an online portal used primarily by Slovak nationals. The data has been run through the IBM SPSS data analysis program. Taking into account three different theoretical approaches: rational expectations, segmented labor market theory and social capital theory the authors have utilized each theory in determining the rational for migration decision making. The results of the research confirm past analysis of the same problematic, yet contribute in the area of distance perception and migration awareness among highly-skilled Slovak migrants. The research shows that Slovak highly-skilled migrants do not perceive migration into the Czech Republic as 'real' migration, but any further step 'west or otherwise' would be considered as such.

**Keywords:** Mobility, Czech and Slovak Republic, Decision-Making, Agency, Intentions

Historically migratory flows within the former Czechoslovak state were under reported and understudied; not as a result of a lack of movement but more so as an outcome of the singular political system which hindered study of the phenomenon. Additionally the study of flows between the Czech and Slovak Republic is somewhat limited by the relative 'invisibility' of the flows. That is to say that Slovak nationals are able to blend into the Czech population with relative ease, thus aiding those who do choose to integrate into the labor market.

Migratory trends are greatly affected by individual perceptions. In the case of Czech and Slovak migrants Wallace (2002) has documented that the number of individuals wanting or intending to emigrate abroad permanently was minimal. While many individuals wish to travel and work abroad for relatively short periods of time few claim to have plans to settle abroad.

Migratory decision making is a complex area of study. Economic rationalizations are often applied to flows however economic factors often possess inadequate explanatory power; social factors, family ties, networks and opportunities/costs all play a role in decision making. (Massey, Arango, Hugo, Kouaouci, Pellegrino and Taylor, 1998) In the case of educated Slovaks, it may be that the high psychological cost of moving is mitigated by 'social factors' in the Czech Republic, such as familial ties, friends, the proximity to 'home', cultural/linguistic similarities between the countries, career growth opportunities and the historical memory of having once been part of the same country. (Strielkowski, 2007 p. 253) It is clearly apparent that conditions are favorable for those who do choose to move intra-regionally.

The intention of this project was to determine the migratory intentions and experience of highly educated Slovak's residing in the Czech Republic in order to elucidate their rationale for migrating and to support or refute existing theories in migration studies.

## **THEORETICAL APPROACHES**

When discussing highly skilled migrants in the European Union (EU) the vast majority are voluntary migrants who are prone to migrate for various reasons; primarily as a result of demand for their skills but also due to the fact that the new immigration policy agenda within the EU pays particular attention to including highly skilled immigrants into the labor market. The same immigration policies acquiesce to market driven demand for highly skilled workers by offering favorable conditions for migration and settlement. The research at hand applies three complementary theoretical groundings in order to better grasp migratory processes underway within the EU.

### ***Rational Expectations***

Migrants are rational actors who respond to economic disparities, to interpersonal relations, to life satisfaction and to the knowledge that a change can bring about improvement in their quality of life as well as enhance their personal satisfaction. Knowing this, they come to the decision to make a move. In the post-industrial era examples exist of similarly developed neighboring countries experiencing completely opposed migratory trends; in which one has a high rate of emigration while the other one does not. If we believe the premise that migration decisions are based on solely the rationalization of salary disparities, then we would anticipate that long ago migration and in particular international migration would have ceased to exist, as at a certain point in time equilibrium would have been achieved. Unlike that postulation, we find that international migration has continued to grow steadily over the centuries, thus instead of having essentially no migration among the citizens of the EU we are faced with an ongoing migration process. Instead of the understanding that migrants make a decision to move based on the intrinsic human motivation to gain, Massey et al. argue that a prospective migrant has calculated risk aversion strategies, has a desire to enjoy a comfortable existence, or simply in order to build better lives at home or at the destination country. (1998)

### ***Segmented Labor Market Theory***

Piore argues that international migration is caused by the undying need for immigrant labor which is structurally embedded in the economies of developed countries. (1979) Piore maintains that immigration is not caused by push factors in the developing countries but by the pull factors that develop in the receiving countries manifested through the 'chronic and unavoidable need for foreign workers'. (Piore in Massey et al. 1998, p. 28) The segmented (dual) labor market theory incorporates a wider range of factors into economic research and as both Piore and Sassen have shown a division emerges between primary and secondary labor markets. (Piore, 1979 and Sassen, 1991) They claim that the main causes of emigration are the structural labor needs of modern economies in destination areas, a shortage of labor in low status/low income jobs, which are combined with the objective of the host population's upward mobility away from low status/ low income jobs which are later filled by immigrants. In the case of highly skilled immigrants the secondary market might not be the destination nor the goal in the decision-making process, but the possibility of contemplating it arises in critical situations (e.g. loss of job due to financial crises). Predisposition to the primary labor market is given to those belonging to the majority ethnic group, in particular to those who are considered to be worthy of generating human capital, (highly skilled and educated), male in gender when connected to migration, to those who have legal status when applying for a position. In opposition to this preferential treatment of

the highly skilled is the recruitment of workers for the secondary labor market, candidates that lack education and vocational training, often overlooking gender, race, minority status and irregular legal status. (Castles & Miller, 2009) The importance of the segmented labor theory for international migration can be found in its ability to astutely demonstrate the important role that employers and governments play even as wage differentials decline, a migration factor supported by neoclassical economics.

### ***Social Capital Theory: migration networks and systems***

Migration networks are sets of interpersonal ties that connect migrants, former migrants, and non-migrants in origin and destination areas through ties of kinship, friendship, and shared community origin. (Massey et al. 1998, p. 42) Subsequently, migration networks can be understood to serve as an accelerator for future migration as they provide support for potential migrants via a reduction in the costs and risks of perspective movement and an increase in the expected net returns to migration. In the same spirit MacDonald and MacDonald define 'chain migration' (a term that precedes migration networks) as 'that movement in which prospective migrants learn of opportunities, are provided with transportation, and have initial accommodation and employment arranged by means of primary social relationships with previous migrants'. (MacDonald, & Macdonald, 1964, p. 82) As such, however, migration networks do not provide sufficient conditions for migration to occur or to be perpetuated, although if access to migration networks is based on kinship ties or ethnicity, according to de Haas they can act as "bridgeheads" for perspective migrants within the same group but they may also act as "gatekeepers", those who are unwilling to assist outsiders. (de Haas 2009)<sup>1</sup>

The set of theories represented here include the main concepts we focus on in our field research. Any externalities that may arise as an outcome of the questionnaire will not be overlooked but will be included in the analysis as additional, unexpected, data.

## **METHODOLOGY AND LIMITATIONS**

### ***General Information about the Project***

The aim of this project was to collect data from highly educated Slovak nations residing in the Czech Republic. The questionnaire was placed on the web so as to accessible to as many individuals in the target population as possible.

The survey utilized during the course of this survey was constructed of a collection of qualitative (open-ended questions) and quantitative (forced-choice questions) questions

---

<sup>1</sup> The established network connections are perhaps better understood as establishing a form of social capital: foreign employment, high wages, and the possibility of accumulating savings and sending remittances. Even though it presents a significant gain for the sustainability of migrant networks it does not enable migration in and of itself. Massey and his associates, following the definition given by Coleman on social capital which sees social capital as being formed when the relations among individuals change in ways that ease action, have pointed to the catalytic role that migration has in shaping social relations. (Massey et al 1998) The authors continue and state that: 'Once someone in a personal network has migrated, however, the ties are transformed into a resource that can be used to gain access to foreign employment and all that it brings. Each act of migration creates social capital among people to whom the new migrant is related, thereby raising the odds of their migration. Massey & España, 1987) Massey claims that at the moment when the network connections in the origin area have reached a critical level, a migration social structure is created which supports the self-perpetuation of migration. (Massey 1990)

which were composed of three forms. *Close-ended* questions were selected for a portion of questions related to demographic specific questions which required only binary responses, *partial open-ended* questions which were multiple-choice or user selected often included the option to provide 'other' as a response were chosen for questions related to personal preference or experience, *scaled* questions were chosen for several questions in order to provide ranking and comparability (salary range as an example). The majority of the partial open-ended questions allowed for user generated input to be entered; as an example users were asked to choose a reason for having left their home town, in this case the last option was defined as 'Other- please specify', thus allowing respondents to clarify if they wished to.

The survey was comprised of a variety of questions related to migratory experience, success, individual behavior and basic demographic data related to sex, region of origin, educational achievement, as well as data related to salary, to region of origin('town majority of youth was spent in'), as well as location of current residence in the Czech Republic.

Additional questions related to 'experience', 'perception' 'satisfaction' and remittance behavior were added in order for analysis to be more conclusive and elaborate, however their validity is questionable and depends on the case in question. The projects outcomes have been compared to previous surveys conducted by researchers in similar contexts. (Drbohlav & Williams, IOMb, 2004) The aim being to contrast results from previous work in the case of widely diverging findings. Respondents were asked to complete approximately thirty five questions of which six pertaining to demographic information were required. Roughly 95% of respondents were willing to answer twenty additional questions related to their "life experience in the Czech Republic".

### **Data collection**

Data collection for this project occurred during the months of June, July and August 2012 and followed translation of the preliminary questions into the target group's native language by a native speaker. The first version of the translation was reviewed by a pilot group of native language speakers who commented on the wording and translation of the original questions. The intention was to reduce the possibility of questions being misleading, or misunderstood. There was no further verification of the questionnaire for bias, secondary or back-translation of the questionnaire was not possible for this survey.

The survey was distributed via several unique pathways. The survey was disseminated directly to Slovak nationals and their acquaintances that were known to the researchers via social media and email in the form of a 'link' to an online digital survey. This 'snowball' sample of individuals and their contacts led to the accumulation of approximately fifty individual respondents. As this number of respondents was deemed insufficient (due to the potential for a high level of statistical error) the researchers opted to post the survey online. The intention of the survey and a link to the electronic survey was posted on a website used exclusively by Slovak nationals in the greater Prague Region.<sup>2</sup> Via this online platform nearly 200 additional respondents participated in the survey.

---

<sup>2</sup><http://www.somvpraha.sk> A members only website which claims to have more than seventeen thousand members – This website is commonly used for networking, information gathering, ride sharing and is used extensively by the Slovak community in the Prague region.

Analysis of the data has been undertaken with the aid of the software IBM SPSS. Within our target population there is no control group (all individuals are migrants) hence we have attempted to corroborate past research as a way of confirming our research.

## Limitations

The survey in its present form is affected by several limitations. Aside from the limitation of having only one primary translator involved in producing the survey we are additionally hampered by the lack of a population frame for our target group. The lack of any population frame for educated foreigners in the Czech Republic results in our sample being necessarily purposive. The survey was intended to be completed by a random sample of individuals residing both abroad and within Slovakia however the data shows that the majority of respondents (95%) currently reside in the Prague Capital region and close surroundings. This geographic limitation is partly due to the large number of respondents generated by one posting on the website *somvpraha* and partly due to the fact that 18.4% of the population of Prague and the surrounding region is composed of foreigners. Thus, although the data set is somewhat biased in terms of regional sampling and cannot be fully representative we assume to have a substantial sub-sample of the Slovak population living in the Czech Republic.



Map 1: Migrant Location in Czech Republic (Source: maps.google.com)

While it would appear that this is a relatively balanced sample; demographically, regionally, and with a wide range of the individuals from different socioeconomic backgrounds a wider sampling from other regions would, of course, improve the quality of the data. (See Map 1) Our data shows balance in that respondents are not exclusively from one category of the demographic. Online distribution has resulted in a balanced number of response from both female (52%) and male (48%) respondents, which closely match the natural population demographic.<sup>3</sup> In addition, there is a substantial range in the length of residence in the Czech Republic with 21% of respondents stating that they have been in the Czech Republic for more than ten years, 33% of respondents for less than five years, and 45% reporting between 5-10

<sup>3</sup>Total population as of 26 March 2011 (in percent): 50.9% Female 49.1% Male (Czech Statistical Office 2012)

years.<sup>4</sup>

The limitations of this survey are, indeed, important to keep in mind and are reflective of the limited time frame for data collection from June to August 2012 and the limited accessibility of the target population. Future research should attempt to overcome the limitations of this survey; suggested methodological improvements include targeting 'new comers' via direct face-to-face interviews or approaching individuals directly at their workplace. These two methods of data collection would aid in overcoming the limitation of this survey while follow up in-depth interviews would serve to clarify and deepen our understanding of individual cases.

## HIGHLY EDUCATED SLOVAKS IN THE CZECH REPUBLIC - CASE STUDY AND ANALYSIS

149,140 individuals claim Slovak ethnicity live in the Czech Republic while 84,380 individuals claim to have Slovak Citizenship. Of those 37,792 live in the greater Prague area. (Czech Statistical Office, 2012) Within our Sample of 222 respondents, 155 respondents were deemed to be valid. Validity was determined to be fitting the criteria of 'Highly educated Slovaks living in the Czech Rep.' and answering, at a minimum, basic demographic questions. (Several individuals were born in the Czech Republic while others were incomplete). Within our original sample 77% of respondents have a university level education. (Ba, Ma or higher) Given the large proportion of respondents with tertiary level education and the otherwise balanced demographic character of survey respondents the authors believe that it is safe to assume that a higher proportion of the target population have a tertiary level education than the general population.<sup>5</sup> From a statistical perspective it would appear that our current sample exhibits a 95% confidence level and has a confidence interval of 7.1.<sup>6</sup> Keeping this limitation in mind caution in interpreting the results is urged and further confirmation of results is necessary.

### *Reasons for leaving (Rational Choice Theory)*

In the case of Slovak migrants the risk of poverty is far higher 'at home' than in the Czech Rep, and self-selection most likely leads to a high success rate for Slovak migrants. Individuals who are unsuccessful in securing employment are apt to return home if they cannot find work. Likewise there is little risk of welfare shopping given bilateral agreements, which exist between the countries. (IOMb, 2004)

The substantial number of those who migrated in order to study was an expected response,

**Table 1 - Employment Activity Pre and Post Migration**

By number of Respondents and Percentage		Employed		Self Employed		Student		Unemployed**		Other*		Total
		Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	
Pre Migration Activity	%	13	18	2	4	30	22	5	3	1	1	99
Post Migration Activity	%	42	38	1	6	4	2	3	0	2	1	99

\*Includes temp and seasonal workers\*\*Includes those 'changing employer'

Authors data

<sup>4</sup>Percentages are rounded to the nearest decimal- individuals who did not reply are not included in statistics related to voluntary questions.

<sup>5</sup>This has also been corroborated by personal experience and communication with business leaders in the Czech Rep.

<sup>6</sup>In order to have a confidence level of 95% +-5% a sample double the size of our current sub-sample would be required.

given that nearly four percent of university students in the Czech Republic are Slovak.( Czech Ministry of Foreign Affairs, 2010) Of significant interest to the researchers was the large number of respondents who were gainfully employed prior to moving to the Czech Republic. (See table 1)

Even if only a small percentage of respondents (9%) indicated that they were unemployed prior to migrating it is relevant to take into account that the level of unemployment in Slovakia has remained high over the last decade in comparison to the Czech Republic. (Figure 1) This is especially the case with the Prague region where unemployment typically hovers around two or three percent. (ČTK, 2012) Additionally, the risk of falling into poverty is consistently higher in Slovakia, which may be an additional, unmentioned, factor involved in or leading to individuals making a migratory decision.

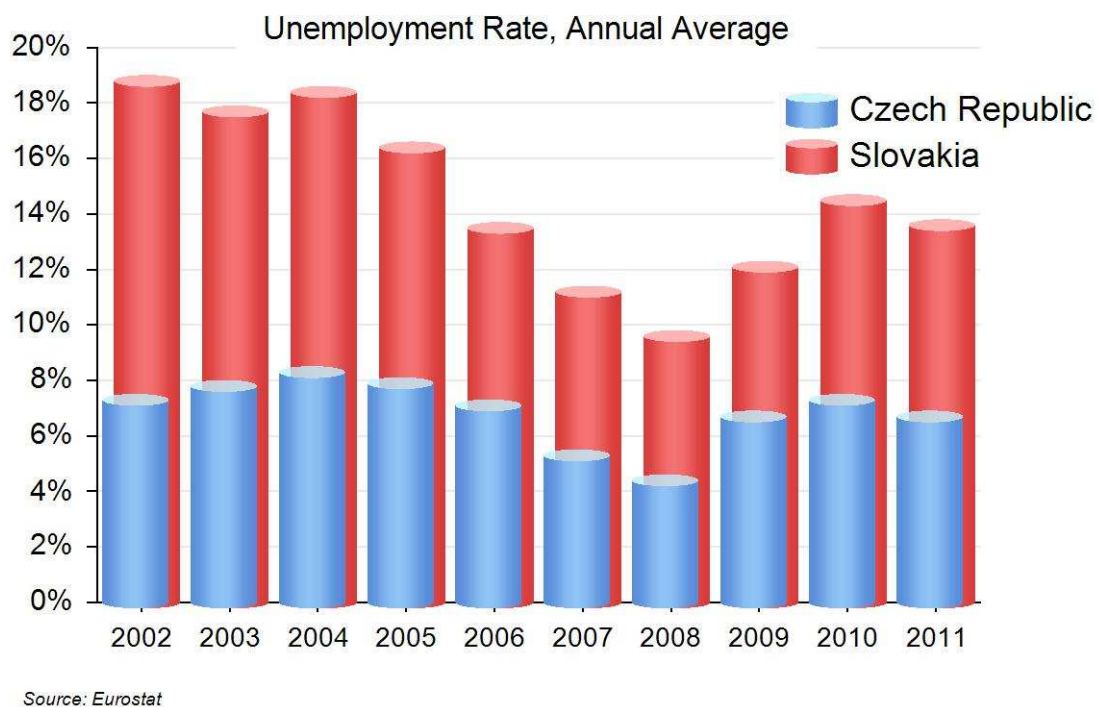


Figure 1: Unemployment Rate by Country- Yearly average (Source: Eurostat)

Respondents indicated that a majority (53% of individuals) would be willing to 'completely change their profession' in the event that they moved to another state within the EU. This is in contrast to our understanding of the current situation of Slovaks in the Czech Republic. The majority of respondents indicated that they were working in a position that was closely related to their education, this is demonstrated by the scatter plot. (Figure 2) which demonstrates the similarity and difference between the profession individuals studied for and the job they currently hold. While not a perfect fit in all cases the scatter plot of 'jobstudiedfor' and 'jobhavenow' indicates that, for the most part, individuals are employed in similar professional areas to that which they studied for. Those now employed in marketing being the least likely to have studied for that profession.

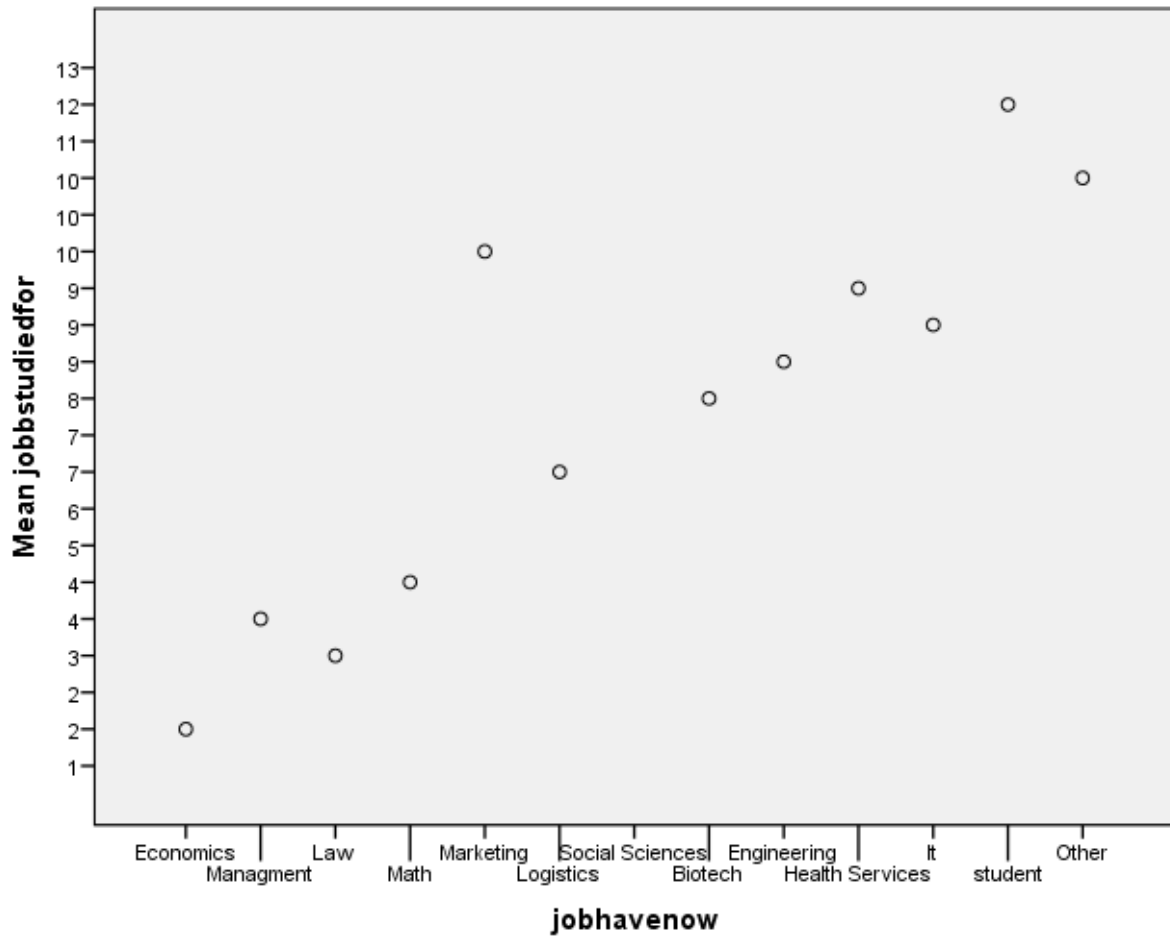


Figure 2: Scatter Plot of Difference between Program/Profession Studied For and Actual Job.  
(Source: Authors Calculation)

The relative lack of divergence we see is perhaps explained by the fact that highly educated individuals who migrate in search of work in the capital region are not willing to retrain or to deskill within or across professions. This understanding is supported by the large number of individuals who were employed prior to their move to the Czech Republic (29%) it would seem unlikely that individuals would be willing to deskill simply in order to live and work in Prague. This is, however, not the case when we look at individuals' willingness to migrate onwards in the future. With 53% of individuals being willing to completely change profession upon moving to another state we are faced with the question as to why. It appears that individuals are willing to make concessions in order to live further abroad, but not in the near abroad. Rationales for moving further afield are discussed below; however, it seems clear that desire for change outweighs the costs that such a transition would entail.





Map 2: Location of Migrant Origin (Source: Author's own calculation and maps.google.com)

The regional distribution of origin is unexpectedly well balanced. (See Map 2) Previous work by the International Monetary Fund indicated that “regional disparities in the level of GDP per capita, labor productivity, and labor utilization have widened since 2000... [as] rapid economic growth appears to have only marginally touched three of the four eastern regions where unemployment rates remain sticky around 20 percent.” (IMF 2009 p.16) Due to this uneven development within the country it was anticipated that a majority of individuals would prefer internal migration whenever possible, which would logically lead to a majority of individuals sourcing from the less developed central and eastern regions yet our sample indicates that this is not the case.<sup>7</sup> The distribution of individuals in terms of source regions is clearly balanced across the country and also between small, mid and large towns; with 19% of respondents having left from small villages, 30 % from mid-sized towns, 36% from large towns and 13% originating in the capital. (See Figure 3) It was anticipated that those who spend the majority of their youth in a capital city would be less mobile than those who come from rural areas, however with only 12 individuals coming from the Capital region of Slovakia this belief appears unsubstantiated.<sup>8</sup>

<sup>7</sup>Internal migration is deemed to be larger in scope and importance than international migration, both in developing and developed regions. (IOMc 2008) In the case of the Czech Republic individuals do not appear to differentiate between internal and international migration (cognitively) due to the historical connection. Several individuals commented that they have a degree from 'Czechoslovakia' or that 'I was born in Czechoslovakia' indicating their perception is that they are 'not truly migrants'.

<sup>8</sup>It may be of some surprise to readers that no respondents were sourced from the southernmost regions of the Slovak Republic, however with roughly 10% of Slovak Nationals belonging to the Hungarian minority and the majority inhabiting regions bordering Hungary it is clear that these regionally concentrated minorities choose other regions of destination when migrating, primarily Budapest as a regional centre (Daftary & Gál 2000, p.6)

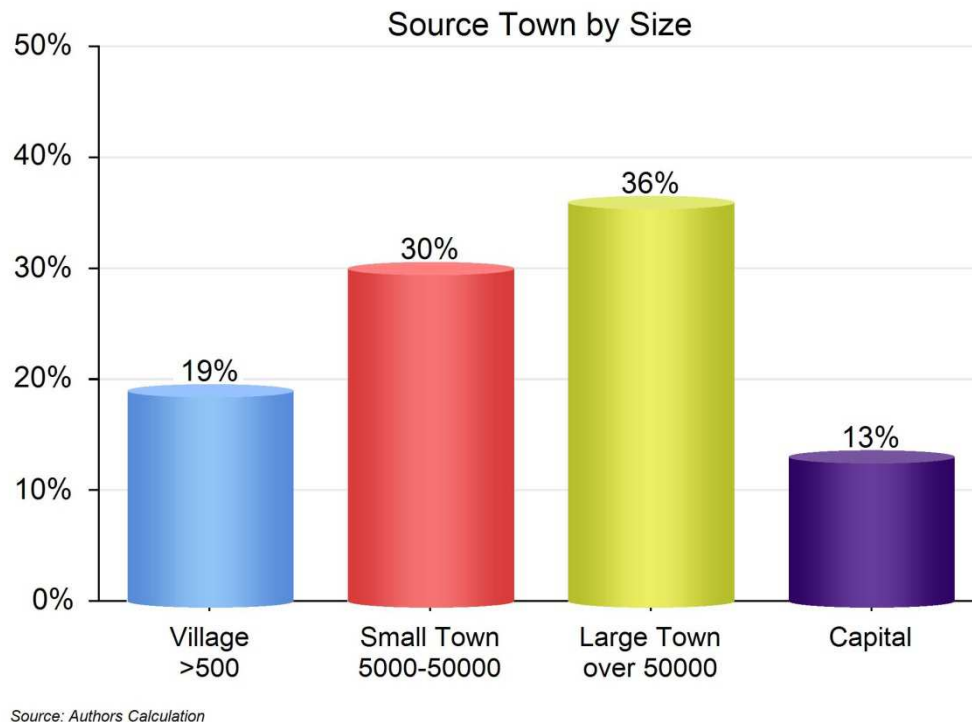


Figure 3: Source Town by Size (Source: Authors Calculation)

From the perspective of factors which lead to a migratory decision responses varied considerably to the question 'Why did you leave Slovakia'. Ranging from work (28%) to study (26%) to a need for change (15%). Our findings are validated/corroborated by a similar survey undertaken by the European Commission which found that "a quarter of respondents moved in order to study in the new Member State." (2010) It is clear from our data that a large number of those who moved in order to study have stayed on and have become employed, more than half of all respondents end up staying and working in the Czech Republic. Even if individuals do not perceive their rationale for migration in terms of employment the end result is just that. Only 3% claimed to move due to family reunification and 6.5% for interpersonal relations. (See Figure 4) There was significant divergence in the percentage of respondents who claimed to come for work when the data was differentiated according to gender, with males being far more likely to claim to have moved due to work. While females were more likely to indicate that they moved due for family reunification, need for change or interpersonal relations.

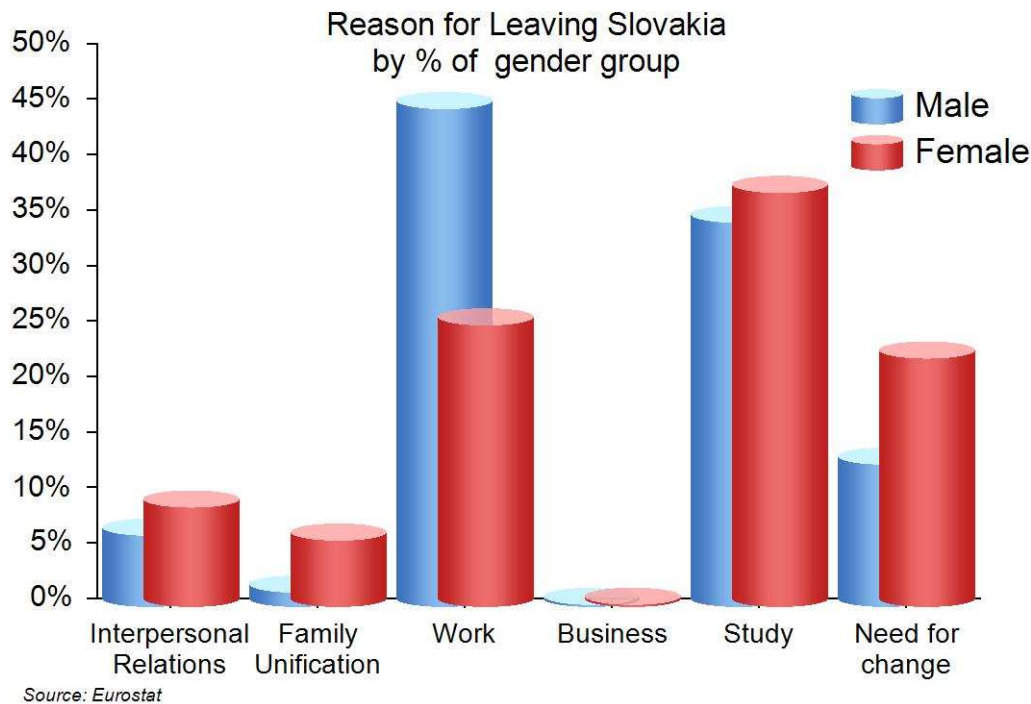


Figure 4: Reason for Leaving Slovakia (Source: Authors Calculation)

Several individuals mentioned that they were looking for diversity or wanted to improve their living standard and experience life in Prague. The appeal of the city is something of a subtext in several responses, and is unsurprising given that nearly half of these individuals come from towns of less than 50000 inhabitants. Thus, we find that the typical direction of migrant from rural to urban settings is maintained within our sample. (See Figure 3) 90% of respondents claim that 'leaving Slovakia' has had a positive contribution to their professional development. While 60% claim that leaving Slovakia has led to an improvement in their quality of life.<sup>9</sup> It should also be noted that a large percentage of students migrated only after completing their studies. (Refer to Table 1)

### ***Skills and Employment-(Dual Market)***

Roughly twice as many of the respondents received their highest level degree from their home country of Slovakia than those from the Czech Republic with several indicating that they have combined/ multiple degrees from Slovakia/Czech or Slovakia/USA. Males were more likely have obtained a degree from the Slovak Republic (70%) with only 30% having a Czech degree, while female respondents were less likely to have a degree from home (53%) as opposed to the Czech Republic (47%).

The majority of respondents live in the Czech Capital and surrounding region (more than 95%), with others being scattered across the country in other regions. (See Map 1) In terms of marital status 70% of individuals claim to be independent, 2.6% divorced, 19.5% married, and 7.1% as having live in partners. Interestingly 88% of individuals claimed to speak their

<sup>9</sup> The question asked- "Has your quality of living improved since leaving Slovakia? "

native language in their homes, 4.5% speak Czech with 4.5% claiming to speak more than one language at home. (Slovak and English being the most common combination)

Given the fact that all respondents have a tertiary education it is unsurprising that many study or have studied another language.<sup>10</sup> (See Figure 5) Overall the most common languages studied are English and German (97% and 76% respectively), with Russian, French and Spanish also being relatively common (29-30%). To elaborate on this point, every additional skill known by individuals enhances their opportunity potential, benefiting both the highly skilled labor market and the network in which migrants may be embedded. This is due to the increased appreciation employers have for highly skilled migrants (including future migrants embedded in this migrant network) and their perceived adaptability and level of skill.

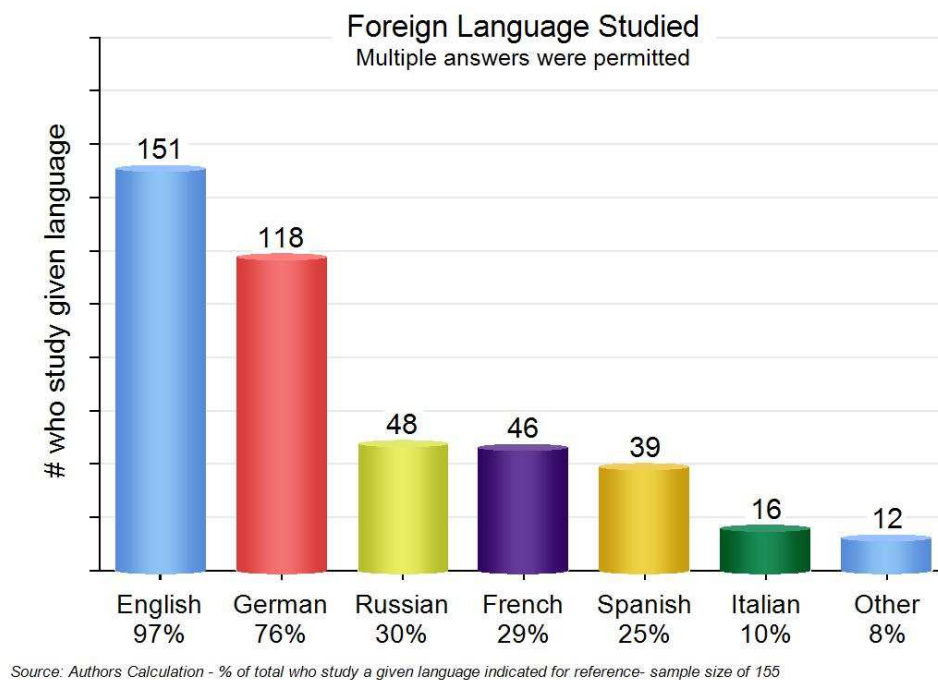


Figure 5: Language Studied (Source: Authors Calculation)

<sup>10</sup> Knowledge of two languages is a general requirement in order to be accepted to, or graduate from, a University and is crucial for job interviews and employment in multinational firms

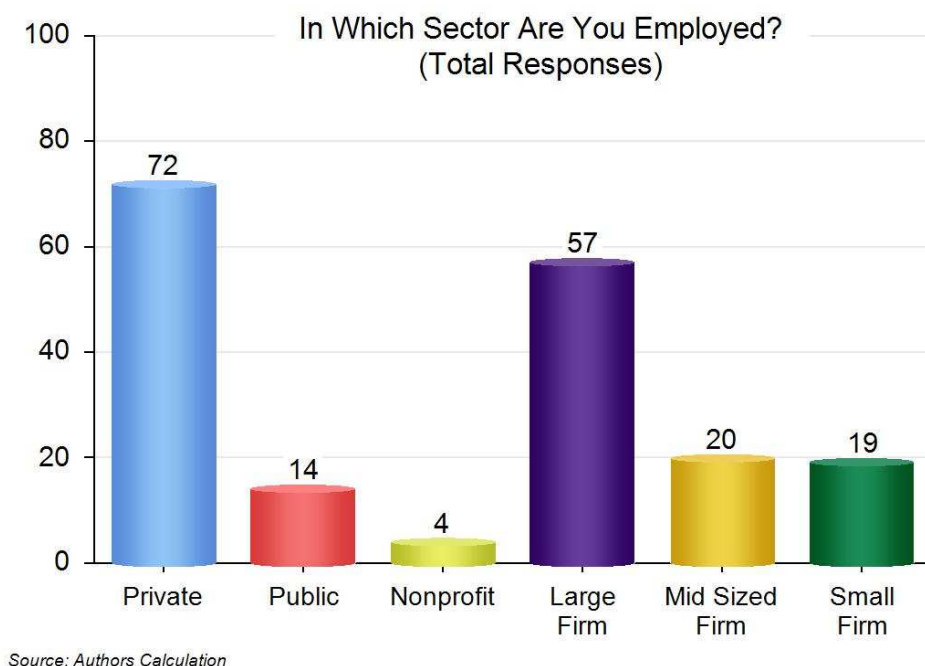


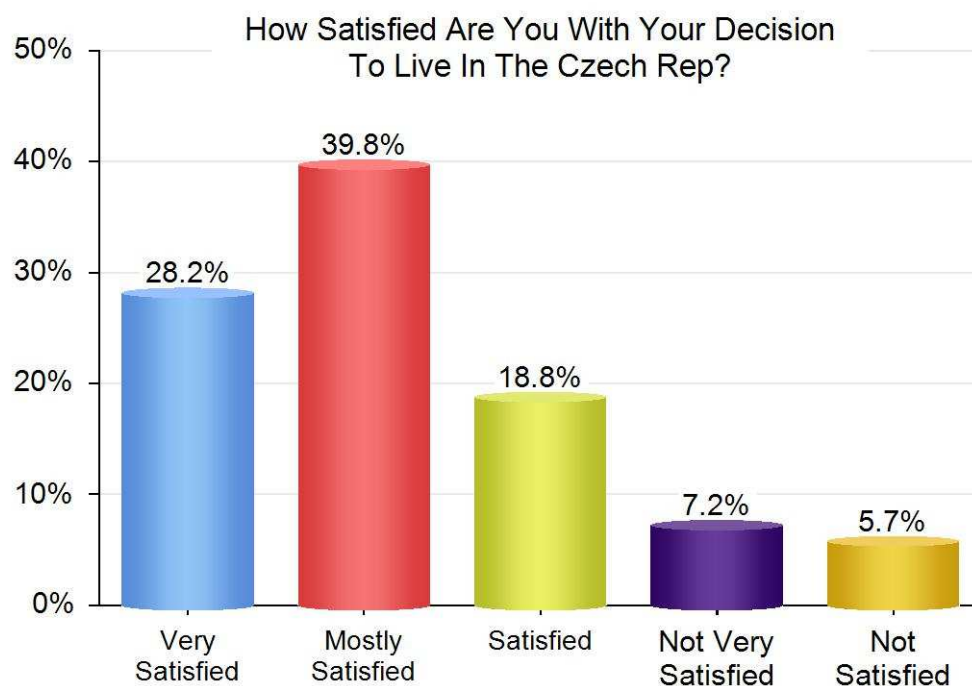
Figure 6: Employment by Sector (Source: Authors Calculation)

It is obvious from Figure 6 that the large private firms play a major role in the labor market, they dictate the rate of employment and are at the same time are susceptible to the market economy and its fluctuations (i.e. economic cycles of boom and bust). On the other hand the public and non-profit sectors are at the lower end of those offering employment opportunities. The public sector due to the preponderance of Czech citizens employed within and the non-profits due to their limited attractiveness in terms of financial reward.

### ***Social Satisfaction***

Overall individuals indicate a high level of satisfaction with their past decision to migrate, 90% claim to be satisfied when asked a yes or no answer. When asked 'how satisfied' a slightly different picture emerges. (28% being Very satisfied, 40 % being mostly satisfied, 19% being somewhat satisfied and only 7% being unsatisfied or very unsatisfied 6%) A relatively balanced picture emerges when such a distribution is represented graphically. (Figure 7) The total who claimed to be 'Satisfied/Mostly or Very Satisfied' is more than 73%.

When it comes to questions related to satisfaction in employment the majority (90%) are 'very satisfied' or 'more satisfied than not' with their work. One unexpected outcome of this survey was the finding that a significant number of individuals would return home if they were unemployed for more than six months 42% indicated that they would return home to Slovakia it was anticipated that the highly educated would, in general be disinclined to return home given the high levels of unemployment in regions of origin.



Source: Authors Calculation

Figure 7: Level of Satisfaction (Source: Authors Calculation)

From the total respondents by far the majority are employed and have full time contracts. (81% of respondents) This may be due to two factors, firstly Slovak nationals have little trouble integrating into Czech society, and secondly self-selection can be expected to lead to relatively high levels of success in securing employment. Thirdly, the sample studied is 'successful' in that it only includes those who have not left the country. Thus our survey is bound to be over representative of 'successful' migrants. From the total respondents who do not have full time contracts, 4.4% are students, and 6.6% are independent contractors/self-employed. Only 2 respondents are unemployed. From the total employed- the majority of respondents. 36.8% are employed in the private sector 7.3% in the public sector, 31.4% in large firms, 12.7% in Mid-sized firms and 10% in small firms. If we assume that all those who claim to work for large-mid and small sized firms work in the private sector then 90.9% are employed by private firms - another point which was anticipated, given that the average wage of respondents is high by Czech standards.<sup>11</sup> A differentiated data set exposes an unexplained gendered difference in salary levels, an unsettling trend where men earn significantly more than women. (Figure 8)

<sup>11</sup> Prague residents earn the highest average wage of 31,845 Kc gross. Even if the Czech Average is 24,436Kc (Czech Statistical Office)

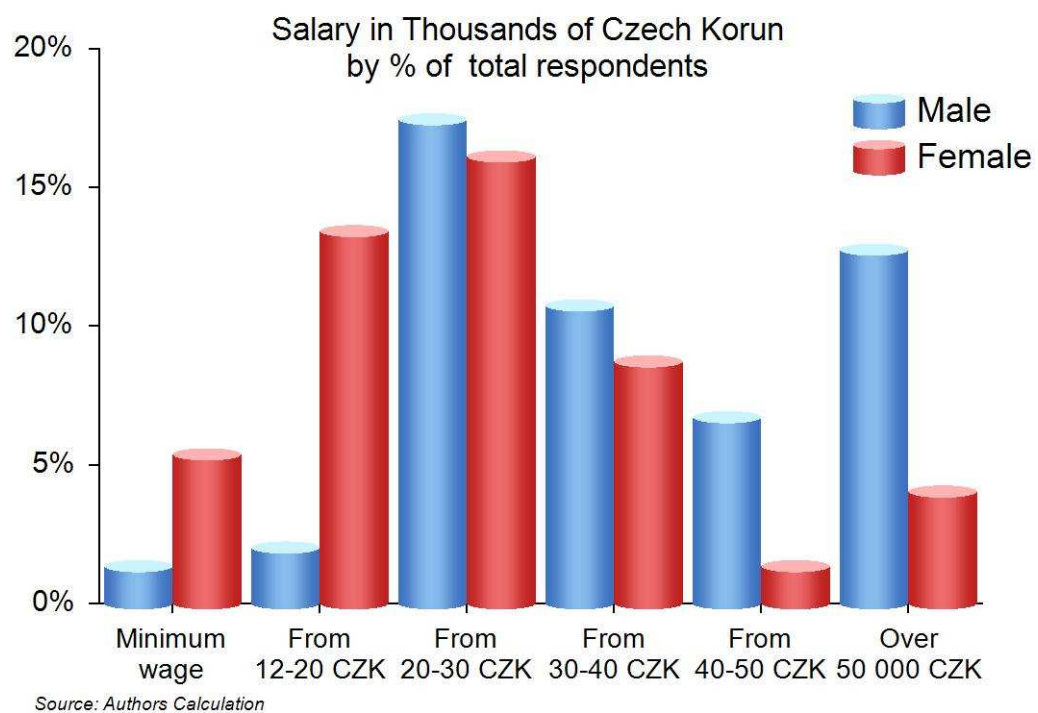
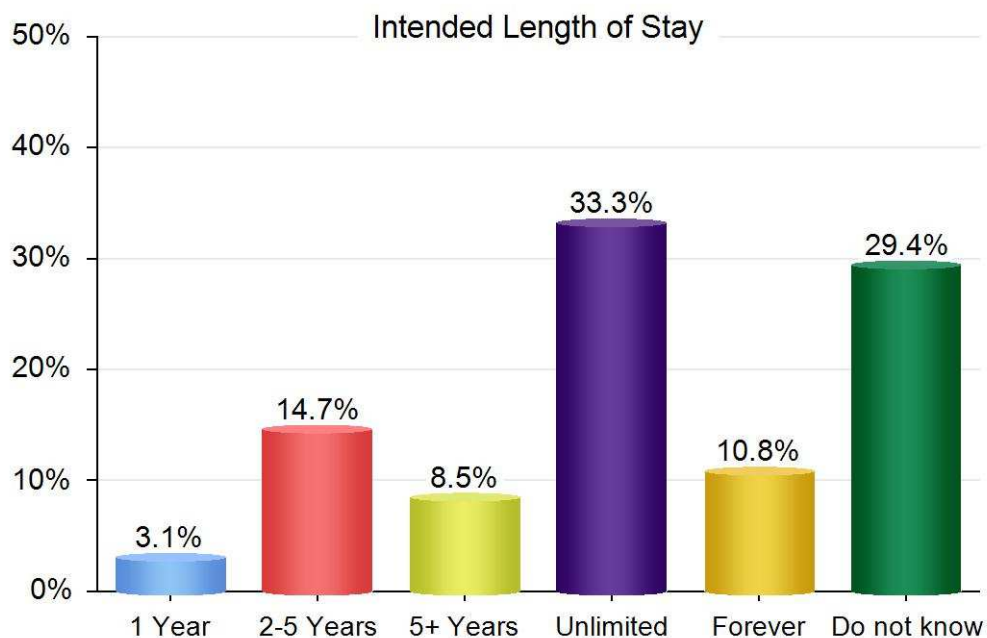


Figure 8: Salary In Thousands By Gender (Source: Authors Calculation)



## FUTURE EXPECTATIONS FOR MIGRATION

The overall trend for government migration policies to anticipate stable return migration is increasingly out of step with reality. It is unlikely that individuals will 'quit' their lives and reject the enhanced quality of life to which they have become accustomed once settled and are well integrated in the receiving society, whatever integration might mean to each individual case. In our investigation, taking the reported high level of satisfaction into account it is to be expected that a large number of individuals would plan to remain, and that is indeed what we have found, with 88% of respondents answering positively to the question 'Do you intend to stay in the Czech Rep for a long time'. A connected question asked 'for how long' and indicates that the majority of individuals are relatively well settled in their adopted home, with 44% of individuals planning to stay indefinitely and 29% unsure as to how long they will stay.(Figure 9)



Source: Authors Calculation

Figure 9: Intended Length of Stay (Source: Authors Calculation)

Another question which remained unanswered in our case analysis was 'Would Slovak migrants move back to Slovakia or move onwards in the face of differing migration systems?' In order to realize their motives for making a future migratory decision individuals were asked about motives for migrating. Respondents corroborated results of a survey undertaken by the European Commission in 2010 and indicated that they would move for reasons of work(44%), 18% for love, 18% in search of better weather, 9% for retirement, and 14% due to 'nicer people' living abroad. In addition several respondents indicated that they would move in search of 'change' or 'lower cost of living' 'better environment for business' and 'higher standards of living in other countries'; all in all very commonly expressed reasons for migration. Somewhat surprisingly, especially given the high average salaries seen among respondents, 15% responded to the question 'What about the current situation makes you



think about moving to another country?' that they would move in order to 'save money' indicating that the perception of the Czech Republic as being a cheap countries to live in is nothing but a myth anymore. On the other hand 14% indicated that 'low income' pushes them to think about making another move. Only 7% indicated that the lack of job opportunities locally makes them think about moving.



Map 3: Potential Destination for Future Migration (Source: Authors Calculation and maps.google.com)

Broadly speaking when individuals were permitted to answer questions freely they provided very clear and, indeed, personal explanations without limitation. The survey was anonymously distributed, and individuals provided very detailed explanations of where and why they would move to other countries. Very broadly speaking individuals overwhelmingly indicated that they would move to the old EU states, due to stability and opportunities available in France and Germany. Much in line with a trend seen in previously asked questions individuals indicated Spain and Italy due to the weather, and Germanic countries due to income potential. Several indicated an interest in employment, opportunities to study language, as well as the opportunity to gain a competitive advantage in the Czech labor market. This confirms the findings of research conducted by Baláž and Williams, (2004) whose in depth interviews fielded similar responses from students coming from Bratislava, thus adding a new dimension, that of highly educated and employed Slovaks in the Czech Republic. In addition to the more typical responses related to work or salary, individuals indicated the need for more 'freedom' or 'no-stress'. Untypical responses ranged from Italy, due to it being a vegetarians paradise (Czech cuisine is heavily meat based), to Croatia and Spain for retirement and cheap real estate, respectively. Predictably, given the large number of recent students included in the survey 38% would move in order to enhance their education, 29% would move if they were offered a job, and 50% would move in order to see other countries or simply in order to live abroad. Roughly nine percent would move in order

to be with friends and family, while 35% of respondents believe that an advantage of moving would be higher salaries.<sup>12</sup>

This survey has demonstrated that highly educated individuals are able to enhance their salary potential and quality of life via the migratory experience. Much as proscribed by the segmented labor market theory there is a demand within the market for highly educated migrants who are able to easily integrate into the host society, and indeed for lower skilled workers. Source regions and the large portion of individuals who reside in the capital indicate that a network effect has influenced the settlement patterns of individuals to some extent, while respondents indicate that pre-existing contacts have indeed played a role in the migratory experience. The high number of individuals who intend to stay in their region of settlement ensures future perpetuation of the social capital which supports migratory flows.

Although the survey sample is under-representative of the total population of Slovak nationals living in the Czech Republic external constraints limit this survey to being demonstrative and purposive. Previous studies undertaken by the European Commission corroborate our findings that individuals perceive the support of government officials to be lacking even when it comes to aiding the settlement process, even if the bureaucratic requirements have been minimized as a result of bilateral agreements between the source and host country. This project has additionally determined that there is a disconnect between the apparent willingness of individuals to deskilling in the case of future migration, with individuals apparently not accepting deskilling in the case of the current move yet into the Czech Republic but claiming a willingness to deskilling in the case of making a move 'west'. This unexpected finding from the research would make for an interesting follow up study, as it appears that moving to the near-abroad is, in the case of Slovak nationals, not perceived as 'real' migration due to those old connections which exist in the minds of many individuals.

The purpose of this research project has not only been to demonstrate obvious trends, but also to establish a direction for further investigation. Future possibilities include work focusing on the different immigrant communities present in the capital region, as well as throughout the whole Czech Republic. Grasping the various challenges facing a variety of individuals coming from diverse backgrounds will allow the authors to gain a better understanding of the Czech migration system. In order to better understand the unique migrant patterns and variations in rationale an adapted version of the questionnaire has been translated into different languages ( Russian, Ukrainian, and English in order to tackle EU residents in the Czech Republic) Understanding the variation in rationale and intentions within and between groups will considerably impact the outcome of this research project, but in our belief would greatly enhance our understanding of intra-European Union migration patterns.

#### REFERENCES:

Arango, J (2000) Explaining Migration: A Critical View. *International Social Science Journal* Number 152, Volume 52, September, UNESCO

DOI: 10.1111/1468-2451.00259

---

<sup>12</sup> Question asked was "What do you see as a potential benefit to moving to another country (aside from the Czech and Slovak Republic)"

- Banerjee, B., & Jarmuzek, M. (2010) Economic growth and regional disparities in the Slovak Republic. *Comparative Economic Studies* 52: 379-403.
- Bahna, M. (2008) Predictions of migration from the new member states after their accession into the European Union: Successes and Failures. *International Migration Review* Volume 42(4) 844–860
- Baláž, V. & Williams A M. (2004) 'Been there, done that': International student migration and human capital transfers from the UK to Slovakia *Population Space Place* 10, 217–237
- Brücker, H., & Schröder, P, J. H., (2007) International migration with heterogeneous agents: theory and evidence, *IAB Discussion Paper 2007/27, Beiträge zum wissenschaftlichen Dialog aus dem Institut für Arbeitsmarkt- und Berufsforschung, Nürnberg [Institute for Employment Research, Nuremberg, Germany]*.
- Carling, J. (2008) The determinants of migrant remittances" *Oxford Review of Economic Policy*, Volume 24(3), p.582–599
- ČTK (2012) Czech jobless rate grows to 8.3 pct in July—ministry. *Czech News Server* 08.08.2012 <[http://www.ceskenoviny.cz/tema/zpravy/czech-jobless-rate-grows-to-8-3-pct-in-july-ministry/826079&id\\_seznam=2184](http://www.ceskenoviny.cz/tema/zpravy/czech-jobless-rate-grows-to-8-3-pct-in-july-ministry/826079&id_seznam=2184)> Accessed Aug 13, 2012
- Czech Ministry of Foreign Affairs. (2010) *Czech universities continue to improve the quality of their offer to foreign students*. Published online 26.01.2010  
<<http://www.czech.cz/en/Education/Czech/General-information/Czech-universities-continue-to-improve-the-quality>> Accessed Aug 16, 2012
- Czech Statistical office. (2012) *Results of the 2011 population and housing census*.  
<<http://www.scitani.cz/sldb2011/eng/redakce.nsf/i/population>> Accessed Feb 2, 2012
- Czech Statistical office. (2012) *Preliminary results of the 2011 population and housing census*. Released January 2012  
<[http://www.czso.cz/sldb2011/eng/redakce.nsf/i/preliminary\\_results\\_of\\_the\\_2011\\_population\\_and\\_housing\\_census](http://www.czso.cz/sldb2011/eng/redakce.nsf/i/preliminary_results_of_the_2011_population_and_housing_census)> Accessed Feb 2, 2012
- Coleman, D.A. (1992) Does Europe need immigrants? Population and work force projections. *International Migration Review* 26/2: 413-61
- Castles, S. & Miller M.J. (2009) *The age of migration international population movements in the modern world* 4th ed., New York: Palgrave Macmillan
- Daftary, F., & Gál, K.(2000) ECMI Working Paper # 8 "The new Slovak language law: Internal or external politics? *European Centre for Minority Issues. (ECMI)*<<http://www.ecmi.de>>
- de Haas, H. (2009) *Working paper: Migration system formation and decline: A theoretical enquiry into the self-perpetuating and self-undermining dynamics of migration processes*. Oxford: International Migration Institute, University of Oxford
- de Haas, H (2008) Migration and development: A theoretical perspective." *International Migration Institute Working Papers* no.9. University of Oxford.
- Drbohlav, D (1994) International migration in the Czech Republic and Slovakia and the outlook for East Central Europe *Czech Sociological Review*, II,
- European Commission: Eurobarometer 67.1 (2007) Cultural values, poverty and social exclusion, developmental aid, and residential mobility, *February-March TNS Opinion & Social*, Brussels. Available at <<http://info1.gesis.org>>

- European Commission. (2010) [European citizenship - cross-border mobility](http://ec.europa.eu/public_opinion/archives/quali_en.htm). Qualitative studies. *Aggregate Report August* <[http://ec.europa.eu/public\\_opinion/archives/quali\\_en.htm](http://ec.europa.eu/public_opinion/archives/quali_en.htm)> Accessed Aug 2 2012
- Fouarge, D., & Ester, P. (2008), How willing are Europeans to migrate? A comparison of migration intentions in Western and Eastern Europe, *Open Access publications from Maastricht University, Maastricht University*, <<http://EconPapers.repec.org/RePEc:ner:maastr:urn:nbn:nl:ui:27-21043>>
- Hollifield, J. (2000) *The politics of international migration: Can we 'bring the state back in'?* In *Migration Theory: Talking across Disciplines*. Ed. C. Brettell and J. Hollifield. Pp. 137-185.
- Kivisto, P., & Faist, T. (2010). *Beyond a border: The causes and consequences of contemporary immigration*. Los Angeles: Pine Forge Press.
- IMF Working Paper - European Department (2009) *Anatomy of Regional Disparities in the Slovak Republic*. Prepared by Banerjee, B., & Jarmuzek M. International Monetary Fund WP/09/145
- IOMa (2004) *Sharing experience: migration trends in selected applicant countries and lessons learned from the 'new countries of immigration in the EU and Austria'*. VOLUME II – Czech Republic *The Times They Are A-Changing*. Prepared by Drbohlav, D. Charles University, Faculty of Science, Dept. of Social Geography and Regional Development. Prague
- IOMb (2004) *Sharing experience: migration trends in selected applicant countries and lessons learned from the 'new countries of immigration in the EU and Austria'* VOLUME V – Slovak Republic *An acceleration of challenges for society*. Prepared by Divinský, B. International Organization for Migration – Bratislava
- IOMc (2008) *World migration report 2008: Managing labour mobility in the evolving global economy Chapter 7 : Internal Migration*. International Organization for Migration. Geneva <[www.publications.iom.int](http://www.publications.iom.int)>
- MacDonald, J. S., & L. D. Macdonald (1964) Chain migration, ethnic neighborhood formation, and social networks. *Millbank Memorial Fund Quarterly* 42.
- Magee, G.B., & Thompson, A. S. (2010) *Empire and globalisation - networks of people, goods and capital in the british world, c. 1850–1914* Cambridge University Press 2010
- Massey, D. S., & España, F. G.. (1987) The social process of international migration. *Science* 237:733-738.
- Massey, D. S. (1990) Social structure, household strategies, and the cumulative causation of migration. *Population Index* 56:3-26
- Massey, D. S. *Patterns and processes of international migration*. University of Pennsylvania. Paper prepared for Conference on African Migration in Comparative Perspective, Johannesburg, South Africa June, 2003
- Massey, D. S., & Arango, J., & Hugo, G., & Kouaouci, A., & Pellegrino, A., & Taylor, J. E. (1998) *Worlds in motion. Understanding international migration at the end of the millennium*. Oxford: Clarendon Press.

- Massey, D. S., & Goldring, L., & Durand, J. (1994) Continuities in transnational migration: An analysis of nineteen Mexican communities. *The American Journal of Sociology* 99:1492-1533.
- Massey, D. S, et al. Theories of International Migration: A Review and Appraisal *Population and Development Review* 19. 1993
- Piore, M.J. (1979) *Birds of passage: migrant labor industrial societies*. Cambridge University Press. New York.
- Sassen, S., & Smith, R. (1991) *Post-industrial employment and third world immigration: casualization and the New Mexican migration in New York* (New York, N.Y. : Columbia University, Institute of Latin American and Iberian Studies) Series : Papers on Latin America #26.
- Strielkowski, W. (2007) A living worth leaving? Economic incentives and migration flows: The case of Czechoslovak labour migration. *Prague Economic Papers*, 3, 2007 University of Economics, Prague, vol. 3, p. 252-264.
- Statistical Office of the Slovak Republic. [The 2011 Population and Housing Census](http://portal.statistics.sk/showdoc.do?docid=49970). Results <<http://portal.statistics.sk/showdoc.do?docid=49970>> Accessed Aug 8, 2012
- Štyglarová, T (2010) The population development of the Czech Republic in 2008 *Czech Demography Vol. 4* <[http://www.czso.cz/eng/redakce.nsf/i/czech\\_demography\\_2010\\_vol\\_4](http://www.czso.cz/eng/redakce.nsf/i/czech_demography_2010_vol_4)> Accessed Feb 2, 2012
- Wallace, C (2002) Opening and closing borders: migration and mobility in East-Central Europe *Journal of Ethnic and Migration Studies* 28(4) p. 603-625
- Map overlays created via the online service provided by <http://batchgeo.com/> using the author's survey data. *Maps © 2011 Google*

**Antonín Mikeš**, M.A. is a PhD student of Political Science at the Faculty of Social Sciences at the Charles University in Prague. He graduated from Anthropology and Political Science at the University of British Columbia and he earned his M.A. in International Economic and Political Studies from Charles University, Prague. Currently, he teaches graduate courses in European policies and practice towards ethnic minorities and Cultural Pluralism and Anti-discrimination in Western Europe and the USA. In his master thesis he dealt with cross-border migration flows in Europe. Within his doctoral studies he is specializing in migration across European borders.

**Živka Deleva**, Ph.D. is an assistant professor at the Faculty of Social and Economic Sciences at Comenius University in Bratislava. She graduated from Legal Studies and International law at the Faculty of Law Justinianus Primus at the Ss. Cyril and Methodius University in Skopje. Her Ph.D. thesis dealt with the construction of the European Migration System. Her analysis involved a theoretical inquiry of a 3D analytical framework for its subsequent assessment and exploration. She is teaching graduate and bachelor courses at the Institute of European Studies and International Relations, FSES CU Bratislava including Europe and International Migration, Governing European Cities, Academic Communication etc. She also teaches a

course in the doctoral programme at the Janko Jesenký Faculty of Law in Sládkovičovo, i.e. Introduction to research methodology in law. She has published several articles.

Over the last six months Živka Deleva, Ph.D. cooperated with Antonín Mikeš, M.A. on the creation and implementation of a survey aimed at establishing the migratory experience of highly-educated Slovaks living in Prague. This cooperation will continue in application of an adapted version of the survey to other migration groups present in the Czech Republic.

# **HISTORICAL AND POLITICAL ROOTS OF THE MIDDLE EAST CONFLICT AND THEIR IMPACT ON THE PALESTINIAN COMMUNITY**

**Lucia Tuleková Henčelová & Tatiana Tökölyová**

## **Abstract**

The chapter deals with historical consequences which gave a rise to the Middle East conflict. The permanent complexity and political complicity of solution of this conflict has its roots just in historical and political events in the last 60 years of the Middle East development. The chapter is devoted to the most significant of these milestones, namely to different conditions for the establishment of state of Lebanon, Israel and Palestine, beginnings of anti-Semitism and anti-Arab moods, arrival of Palestinian refugees to Lebanon, outbreak of the Civil war in Lebanon and start of Israeli offensive reaction.

## **Key words:**

Middle East conflict, refugees, civil war in Lebanon.

## **I. Historical background on the creation of Lebanon and Palestine**

At the turn of the 18<sup>th</sup> and 19<sup>th</sup> century, the port in Beirut as well as other Lebanese ports became major transit centers, which contributed to the fact that many European powers, mainly France, England and Russia, to intensively intervene in the internal affairs of Lebanon. The importance of this phenomenon is highlighted even more with the fact that all of these powers enforced their interests primarily through the acquisition of support of the single religious groups, that is the French among the Maronites, the English among the Druzes and the Russians among the Orthodox population living in that region. The direct pressure applied from the powerful states on the development of the country had resulted in its division into two governed statehoods, the Maronites and the Druzes. This political move in time had proved to be controversial, since the situation eventually led to bloody rain. The conflict gradually gained international legal dimension, as the European powers' interference in the internal Lebanese affairs was a suitable pretext for it. Finally, at the beginning of the 20<sup>th</sup> century Lebanon together with the Ottoman Empire turned into a colony of the Western powers, especially France.<sup>1</sup>

### **1.1. Historical background of the political developments in Lebanon (analysis of the years between 1926 and 1948)**

In response to the presence of the powerful states of France and Great Britain in this region, nationalistic circles were activated and Beirut was established as their main center. Sometime in this period date the first efforts of the Lebanese people to gain state sovereignty. Amid this atmosphere the territory of the former Ottoman Empire (already known as Turkey) was caught in the rage of World War I.

---

<sup>1</sup> Muzikář. J.a kol., 1981. *Libanon – Obchodně ekonomické sborníky*. Institut zahraničního obchodu. Praha.

In August 1918, after the defeat of the Turkish army, Great Britain intervened in the name of the foreign powers, consequently in short time taking control over the territory. The control over the territory was taken over by France again though and the Great State of Lebanon was established. The formal independence of Lebanon was held under the control of the French. As head of the state a French governor was appointed as well as all other important political functions that were held by French citizens, which launched a wave of protests against the colonial powers in the Lebanese society. Couple of anti-French uprisings was held before the French started to partially address this pressure.

This has resulted in the declaration of independent Republic of Lebanon on the 23<sup>rd</sup> of May 1926. Its constitution was developed in France and the control over the major thrust sectors (defence and police forces) as well as over the foreign policy was still in the hands of France. With regard to the realization of the state powers, and the realization of the legislative powers in the state, the religious structure of society took over that since the seats in the parliament were channelled and divided according to the religious affiliation. The head of the Lebanese Republic a President of the State was appointed by the Lebanese government, of course in accordance with the French requirements.

The modern history of Lebanon in the interwar period (during the economic crisis) was marked by the efforts to gain independence from France. During this period, France has concluded an agreement with the Lebanese government recognizing its independence. However, this independence was more or less of a formal character, as France demanded that French troops were spread throughout Lebanon. At the same time it abused its rights and interfered in the foreign affairs of the state as well as in its internal affairs. However, in 1939, the French parliament decided not to ratify the agreement any further.<sup>2</sup> The political consequence of this decision was the continued occupation of Lebanon by France until 1943, when on November 22<sup>nd</sup> a National Government was appointed and the country officially declared independence.

#### 1.2. Historical background of the political developments in Palestine (analysis of the development until 1948)

For a comprehensive seizure of the analyzed question it is necessary to base the answer on the political contexts arising from the early history of the country. Historically the name of the country, Palestine, is derived from the Greek word Palaistine or Philistia, actually a country inhabited by the Philistines, who came to the area in the 12<sup>th</sup> century BC, joined the Canaanites who lived there since 2000 BC. Around the 13<sup>th</sup> century BC the first Jewish tribes joined the Canaan, and gradually prevail over the indigenous peoples. On the turn of the 10<sup>th</sup> and 11<sup>th</sup> century BC the first biblical Jewish state of Israel is born, led by King Saul, later succeeded by his adoptive son David, subsequently succeeded by his son – the famous King Solomon.

After the death of King Solomon, the kingdom was divided into two parts – Israel and Judah. The both parts gradually were dominated by other units, therefore leading Israel to its death in 772 BC. The Assyrians and Judah fell under the rule of the Babylonians in 586 BC. The Jewish gained independence only in 168 BC. This period is important for the future development of the country, among the other things because at this time the Roman

---

<sup>2</sup> Ibid.



influence becomes a lot stronger.<sup>3</sup> After centuries of Roman rule, a period of spreading the new faith of the Prophet Muhammad followed (640-1009 AD). In the Middle East full Arab domination developed, which was basically not threatened even by the Crusades between the 11<sup>th</sup> and 13<sup>th</sup> century, nor the raids of the Mamluk dynasty. From the mid-16<sup>th</sup> century, the Ottoman Empire prevailed on this territory. The country introduced a centralized system of government headed by a sultan. The religious communities were given their autonomies. At the end of the 18<sup>th</sup> century the imperial power weakens and that opens possibility for other European powers to interfere in the governance of the country. Meanwhile Palestine is becoming center of attention for foreign powers. First to show interest in Palestine, a strategically and political important area of the Middle East, is the European monarch Napoleon during his expedition to Egypt. He was intrigued by the idea of creation of Jewish state in Palestine under the French protectorate. Palestine, however, remains part of the Ottoman Empire until the outbreak of the World War I, when one of the Allies (United Kingdom) assumed control over it. The area west of the river Jordan got the official name of Palestine and in 1920 it was declared a British mandate territory. This was officially recognized by the League of Nation in 1922. This supported the idea of a creating a Jewish state and it opened a space for immigration of Jews on the territory of Palestine in the future. This immigration boomed especially at the end of the World War II and this reality has led to increased tensions in the area. Under the pressure from a number of foreign policy events in the world, the United Kingdom has decided to terminate its mandate in 1948, allowing the creation of an independent state of Israel. Subsequent events, particularly the Arab-Israeli war, prepared Palestine for political identity for the many decades to come. Its original territory was divided between Israel, Egypt, occupying the Gaza Strip, and Jordan, which occupied the west bank of the river Jordan. The problem of the territorial integrity in its original form became the subject of many international peace initiatives and we can state that it is one of the aspects that should be accounted for when dealing with the return of Palestinian refugees to their country of origin.

## **2. Historical and political milestones in the development of the Middle East conflict**

### **2.1 Roots of the Arab-Israeli conflict and the arrival of the Palestinians in Lebanon (1948-1958)**

The ideas of Zionism and their direct impact on the development in the region

The idea of the return of the Palestinian territory to the Jewish people after Napoleon was taken over by the British Prime Minister Benjamin Disraeli (1874 – 1876), whose family was the first to present the goals of the emerging Zionist movement, whose point of departure is to establish and maintaining a Jewish state. The emergence of the Zionist movement is connected to the boom of the ideas on anti-Semitism, which at that time (the second half of the 19<sup>th</sup> century) are beginning to spread in Europe. Related to the impact of extending power and wealth were the people, senior government officials, well-known businessmen and bankers, who were proud of their Jewish origins. Hereby Jewish Zionism begins to associate with the idea of creating their own state, which would guarantee them political and economical self-sufficiency. Theodor Herzl<sup>4</sup>, a Viennese journalist of Hungarian origin is generally considered the official spiritual father of the emerging political movement, who in

---

<sup>3</sup> ČEJKA, M.: *Izrael a Palestína. Minulost, současnost a směřování blízkovýchodního konfliktu*. 2005. Centrum strategických studií. Brno. 2005. p. 16

<sup>4</sup> Flapan, S. 1987. *The birth of Israel, myths and realities*. Pantheon Books, New York.

1896 summarized his views as follows<sup>5</sup>: “The Jewish question persists wherever Jews live in appreciable numbers. We are a single nation – united through our enemies, as it happens again and again in history. Suffering unites us and thus united we suddenly discover our strength. Yes, we are strong enough to create a state, and that is, a model state. We have enough human and material resources to achieve this objective.”<sup>6</sup>

The political Zionism was since its inception closely linked to the international system of dominating states. And from the perspectives of international politics it was assumed that colonization will be conducted with the help of the European powers. When the location of the future state was concretized the representatives of this movement coming from these countries guaranteed that the future Jewish state will have the status of “upstream wall of defense” of Europe against Asia and civilization against barbarism.<sup>7</sup>

In the traditional rivalry in the struggle for power status in Europe between Great Britain and France – imperial Germany co-joined, which through building a railroad from Berlin to Baghdad tried to settle permanently in the area. The competing powers used the Zionists in their own advantage and played an increased complex diplomatic activity characterized by a number of backdoor negotiations with representatives of the respective governments (1882 – 1924). In practice, these efforts re-fused into the organized Zionist waves of immigration to the territory of Palestine (the so-called Aliyah). The Jewish immigrants came to Palestine as tourists or as Pilgrims. And gradually they settled here permanently. They began to build their own farms, later villages and entire cities. Early 20<sup>th</sup> century resulted in the movement of pro-national Arab ideas conflicting the continued domination of the Ottoman Empire and the expansive efforts of Zionism. A desire for own Arab state was born, that grew into a political struggle to obtain independence of the Arab nation (1875 – 1911). The first representatives of the independent movement of Arab countries were intellectuals like Abd al-Rahman al-Kawakibi (1848 – 1902) and representatives of the clan Hasimov (Hedschas) Hussein ibn Ali (1896 – 1931). Opportunity to create their independence and adopting the Arab language as one of the official languages of the Ottoman Empire gave a possibility for the first Arab nationalist outbreak in the World War I. The Arab nationalists, led by the son of Hussein ibn Ali, Faisal jointly developed the so-called Damascus Protocol (1914), in which as a condition for entry into the war alongside Great Britain they asked for the provision of independence for all Arab countries.<sup>8</sup>

The conditions under which the Arab part of the population openly stood up for the interests of the United Kingdom were breeched by Great Britain alone in no more than 2 years. The British Government in 1916 signed an agreement with France, the secret Sykes-Picot agreement on the division of the Arab lands of the Turkish Empire between Great Britain and France.<sup>9</sup>

The French and the British, agreed to an international administration of this territory. Later, the British government unilaterally changed that part of the joint agreement, covering the international administration of Palestine, thus angering the Arabs. From political and

---

<sup>5</sup> Theodor Herzl's views published in: *The Jewish State: An Attempt at a Modern Solution to the Jewish Question*.

<sup>6</sup> Herzl, T. 2008. *A Jewish State: An Attempt at a Modern Solution of the Jewish Question (Large Print Edition)*. BiblioBazaar, 2008, pp. 41-47

<sup>7</sup> Rácz, J. *Palestína včera a dnes*. Bratislava.1983. pp. 22-23

<sup>8</sup> Available at: <http://www.daringopinion.com/Sharif-Hussein-Revolt-Against-the-Ottoman-Empire-of-1916.php>

<sup>9</sup> The Sykes-Picot was concluded between Sir Mark Sykes and George Picot in January 1916 and it defines the British and French interest in the Middle East.

pragmatic reasons, the United Kingdom finally decided to adopt the Zionist plan submitted by the lobbyist and chairman of the World Zionist Organization Chaim Weizmann (1874 – 1952), who has consistently insisted that Palestine should be the new home for the Jewish people, for which it had said that “the Jewish borders of Palestine will be as big as the decisiveness with which the Jews seek to acquire this land”.<sup>10</sup>

At this time (1917) the famous Balfour Declaration was formulated, which became the symbol of the official recognition of Zionism, i.e. the territorial and political claims of the Jewish community by the world powers. This document was actually a letter sent by the British Minister of Foreign Affairs of the United Kingdom, Arthur James Balfour (1848 – 1930) to his friend, who was at the time a very influential Jew – Lord Rothschild (1844 – 1911).<sup>11</sup> This letter can be considered as the formal expression of the attitude of Great Britain on the question of building a Jewish state, while laying the foundation for the creation of a Jewish state with the help of Great Britain. The further development only confirmed that Palestine was sacrificed for foreign interest and that the double policy of Great Britain, that on the one hand, promised the Arab community administrative autonomy and on the other hand, in the same territory declared the creation of the Zionist state which later became one of the reasons for the late Arab-Israeli conflict.

In Palestine, where on a common area for many years lived Arab and Jewish residents in conformity, after the arrival of the British the nationalist conflicts broke out. The British politics from the beginning put both sides against each other and this antagonism it used to secure control over Palestine. By the thirties the growing inequalities, violence and insecurity caused serious economic problems, particularly unemployment, mainly concerning the Arab part of the population.<sup>12</sup>

Somewhere here we should search for the roots of the Arab-Palestinian-Israeli conflict. Although there is an often used explanation, that the real and sole reason of the conflict is the difference in faith and religion, it is not so. Much more significant was the governmental decision to split the territory of Palestine, the power struggle for dominance over the territory and the nourishment of the nationalist ideas both on the Zionist and Arab side. The Middle East after the World War I became a problematic region, full of ethnic violence and religious fundamentalism.

Addressing the issue of the “Jewish state” by the international community

After World War II the events on the political scene turned in favor of the Jewish people. The public supported the Jews, who survived the hell of the concentration camps and lost their property and homes, could immediately and en masse leave to Palestine. Therefore the situation in Palestine became worse by the hour.

In January and February 1947, the British government decided to solve the increasingly complex problems of Palestine by attempting to divide the territory into two autonomous regions. This alternative, however, was rejected not only by the Arab leaders, but also by the Jewish population. Finally, the British government shifted the burden of the entire conflict to the United Nations. Specially created UN Commission provided a list of detailed recommendations for the creation of two separate states, the so-called The United Nations Partition Plan for Palestine:

---

<sup>10</sup> Chapman, C. 2003. *Či je země zaslíbená? Pokračující krize mezi Izraelem a Palestinci*. Volvox Globator. Praha. 2003. p. 58

<sup>11</sup> In the diplomatic practice it is common that the letter sent by the Minister of foreign affairs is considered an officially adopted attitude/text by the government.

<sup>12</sup> Rácz. J., 1983. *Palestina včera a dnes*. Pravda. Bratislava. p.33

- The Jewish state, which would be spread on the 55% of the territory and would be inhabited by more Arabs than Jews
- Arab state, which would spread on the remaining 45% of the territory and it would be consisted by app. 750 thousand Arabs and app. 9500 Jews.
- Jerusalem and its environs would become an international zone.<sup>13</sup>

On the basis of a vote of the General Assembly of the UN (hereinafter referred to as "General Assembly"), (with the necessary two-thirds majority) and the adoption of the UN Resolution no. 181 (1947) finally historic Palestine was divided into a Jewish and Arab state.<sup>14</sup> To fulfill the objectives of this resolution a crucial input was given by the United States that accurately used the time before the adoption of the Resolution and through business leaders and influential Americans "lobbied" for the adoption of the plan with those state governments which opposed the division of the Palestinian territory, but have, respectively expected the US to fulfill the pledges it made to them. This situation is confirmed by the statement of the then US President H.S. Truman, who said: "I am sorry gentlemen, but I have to accommodate hundreds of thousands of people who wish to fulfill the idea of success of Zionism: I do not have hundreds of thousands of Arabs among my constituents."<sup>15</sup>

The entire 1947 was marked by frenzied armaments on both Arab and Zionist side. The demonstrations in the territory of Palestine grew into armed conflict, which in their nature resembled a civil war. One minute after midnight on May 15<sup>th</sup>, 1948 in Tel Aviv the Zionist leader Ben Gurion (1886 – 1973) declared the independence of Israel and couple of hours later the first Arab-Israeli war broke, also known as the Independence War, or Al-Nakba. United Transjordan, Iranian, Lebanese, Egyptian and Syrian with the initiation of a military intervention on Israel demonstrated its contradictory position to the officially recognized UN borders in order to once again restore the land of Palestine to the Arabs. Israel, however, had its own militant ideas, and it managed to defend its independence and in the war it won additional territory (Sinai and Gaza).<sup>16</sup>

The following period was marked with the exodus of Palestinian Arabs from the territories occupied by the Israeli troops. Until 1967, Israel took over around 70 000 km<sup>2</sup> of Arab territories and introduced an occupying administration over 1.3 million Arab citizens, from whom the vast majority was Palestinians. This behavior led to many conflicts and forced the indigenous people to leave their homes. This subsequently led to account over 780,000 refugees in exile.

At that time Lebanon enters the situation, a country that accepted most of the Palestinian refugees (in addition to Jordan). Its role in the conflict we are analyzing was and is even now important, as in the years before the first Arab-Israeli war Lebanon had special relations with Palestine, which was evidenced by the presence of 3 of its consular representations – in

---

<sup>13</sup> Chapman, C.: 2003. *Čí je země zaslíbená? Pokračující krize mezi Izraelem a Palestinci*. Volvox Globator. Praha. 2003. pp. 28 - 31

<sup>14</sup> [http://www.un.org/french/documents/view\\_doc.asp?symbol=A/RES/181\(II\)&Lang=F](http://www.un.org/french/documents/view_doc.asp?symbol=A/RES/181(II)&Lang=F)

<sup>15</sup> Harry S. Truman was the 33<sup>rd</sup> American President. Quoted from his speech of 1945 addressing the American ambassadors working in the Arab countries. Source: Chapman, C.: 2003. *Čí je země zaslíbená? Pokračující krize mezi Izraelem a Palestinci*. Volvox Globator. Praha. 2003. p. 70.

<sup>16</sup> Rácz. J., 1983. *Palestina včera a dnes*. Pravda. Bratislava. p. 42

Jerusalem, Haifa and Jaffa. It was therefore not surprising that the Palestinian refugees were fleeing mainly to Lebanon.<sup>17</sup>

The first, about 10 years (1948 – 1958) of the coexistence of the Lebanese with the Palestinian refugees the known political scientist and journalist Suleiman Jaber in his contribution calls it the phase of “adaptation and hope”.<sup>18</sup> The Palestinian refugees were governed by Lebanon and welcomed by the other societal layers. Due to previous interstate relations, there were no concerns of abuse of the social and political status. The Palestinians were in fact major retailers, bankers, intellectuals, who in the past significantly influenced the national economy and its growth.

## 2.2. The Palestinian resistance movement (1958 – 1970)

The emergence of the Palestinian resistance movement, which promoted the interests of the refugees to the government of Lebanon, was only a natural result to the activities that were directed against the presence of the Palestinian refugees in the country. The refugee camps with the influx of other masses of people suddenly became huge social centers, where different types of societal relationships were created. The main thrust of the refugees thus became the gradual emancipation from the life in the camp and in any possible way to find a way to participate in the city life. The classical camp life began to crumble and the refugees started to significantly influence the current cast structure of Lebanon, but also the economic and social life of the local population.

After the Palestinians started leaving their homes in the refugee camps and accounted for more than half of the local population in Lebanon, they began significantly to build strong national consciousness. The previous passivity was replaced by an active national and political consciousness. While the vast majority of young Palestinians got to the camps in Lebanon only due to the enormous efforts and continuous education, in neighboring countries in the same time there was a group of people who managed after the departure from Palestine to snap important positions. These people continued to be regarded as Palestinians and the belonging to their people they started document through generous financial contributions for the support of the Palestinian revolt against Israel. The idea of Arab nationalism and Arab unity was born, spread from the neighboring countries, also influenced the different casts of the Palestinian people in Lebanon and revived the idea of national consciousness. The events in that period pushed the Palestinians to pre-orient their resistance to a purely Palestinian one, in the form of organized armed movement. Under the influence of the revolutionary process in the Arab world and the success of the national liberation struggle in Asia and Africa in the late 50s a strong turn of events happened in the Palestinian movement as well. It was characterized by attempts to integrate the various components of resistance. The first organization that sought to connect the components of resistance became the Palestine Liberation Organization, which in 1959 adopted the name Al-Fatah. Al-Fatah was primarily consisted of a group of students that began to publish a magazine in Beirut, called Our Palestine. Their goal was liberating Palestine with guns in their arms.

---

<sup>17</sup> Nasri Saleh, H. 2000. *Palestinian Refugees in Lebanon: Until When?*. Shamil Palestinian Diaspora and Refugee Centre, Ramallah, July 2000.

<sup>18</sup> Suleiman, J.: *The Current Political, Organizational and Security Situation in the Palestinian Refugee Camps of Lebanon*, Journal of Palestine Studies. Vol. XXIX No. 1 Issue 113, 1999. pp. 66-80

“Armed struggle is the only way leading to the liberation of Palestine. It is therefore a general strategy, not only a temporary tactic. The Palestinian Arab people manifests that it is strongly committed and determined to continue in their struggle and empowerment of their armed revolution, whose goal is liberation of its territory and their return to it. The combat actions of the assault section are basis for the folk fight...” (Excerpt – point 9 and 10 of the Palestinian National Charter adopted on July 17<sup>th</sup>, 1968)<sup>19</sup>

The best-known leaders became Yasser Arafat, Saleh Khalaf and Khalil el-Wazir. At the same time influential Palestinians helped to create in the refugees camps in Lebanon secret cells of Al-Fatah and to arm volunteer soldiers.

The changed situation conditioned particularly by the changes in the social structure of the local Palestinians formed favorable conditions to unite fighting Palestinians. The result of this activity was the foundation of an organization named the Palestinian National Front (later the Palestine Liberation Organization – hereinafter referred to as “PLO”). On the initiative of the Palestinian National Front a manifest was born signed by 180 prominent representatives of the Palestinian resistance. The manifesto proclaims recognition of the PLO as the sole legitimate representative of the Palestinian people. This is considered to be a key moment in the development of the Palestinian resistance movement, since it was the first time that they managed to unify the Palestinian reaction and create a consistent movement with full powers to represent the interests of the Palestinians. After the formation of the PLO, the majority of the Arab states turned away from Al-Fatah because they considered their action too militant and as those who turn the international public attention to the problem of the Palestinian refugees in the light of the performed terrorist actions. The activities organized by the Palestinian militants in Lebanon were received with great reluctance because they feared retaliation by Israel. The fedayeen of the Al-Fatah were later supported only by Syria, which has expressed its willingness to accept and support them. The organization then transferred its headquarters from Beirut to Damascus. Here it built its first military headquarters.<sup>20</sup>

In the following years, the development of the Palestinian resistance movement was influenced by the process of frequent regrouping, merging and splitting of the movement itself. This process was the result of social, as well as political diversity of the movement; it also reflected the differences between the fractions and their views on the manners of keeping an organized fight. The Palestinian movement was also influenced by the particular Arab states as well as the specific position of the Palestinians separated by borders and the political views of the host countries. The period between the 60s and the 70s can also be characterized as a period of renaissance of the Palestinian nationalism, which however, was often undermined from within, by the fight of the individual groups for dominance over the others.<sup>21</sup>

Despite the inconsistencies and contradictions of the movement it can be said that a real military and power group started existing, which could cause another wave of armed rebellion in the region. The movement apparently gave the impression of consistency and its highest political body, the Central Committee of the Palestinian resistance movement, became the partner in the forthcoming negotiations on the status of the Palestinians. In 1970, Yasser Arafat was elected as its leader. In addition, the movement noted the rise of

---

<sup>19</sup> PALESTINE NATIONAL CHARTER, taken from:

[http://www.jewishvirtuallibrary.org/jsource/Peace/PLO\\_Covenant.html](http://www.jewishvirtuallibrary.org/jsource/Peace/PLO_Covenant.html)

<sup>20</sup> Rácz, J.: 1983. *Palestína včera a dnes*. Pravda. Bratislava. 1983. p. 110

<sup>21</sup> Wanner, Š. 2002. *Krvavý Jom Kippur. Čtvrtá a pátá arabsko – izraelská válka ve světové politice*. Libri, Praha.

managing and organizational units, as well as an executive branch – i.e. executive committee, and a legislative component – the Palestinian National Council and military unit known as the Palestinian Liberation Army. Such a division of the power evoked in the public mind the idea of extremely strong and united organization. Critical moment for the resistance became the so-called Black September (1970), when all resistance organizational branches and its combatants were forcibly evicted from Jordan.<sup>22</sup> After the loss of the Jordanian position the focus of the Palestinian activity was shifted to south Lebanon, where the Hermon Mountains provided favorable conditions for natural resistance. The combatants started building fortifications and the leadership had moved from Amman to Beirut.

The repression and persecution of the members of the movement from the expulsion of the Palestinians from Jordan began increasingly to appear in Lebanon. By the mid 80's, the government troops managed to dispose of dozens of prominent Palestinian personalities and cause the death of hundreds of innocent people who happened to be close to the assassination locations. Nevertheless, until the evacuation of the Palestinians from Beirut (September 1<sup>st</sup>, 1982) the Lebanese capital stayed the headquarters of the Palestinian revolution leadership with branched apparatus offices, institutions, cultural and health facilities and well developed propaganda system and press. This activity was concentrated in the Information Center of the PLO which apart from issuing the Palestinian newspapers, magazines and publications coordinated the activities of the official news agency WAFA. Apart from the Institute for Social Affairs that provided basic material and financial assistance to families who lost their breadwinners, and the economic organization of the PLO SAMED (Palestinian Martyrs Works Society), trade unions, women, youth, cultural and other community organizations had their headquarters in Beirut.<sup>23</sup> Even during the Civil War (1975), basically until the Israeli invasion (1982) the PLO was the biggest employer of refugees in the country. The PLO leadership in these years fully focused on the management of life in the refugee camps. The gradual intensification of the PLO in Lebanon led to the creation of a "state within a state". The Palestinian economy in Lebanon at this time gained significant dimensions. Paradoxically, however, the PLO leadership did not show strength and potential to use and set the policy for the period of the crisis, which had occurred as of recent.

The history of the Palestinian resistance movement acknowledges that the issue of unity is extremely sensitive and the complexity of the whole problem and later the tragic events at the time of the civil war in Lebanon, when some Palestinian groups opposed each other with arms in the hand. Moreover, the Palestinians had to face at all times the forces of Tel Aviv as well as the often Arab reaction that tried to prevent the unification of the Palestinians. This is to say that they became aware that in the case of unity they would create a real force in the Middle East.

---

<sup>22</sup> Jordan until 1970 was a "stronghold" of the Palestinian resistance movement, until the day when its fighters tried to overthrow the government of King Hussein. The violent clashes resulted in the termination of the management of the Palestinian resistance and the beginning of harsh repression in the eyes of its supporters. These tragic events ended only after the intervention of the Egyptian President Nasser, with the signing of the famous agreement in Cairo (Cairo Accords) in which the government declared extraterritorial sovereignty of the Palestinian armed groups. The agreement also guaranteed the Palestinians the right to collect weapons in the refugee camps and to attack Israel through the Lebanese border. The Palestinians in turn had to respect the Lebanese legal system and its sovereignty.

<sup>23</sup> Rácz, J. 1983. *Palestína včera a dnes*. Pravda, Bratislava.

### 2.3. The civil war in Lebanon (1975 – 1990) and its impact on the Palestinian community

The civil war in Lebanon was preceded by a period of relative political stability. As noted above, in the 60's of the twentieth century the country had seen a strong economic growth and began to apply the principles of liberal market economy. Slowly, however, discontent started rising with the Muslims and the secular leftists in the consolidation of the organs of the State authorities which guaranteed Christians bigger political power. Voices calling for political consensus begin to take into account the new demographic situation in the country. The gradually increasing anti-Palestinian forces in Lebanon, resembling the ones in Jordan, did not give up from their plan to liquidate the resistance movement, even after the signing of the Cairo Agreement (1969), which guaranteed extraterritorial sovereignty of the Palestinian armed groups. The open cooperation of the Christian right with Israel caused coordinated attacks on the Palestinian bases and refugee camps, whereby Lebanon, even though it was not officially at war with Israel, suffered more than the so-called frontline states. The aim of these common actions was to consolidate the aforementioned alliance of Israel and the Christian militias in Lebanon, to weaken the relations of Lebanon with the rest of the Arab world and to paralyze the power and influence of the Palestinian resistance movement. The increased civil and political tensions eventually triggered a devastating civil war.

The country was divided into two camps. For those who supported the Palestinians, and those who stood against them. The violence slowly caught up with the local population who had to leave their homes. The public order had gotten worse from day to day with the violence going on between the Christians and the Palestinians. In the early months of the war around 1,000 people were killed, but many nevertheless believed that the war is only a temporary phenomenon that will soon expire. The conflict was stopped finally after the intervention of the Arab League on the 17<sup>th</sup> of May 1973, after seventeen hours of negotiation, when both of the parties, Palestinians and Lebanon, announced that they reached an agreement, called the Melkart Protocol.<sup>24</sup> According to this agreement the PLO was obliged to respect the "independence, stability and sovereignty" of Lebanon. On the other hand, the agreement made it possible for the PLO to exercise autonomy, including the right to regroup their military forces on its territory.<sup>25</sup> This way PLO reached unexpected extensive rights in Lebanon. However, the efficiency of the agreement was only on paper. The Lebanese-Palestinian relations continued to deteriorate. The government of Lebanon accused the Palestinians for abusing the asylum granted on their territory and of interfering in the internal affairs of the country. The Palestinian presence was demagogically identified as the main cause for the existing tensions in the country. Another cloak for formal expression of dissatisfaction was also the activation of Palestinians who have joined the strike and the protesting masses for the improvement of social conditions.<sup>26</sup> This reality did not contribute in ceasing the clashes between the Palestinians and the Lebanese Christian

---

<sup>24</sup> Named after the Melkart Hotel, where the Protocol was signed. For details see: "GOLFedayeen Arrangement", Houghton to Secretary of State, 18 May 1973, File Pol 1310 Arab 51573, Box 2047, SNF 19701973, RG 59, NARII.

<sup>25</sup> Gemayel, B. 2005. Lebanese war series (part 13). Available at:

[http://www.fotolog.com/benet\\_is\\_out/9681395/](http://www.fotolog.com/benet_is_out/9681395/)

<sup>26</sup> Rácz, J. 1983. *Palestína včera a dnes*. Pravda, Bratislava.



forces, which continued further.<sup>27</sup> Although for a specific time there was an agreement to ceasefire, the actual outbreaks of hostilities were permanent. The consequences of the war were devastating, not only in terms of human casualties, but due to the offenses caused to the environment that left Lebanon environmentally crippled. The inadequate legislation, the illegal interventions to the environment, removing sand from the beach, “black” buildings and forbidden warehouses, caused widespread damage to the natural resources.<sup>28</sup> Moreover, the war largely destroyed or damaged electricity plants, sewage systems, oil refineries and irrigation system. The long period of turmoil caused a large number of the population to be relocated from rural to urban areas, increasing the number of the urban population which only increased the problems and not only the social ones. In addition, the effects of the war were disastrous from the perspective of reconstruction of the country, as many of the qualified professionals had emigrated abroad. This meant that Lebanon was completely drained from the middle class.<sup>29</sup>

#### 2.4. The Israeli invasion (1982 – 1989) and the PLO withdrawal from Lebanon

Since the early 70’s there were many cross-border armed clashes between the Palestinian groups and the Israeli forces, forcing the Christian part of the population of Lebanon to seek help from their neighbors in Israel. Israel responded to the plea for help and started sending help in the south of Lebanon in the form of food, medicine, and of course weapons (policy known as policy of “good protest”). The Christian militia conjugated in the so-called South-Lebanese Army (SLA ) had gradually became direct allies of Israel, as they were joined by common interests: the expulsion of Syrian intervention troops and the evacuation of Palestinian forces from the country.

The final reason for launching the ground operations of Israel in the eyes of the PLO was provided by the terrorists from the Abu Nidal group (a group that broke away from the PLO). The group attempted assassination on the Israeli ambassador to Great Britain on the June 3<sup>rd</sup>, 1982.<sup>30</sup> A day later, June 4<sup>th</sup> a plane belonging to IDF (Israeli Defense Forces) began to bomb Palestinian targets in west Beirut. The Israeli cabinet approved the launch of the operation called “Peace for Galilee”.

Shortly, however, it was showed that this military mission has a much broader scope, and paradoxically, there was no question on the “Peace in Galilee”. Kirsten E. Schulze, in her book *The Arab-Israeli conflict* claims that the main reasons for launching the operation are: (1) the elimination of whatsoever Palestinian presence and its influence in Lebanon, (2) establishing of a Maronite government led by Bashir Gemayel that created a new political order, (3) ousting the Syrian troops, (4) destruction of the Palestinian nationalism on the West Bank and in Gaza stripe, and (5) releasing Israel from the traumas from the past.<sup>31</sup> After the entry of the Israeli troops in Beirut the fire was temporarily suspended. Israel

<sup>27</sup> The Lebanese paramilitary youth movement, founded in 1936, to assist the Lebanese independence. Gradually it was transformed into a political movement of the Maronite Christians with their own military component.

<sup>28</sup> Davie, M. 1993. *Beyrouth apres la guerre : Une geographie urbaine*. Eurames Conference, Warwick, July 1993.

<sup>29</sup> The Washington Institute for Middle East politics; special report from the political forum: *Lebanon, peace process and U .S .policy*. 25. August 1997.

<sup>30</sup> Chomsky, N. September 1993. *Limited war in Lebanon*. Z Magazine.

<sup>31</sup> Schulze, E. K. 2012. *Arasko-Izraelský konflikt*. CPress. Brno. 2012. p.65

decided on the withdrawal of the PLO troops from the capital and continued monitoring it the next 70 days. The victims among the civilians, who were killed during the siege of the city, have earned international condemnation of Israel. The critical situation in Lebanon focused the world attention on the Palestinian question. Arafat wanted to take advantage of that and thus he tried to negotiate with the heads of power. He managed to be admitted to U.S. soil, where he informed about his consent to leave Beirut with his troops. But the condition was that international peacekeeping forces (UNIFIL) will be stationed on the territory, whereby they would ensure the protection of the departing soldiers and their families.

The evacuation of the Palestinians by sea towards Cyprus and land route toward Damascus began on the 21<sup>st</sup> of August 1982. The PLO leadership moved to Tunisia. The exodus of the Palestinians ended on the 1<sup>st</sup> of September. Around 11,000 Palestinian soldiers, including 8,000 men of Fatah, 2,600 members of the PLO and almost 3,600 Syrian men had to be evacuated from the capital. Nevertheless, around 10,000 Palestinian insurgents were still residing in Lebanon.<sup>32</sup>

The symbols of Israel's interventions in 1982 were the notorious sad events in the Palestinian refugee camps of Sabra and Shatila. Within two days, the soldiers massacred some 700 to 800 Palestinian men, women and children. Robert Fisk claims that the exact number has never been found.<sup>33</sup> Thomas Friedman, who won the Pulitzer Prize for coverage on the massacre, said the death toll was around 1,000.<sup>34</sup>

After the war, the Lebanese government administration announced that the final death toll in the camps of Sabra and Shatila was 857 and the number of injured 1,124. About what happened in those 36 hours, except the testimony from the residents of the camps, who managed to survive, we have the testimony of mostly doctors and other hospital staff, UN staff, diplomats and some journalists, who entered the camps through the barriers of the Israeli forces. The tragedy is expressed by the well-known professor of Hebron University, J. Leibotvitz, editor of the *Encyclopedia Hebraica*: "...the carnage was caused by us. The phalangists were only implementing orders, just like the Ukrainians, Croats and Slovaks were Hitler's minions ...Had we become murderers in the name of eradicating Palestinians?"<sup>35</sup>

In 1985, Israel finally decided to withdraw its troops from Lebanon. Israel was forced by many factors, particularly the heavy losses among their own security forces, the international condemnation for the massacre in the camps of Sabra and Shatila and mainly the poor economic indicators in the management of the country. The period after the withdrawal of the Israeli troops from the country could be described as a period of economic decline of Lebanon in comparison to its neighbors. The Lebanese society tired from the long lasting conflict, began showing tendencies of apathy in the political development of the country. Individual confessional groups failed to mobilize their supporters to continue the fight. This resulted namely in the collapse of the Christian bloc and in reality, the Syrian troops, with American help, finally forced the militant fractions to lay down their arms. The Taif Agreement (1989) was signed, which also grants Muslims an equal power as to Christians. The official date of termination of this tragic historical event of Lebanon is May 22<sup>nd</sup>, 2000, when the last Israeli troops started leaving the country. The departure was

---

<sup>32</sup> Rácz, J. 1983. *Palestína včera a dnes*. Pravda. Bratislava. 1983.

<sup>33</sup> Fisk, R., 2001. *Pity the Nation: The Abduction of Lebanon*. Oxford.

<sup>34</sup> Friedman, T. Január 1985. The New York Times.

<sup>35</sup> Farook, L. *Zionist Jews- Godfathers Of Terrorism*. Available at: <http://www.rense.com/general84/ahas.htm>

completed within 24 hours. The freed positions were instantly taken over by Hezbollah units. Despite restoring the delicate balance in the country and laying the foundations of the new socio-economic life of the country, we can still observe the instability in Lebanon. Part of the problem could be also identified in the fact that the Muslim political representation in Lebanon, there is a close relation between political and parliamentary elements, whose contacts of one side give these organizations legitimate character (as political movements), and on the other hand serve as pretext of armed struggle.<sup>36</sup>

## 2.5. The Israeli attack and the destruction of the Nahr el-Bared camp (2006 – 2007)

The relations between Lebanon and Israel, even after all those years have passed since the end of the invasion, are still tense. They escalated also in 2006. Pretext for unleashing the dispute was the kidnapping of two soldiers by members of Hezbollah. Israel immediately reacted repressive in order to push Hezbollah from the territory of Lebanon. After a short, but very intense war the economy that was built in the last couple of years in Lebanon had collapsed. The consequences were felt to that extent that the international community decided not to respond to the situation. After signing the agreement in the UN, Israel left the territory of Lebanon and the control of the situation was left to the international forces. The June or the 2<sup>nd</sup> Lebanese war lasted exactly 34 days. Among the victims were 500 thousand Israelis evicted from the north of the country and 900 thousand residents of southern Lebanon. The material and economic damages exceeded \$500 million.<sup>37</sup> For the time the latest armed attack which affected the lives of the refugees in Lebanon, was the destruction of the camp Nahr el-Bared in September 2007. It is than that the escalating clashes between the members of the Fatah al-Islam, the Islamist armed group and the Lebanese troops had moved from the area of Tripoli to the nearby camp. During the first 12 days of the fights 23 Palestinians were killed and many more were injured. The fights continued the next 15 weeks, until 2<sup>nd</sup> September when units of the Lebanese army took full control of the camp. The result of the fights was 166 dead on the Lebanese side, 220 members of the Fatah al-Islam and 42 civilians. The camp was almost completely destroyed, resulting that from it nearly 30,000 refugees were moved to the Beddawi camp 15 km away.<sup>38</sup> The same year the Lebanese Prime Minister Fouad Siniora asked the international donors for almost \$ 400 million for the reconstruction of the Nahr el-Bared camp and help in its recovery, so that its residents could return to their homes. Financial support came from UNRWA sources and the Norwegian government.

## Conclusion

*„Tu je naša minulosť, súčasnosť aj budúcnosť. Naše korene ležia hlboko v tejto zemi. Aj keby nás ostalo iba dvadsať, zostaneme.“* Citát z diela významného palestínskeho básnika Tawfíka Zajáda úprimne odzrkadľuje životnú filozofiu, s ktorou sa stotožňuje obrovská masa ľudí bez vlastnej domoviny. Diskusie o legitímnosti prítomnosti Palestínčanov alebo Židov na území

---

<sup>36</sup> In this sense, a typical political party in Lebanon is Amal, which was founded in 1974. In the 80s Hezbollah segregates from it.

<sup>37</sup> Schulze, E. K. 2012. *Arasko-Izraelský konflikt*. CPress. Brno. 2012. p.105

<sup>38</sup> Amnesty International. 2007. *Lebanon: Exiled and Suffering: Palestinian Refugees in Lebanon*. AI MDE 18/010/2007. October 2007.

dnešného Izraela však už dávno presahujú hranice Blízkeho východu. Kým Palestínčania prijímajú tento región za svoj predovšetkým z historického hľadiska, Židia si naň robia nároky aj z náboženského hľadiska **a bez pochyb, v súčasnosti už aj ako životnú nutnosť**. Neodškriepiteľným faktom ostáva, že na úplne prvý konflikt (po vzniku štátu Izrael) boli podstatne lepšie pripravení Židia ako Palestínčania a z tejto výhody profitujú do dnešných dní. Mali na svojej strane svetové veľmoci ako Veľkú Britániu a USA a aj priazeň svetovej mienky, ktorá ich ľutovala za krivdy spôsobené predovšetkým holokaustom. Palestínčania sa sústredili na celkový odpor voči „okupantovi“ a úplne potlačili v sebe akékoľvek politicko-spoločensko-kultúrne riešenie svojej vzniknutej situácie. Ambície a snahy na prípadne negociačné rozhovory, ktorých výsledkom by mohol byť vlastný palestínsky štát, prevážila snaha o navrátenie zabraných území a medzinárodne potvrdenie práva vpísaného do Rezolúcie OSN č. 194 o návrate do krajiny pôvodu. A tak otázka svojbytnosti palestínskeho ľudu ostáva aj naďalej jednou z najdiskutovanejších otázok posledných desaťročí, predmetom teoretických štúdií, témou pre články a komentáre vo svetovej tlači, problémom, ktorý sa pokúšajú riešiť rozliční predstavitelia na najvyšších medzinárodných fórach. A to všetko preto, že svetová verejnosť si začala stále zreteľnejšie uvedomovať, že mierové urovnanie na Blízkom východe musí nevyhnutne zahŕňať spravodlivé riešenie palestínskej otázky na základe uznania zákonných národných práv palestínskych Arabov.

### Bibliography

- AL – ABSI, M. 2008. *K starším dejinám arabskej kultúry*. UKF, Nitra.
- AMSTRONGOVÁ, K. 2002. *Islam*. Slovart, Bratislava.
- ČEBOKSAROV, N.N., ČEBOKSAROVÁ, I. A. 1978. *Národy, rasy, kultúry*. Mladá Fronta, Praha.
- ČEJKA, M. 2007. *Encyklopedie blízkovýchodního terorismu*. Společnost pro odbornou literaturu, o.s., Brno.
- ČEJKA, M. 2005. *Izrael a Palestina. Minulost, současnost a směřování blízkovýchodního konfliktu*. Centrum strategických studií. Praha.
- CHAPMAN, C. 2002. *Čí je země zaslíbená? Pokračující krize mezi Izraelem a Palestinci*. Volvox Globator, Praha.
- FISK, R. 2001. *Pity the nation : The abduction of Lebanon*. Oxford.
- FLAPAN, S. 1987. *The birth of Israel, myths and realities*. Pantheon Books, New York.
- FRANGI, A. 1983. *The PLO and Palestine*. Zed Books, Ltd., Londýn, 1983.
- GOMBÁR, E. 1999. *Moderní dějiny islámských zemí*. Karolinum, Praha.
- HERZL, T. 2008. *A Jewish State: An Attempt at a Modern Solution of the Jewish Question* (Large Print Edition). BiblioBazaar.
- HRBEK, I. 1989. *Zápas o novodobý stát v islámském světě*. Academia. Praha.
- HOURLANI, A. 2010. *Dějiny arabského světa od 7. století po současnost*. Nakladatelství Lidové noviny, Praha.
- KŘIKAVOVÁ, A., MENDEL, M., MULLER, Z. 1990. *Islám, ideál a skutečnost*. Panorama, Praha.
- KROPÁČEK, L. 1996. *Islámský fundamentalismus*. Vyšehrad, Praha.
- LEWIS, B. 1996. *Dějiny Blízkeho východu*. Lidové noviny, Praha.
- LEWIS, B. 2003. *Kde sa stala chyba? Vliv Západu na Střední východ a jeho následná odpověď*. Volvox Globator, Praha.
- MACKEY, S. 1989. *Death of a nation*. Bantam Doubleday Dell Publishing Group, Inc., New York.
- MENDEL, M. 1994. *Islámska výzva*. Atlantis. Brno.

MENDEL, M. 2000. *Náboženství v boji o Palestinu*. Atlantis, Brno.

RÁCZ, J. 1982. *Blízky východ*. Obzor, Bratislava.

RÁCZ, J. 1983. *Palestína včera a dnes*. Pravda, Bratislava.

SALIBI, K. 1993. *A House of Many Mansions – The History of Lebanon Reconsidered*. I.B.Tauris & Co Ltd.

SCHULZE, K. 2012. *Arabsko – Izraelský konflikt. Histórie. Fakta. Dokumenty*. CPress, Brno.

STANO, J. 1979. *Země bez konca*. Panorama, Praha.

TAUER, F. 1984. *Svět islámu*. Vyšehrad, Praha.

TUREČEK, B. 2007. *Světla a stíny Islámu. Drama Blízkeho východu a sonda do duší jeho obyvateľ*. Euromedia Group, k.s., Praha.

VESELÝ. 1971. *Průhled politických a kulturních dějin islámských zemí*. KU, Praha.

WANNER, Š. 2002. *Krvavý Jom Kippur. Čtvrtá a pátá arabsko – izraelská válka ve světové politice*. Libri, Praha.

### Studies and articles:

ABU – SABA, M. 2000. *Planning for justice in south Lebanon*. Peace Review 12 : 1, marec 2000.

Amnesty International. 2003. *Lebanon: Economic and social rights of Palestinian refugees: Submission to the Committee on the Elimination of Racial Discrimination*. Index: MDE 18/017/2003.

ARCI, J. 1993. *Izraelsko – arabské narovnanie. Viac ako koniec začiatku: začiatok konca*. In: Mezinárodní politika. č. 9.

BADIL Resource Center for Palestinian Residency and Refugee Rights. 2001. *The Right of Return – Campaign for the Defense of Palestinian Refugee Rights*. Marec 2001.

BADIL Resource Center for Palestinian Residency and Refugee Rights. 2006. *Displaced by the Wall. Forced Displacement as a result of the West Bank and its Associated Regime*. September 2006.

BADIL Resource Center for Palestinian Residency and Refugee Rights. 2009. *Survey of Palestinian Refugees and IDPs (2008-2009)*. Marec 2009.

DAVIE, M. 1993. *Beyrouth apres la guerre : Une géographie urbaine*. Eurames conference, Warwick, júl 1993.

DIBEH, G. 2007. *Foreign Aid and Economic Development in Postwar Lebanon*. United Nations University. Research Paper No. 2007/37, jún 2007.

EL – EZZI, G. 2000. *L'invasion israélienne du Liban, 1982*. L'Harmattan.

EVRON, Y. 1987. *War and intervention in Lebanon*. John Hopkins University Press.

FAWAZ, L. 1991. *State and society in Lebanon*. Centre for Lebanese studies, Oxford.

Gassner Jaradat, I.: *The Evolution of an Independent, Community – Based Campaign for Palestinian Refugee Rights: Palestinian Refugees in the 1967 Occupied Palestinian Territories and 1948 Palestine/Israel Coping with the Post-Oslo Contitions*, BADIL Resource Center, 23. december 2003. [on - line] dostupné na: <http://www.badil.org/Publications/Briefs/Brief-No 3.html>, 23.12.2003

GEMAYEL, B. 2005. *Lebanese war series (part 13)*. [on - line] dostupné na: [http://www.fotolog.com/benet\\_is\\_out/9681395/](http://www.fotolog.com/benet_is_out/9681395/)

Farook, L. *Zionist Jews- Godfathers Of Terrorism*. [on - line] dostupné na: <http://www.rense.com/general84/ahas.htm>

FISK, R. 1996. *Massacre in sanctuary; Eyewitness*. The Independent, 19. apríl 1996.

CHOMSKY, N. 1996. *Israel, Lebanon and the peace process*. MIT, Cambridge University, 23. apríl 1996.

CHOMSKY, N. 1993. *Limited war in Lebanon*. Z Magazine, september 1993.

MOYSTAD, O. 1999. *Morphogenesis of the Beirut Green Line*. Norwegian Academy of Architecture, Oslo, jún 1999.

MROCEK, T. 2000. *V krajine cédrov hrozí nová vojna*. Slovo, 2000.

MUGRABY, M. 1998. *Lebanon : A wholly owned subsidiary*. Middle East Quarterly, jar 1998.

PAKRADOUNI, K. 1983. *Le mandat d'Elias Sarkis (1976 – 1982)*. Edition fiches du Monde Arabe, Bejrút.

PEDERSEN, J.; SLETTEN, P. 2003. *Coping with Conflict. Palestinian Communities Two Years Into the Intifada*. FAFO Report No. 408, 2003.

SHAHAK, I. 1996. *Strategic aims of Grapes of Wrath operation*. Columbia University.

SHEHADI, N. & HOLLIS, R. 1996. *Lebanon on Hold – Implications for Middle East Peace*. Royal Institute for International Affairs, Oxford, júl 1996.

SHERRY, V. 1997. *Operation Grapes of Wrath*. Human Rights Watch, september 1997.

THE WASHINGTON INSTITUTE FOR NEAR EAST POLICY. 1997. *Lebanon, The peace process and the U.S. policy*. 25. august. 1997.

**Contact:**

PhDr. Lucia Tuleková Henčelová, PhD.  
 lucia.hencelova@gmail.com  
 Spoločnosť komunitných centier, Bratislava

PhDr. Tatiana Tökölyová, PhD.  
 tatiana.tokolyova@vip-vs.sk  
 University College of International Relations and Public Politics Prague,  
 Dept. of World Politics, Bratislava

# **NORMAN KIRK'S ROLE IN FORMATION OF INDEPENDENT NEW ZEALAND'S FOREIGN POLICY**

**Tatiana Tökölyová**

## **Abstrakt**

Ideas of prime ministers, their characteristic features, areas of their interest, styles, communication and cooperation have also a great influence on how the particular country is seen all over the world. The paper focuses on analyse of New Zealand's foreign policy key development in the background of politics of the most influential prime ministers of New Zealand since it started its independent foreign policy - on Peter Fraser who was the very first showing the voice of New Zealand in the world; Norman Kirk – many times said to be a “father” of New Zealand nation; Robert Muldoon who considered trade and business the main tool of diplomacy; and David Lange who despite the consequences pre-determined New Zealand's position of anti-nuclear country.

**Key words:** prime minister, national identity, anti-nuclear politics, Pacific

## **Introduction**

In the political development of New Zealand and Australia there is a definite and historically determined mutual line of development. Both these Pacific countries gradually went through stage of a prison colony and dominion in a submissive relation toward Great Britain up to the current state of equal partners of all democratic countries of the world.

At the very beginning it is necessary to state that however both the countries have, as the former British dominions, mutual historical roots and at the present they are members of the British Commonwealth, Australia has gone on historically specific way via its written constitution while New Zealand preserves its non-written constitution and fundamental elements of the Westminster model of government however quite amended after 1993 constitutional reform. These, on the first sight pure domestic matters of political systems sharply influence visions and routings of the foreign policy and place in the world of the both countries, as domestic constraints. One of such constraints, as explained below, are common historical roots –strong ties to their mother country, Great Britain.

The main goal of this paper is to provide an analyse of formation and development of New Zealand's foreign policy, i.e. analyse of those factors that in our opinion sharply touched and drew today's position of the country in the world. As the main factors of that significance, we consider historical roots and ties to Great Britain that underlined formation of independent security and foreign policy; and consequently its political leaders, prime ministers leading the country in the most decisive moment shaping the country's future in the world. These are the reasons we have divided our paper into two fundamental parts – historical outcomes and prime ministers as domestic constraints to foreign policy.

R. Patnam provides other two significant lines undetermining the development of New Zealand's foreign policy<sup>1</sup>. As provided, one of the very significant importance are “some

---

<sup>1</sup> Patman, R. G.: Globalisation, Sovereignty and the Transformation of New Zealand Foreign Policy. Centre for strategic studies: New Zealand. Victoria University of Wellington, New Zealand. No. 21/05. p. 7

quite distinctive national features that may counteract the lack of institutional pluralism in the foreign policy making process.” As stated, the intimacy and transparency of the New Zealand political system means that public opinion is potentially a far more potent factor in the shaping of foreign policy than is normally the case in larger democracies. Another one, as provided by R. Patnam is the fact that New Zealand has developed some quite distinctive national characteristics not typically associated with a small state<sup>2</sup>, as highly proved during its political development mainly in the pre and post-war period when nation building and foreign policy building rapidly jumped from the stage of its birth to the stage of its peak and definite adherence. After thoughtful study of the country’s history it is absolutely clear it is right the country’s experience as a colony that learned the evolving society to adjust conventional interpretations of society enhanced by the geographical distance and isolation from the major political powers. There is no doubt that this experience is determining not only for making New Zealand one of the most reforming countries in the world considering its domestic policy (and economy)<sup>3</sup> but also determining specific and unique position of New Zealand in the world and in the Pacific region mainly since the very beginning of spreading its voice around long time before the Westminster Statute.

The post-war period was crucial for New Zealand’s foreign policy development and making. It was the time when the country’s high representatives and the nation as well felt the right time to decide which way to go. Simply to say, to find their place in the world concerning their economic, political as well national identity point of view. As foreign policy issues, since second half of the 20<sup>th</sup> century mainly, as the issues of various areas of the country’s issue, as economy, security and human rights are closely interconnected and influencing each other, it is necessary to draw up the fundamental lines in the foreign policy of New Zealand. Yet, we have mentioned the most fundamental fact the country has faced. Upon the close analyse of all the relevant facts, we may state the following lines of development of the foreign policy of New Zealand, as *historical line and economic line* –historical roots of the country underlying the strong tights to Great Britain not only in the state-building area (colony – dominion- independent state) but also considering its trade and exports; *security line* – this draws the way of the country from the joint troops with Australia in ANZAC to ANZUS, a military pact with USA, Australia up to their independent army now considered to be one of the best trained and equipped armies in the world; *environmental line* – closely connected and having inseparable impact not only on foreign policy of the country but also on its military/security issues as proclaimed New Zealand to be “a green” non-nuclear country (as below). All these lines are highly interconnected in the time and space and shaped not only New Zealand’s political system as a unique one, but also significantly shaped their foreign policy and nation building and made New Zealand significant Pacific actor, as proven in this paper.

World wars both were extremely important in the foreign policy establishment for both Pacific countries as the wars proved that Great Britain was not able to protect its former colonies against any military attack and threat (as proved for example by bombing the Darwin city by Japan) as well as in establishment of their own professional military forces. Because of all international circumstances and challenges the country was facing to in the

---

<sup>2</sup> Ibid. p. 7. Here he includes “values commonly described as ‘the No. 8 wire mentality’ or ‘Kiwi ingenuity’- an ability to improvise and innovate within the constraints imposed by limited resources and the vast physical distance from its political and economic centre of gravity in Britain.”

<sup>3</sup> for example democratic reforms as women enfranchisement in the world in 1893; adopted a 40-hour workweek and unemployment and health insurance (1938) and others.



war- time the New Zealand's government entered very close relations with their Pacific neighbours –with Australia and USA. The main aim of these strategic relations was a military protection of the country and as an effect the Canberra Pact in 1944 was signed between New Zealand and Australia. This Pact was presetting mutual consultations in foreign affairs matters and ensured also military protection in case of attack on any of the contracting parties. This pact changed after the War into a tripartite defence agreement ANZUS signed on 1.9.1951 in San Francisco among Australia, New Zealand and USA.<sup>4</sup>

However New Zealand's support to military actions of Great Britain continued also in the post – war period (e.g. in 1955 in line with neo-colonial goals of Great Britain in South –East Asia they provided their military units to Malaysia and Singapore as a part of military reserves of the Commonwealth in this area to suppress anti-colonial movement in Malaysia<sup>5</sup>).

Support to this and others military interventions proving support to the British neo-colonial politics in this part of the world confirmed again that influence of Great Britain over New Zealand still continued however this sphere of influence had already been divided between Great Britain and USA.

From the domestic point of view, eminent pro-British and pro-American orientation of the country's foreign relations can also be seen as a result of a long-term government activity of National party that had actively supported British and American political goals in the area of the South Pacific and South-East Asia.

The post- war period was a crucial one for all administrations as they had to take life decisions shaping it future life. One of such challenges occurred when Great Britain struggled and applied for its EC membership. This, for the first sight purely domestic issue of Great Britain, extremely jeopardised New Zealand's economy. Great Britain was a traditional market country for most of the New Zealand's production from the very beginning of a “production history” of the country.

General elections in 1987 won Labour party led by David Lange. Its electoral campaign was built on motto calling for non –nuclear policy of the country. As a result, New Zealand banned all nuclear vessels to their ports and reaction of their ANZUS partners was then more than clear<sup>6</sup> - military protection obligation resulting from 1952 ANZUS Treaty was suspended from USA and Australia.

Here it is necessary to state that also relations with France had rapidly worsened after ship Rainbow Warrior of Greenpeace organisation was scuttled just when monitoring nuclear tests in French Polynesia by secret agents of France in Auckland. These events resulted into significant international dispute before the court and were one of those moments that showed New Zealand its future position. Another important step concerning their security issues was that in 1986 they cancelled military service by law. As below, in 1987 National party continued its anti-nuclear policy and as a result, USA re-evaluated its relation towards New Zealand from an ally to a friend country.

In the 90<sup>th</sup> of the last century New Zealand, besides Australia, more and more traded with countries of Asian continent however the most important one still stayed Australia tied with in CER –Closer Economic Relations since 1983 that still is one of the most effective free trade agreements in the world. For example, in the period of 1991 – 1993 rate of export to the

---

<sup>4</sup> [www.cnduk.org](http://www.cnduk.org)

<sup>5</sup> New Zealand terminated its membership in ANZUS after started its anti-nuclear politics in 1984 (see below). In: Ibid, pp.187-193

<sup>6</sup> Capie, D.: Constructing New Zealand in the World. In: Miller. R.: Political leadership in New Zealand. Auckland University Press 2006. p. 19-20

most important partner Asian countries (Japan, South Korea, Taiwan, and Hong Kong) increased in 17 % and reached 4. 540 mil. NZ dollar, i.e. one quarter of the whole New Zealand's export then.<sup>7</sup>

Also membership in APEC provides New Zealand definite advantages as up to 14 from the 20 most important markets of New Zealand are APEC member states and mainly the three strongest world economies – USA, China and Japan. Up to 70% of New Zealand's total trade and 60% of direct foreign investments comprise the region of APEC countries.<sup>8</sup>

New Zealand as a Pacific actor is a member of various not only general IGO's but also of many regional organisations as SEATO, ASPAC, South Pacific Commission, South Pacific Forum, Colombo Plan, NAFTA and others.

## **NORMAN KIRIK'S INFLUENCE TO FORMATION OF NEW ZEALAND'S FOREIGN POLICY**

Foreign relations of a state are formed by number of domestic factors and actors as well as but its objective surrounding, i.e. international actors that influence the state in a particular manner concerning its direction of foreign policy. The Global period in development of international system has brought also in the shape and behaviour of these actors so in the decision-making proces in foreign affairs not only ministers of foreign affairs, of defence or trade with their staff are involved but also number of non-governmental organisations and especially individuals mainly at the domestic policy level, as prime ministers are.

There is very close connection between domestic and foreign policy as well. One has impact on the other one. Leaders almost always face domestic constraints on foreign policy making. These constraints may narrow the available policy options but may also cause innovative policy responses. These challenging conditions of decision-making within foreign policy are facing other factors as media role directly influencing public opinion but also giving the space for the leaders to create and promote their positions also out of the domestic policy, i.e. international relations.

Prime ministers' ideas, their characteristic features, areas of interest, styles of communication and cooperation are also factors influencing and shaping picture of the country in the world. They take their decisions through filters that are in practice values, conviction, routine, analogies and metaphors, political or personal ties, momentary psychical disposition,...

In this part of our paper we deal with four prime ministers we consider to be the most influential at the process of the country's foreign policy formation, namely to P. Fraser – the prime minister who as the first one showed strength of New Zealand's voice in the world; to N. Kirk often called father of the nation; to R. Muldoon who considered trade as the main tool of diplomacy; as well as to D. Lange who despite the consequences started New Zealand's history of antinuclear country.

These, as chosen, prime ministers preset direction of the country and through their active politics their proved the extend open and possible for a domestic policy leader to co-formulate, and/or re-define direction and principles of the country's foreign policy. Such is crucial especially for the country standing at the very beginning of its independent foreign policy as New Zealand occurred especially in the post-war period.

---

<sup>7</sup> Statistics New Zealand; Australia's Trade Outcomes and Objectives Statement. <http://www.mfat.govt.nz/Trade-and-Economic-Relations/0--Trade-archive/0--Trade-agreements/Australia/0-trade-agreement.php>. Page last updated: Monday, 23 June 2008 12:23 NZST

<sup>8</sup> <http://www.mfat.govt.nz/Trade-and-Economic-Relations/APEC/4-Importance-to-NZ.php>

Thus the prime ministers are the actors of international relations of very specific character – due to mass extension and exploitation of mass media at the policy-making process and its enforcement the top representatives of a country, in this case namely prime ministers, become a bridge between domestic and foreign policy via representation of the country abroad and provision of their statements concerning foreign policy issues, it means the expressly form direction of the foreign policy.

One of the factors which in the every day politics support and underline extended and increased role of prime ministers as representatives, and/or co-creators of the foreign policy in this region is the fact that only prime ministers are allowed take part at the sessions of e.g. APEC (The Asia-Pacific Economic Cooperation), Pacific Leaders' meetings, (The Commonwealth Heads of Government meetings, The Pacific forum, and others. This means that however New Zealand's prime ministers do not have directly in their portfolio, i.e. official responsibilities and duties, the area of foreign affairs, they are just those by representing the country abroad (i.e. promote and represent its core ideas) contribute on setting the course of the foreign policy and thus create the place of the country in the international family.<sup>9</sup>

One of the very important prime ministers in the war-time period, who started to practise an independent country's foreign policy, is **Peter Fraser**, the prime minister who showed New Zealand's voice in the world as he was deeply interested in international relations (on the contrary to his forerunners as well as contemporary colleagues as Sidney Holland or Keith Holyoake). His role in New Zealand's foreign policy creation is so significant because he was the prime minister in the war-time period that from the international relations point of view meant not only human and material loss but from the point of view of the future development of the country in meant significant challenge as well as considering its military security. As already mentioned, world war II showed that however Great Britain had declared its will to provide help and assistance to Australia and New Zealand, events during the war showed (as bombing of Darwin city) that it is the time for seeking their own paths in military, security and international relations issues.

Despite his insufficient education (not completed studies because of financial problems)<sup>10</sup> he is considered by many historians to be the main man of the modern history of the country as well as of the Labour party he was the representative, too.

Significance of his action may be underlined by the fact that one of his major steps was that he personally took a part in establishment of the UN and drafting of the Universal Declaration on Human Rights, therefore he started to be recognised as an international statesman in the world. He considered establishment and activity of the UN to be the best way to prevent big military conflicts. He did not agree with development in the Czechoslovakia and when the World War II outbreak, New Zealand immediately declared war to Germany as a loyal ally of Great Britain. The immediate effect was a number of measures touching also domestic politics area, as recruitment of soldiers reasoned that that war definitely differed from World War I by a significant feature – it was a war against Fascist aggressors not just an imperialistic game.<sup>11</sup>

---

<sup>9</sup> Also New Zealand government ministers taking decisions in the foreign affairs decide on advice of public officials (as the Ministry of Foreign Affairs and Trade.

<sup>10</sup> Born in Scotland, at his adulthood moved to New Zealand being convinced that this progressive country may give him a future. In 1947 minister of Internal affairs, later on he transferred it into ministry of Maori Affairs that may be considered as his great deal because such he contributed on elimination of inequality of Maoris.

<sup>11</sup> Sinclair, K.: Dějiny Nového Zélandu. NLN s.r.o. Praha 2003. ISBN 80 – 7106-556-0. p 255

After the war, his diplomacy focused mostly on the process of UN establishment on the field of which he advocated for restriction of permanent members veto and within his whole UN period he advocated for interests of “small” countries.<sup>12</sup> At San Francisco conference in 1945 he contributed on amendments of chapters 11-13 of the UN Charter which dealt with the post – war colonial politics aimed at assurance of the international administration system governed by the Council targeted to the future independency of the dependent areas (as Tokelau under administration of New Zealand; now in the process of decolonisation)

Due to these foreign policy activities many politicians all over the world started to see New Zealand as one of the important actors in the international relations.

In the post-war period, it was the time when the country was facing great and crucial challenges therefore we compare foreign policy steps of N. Kirk, D. Lange, and R. Muldoon who may be connected through some mutual characteristics: all were very interested in foreign affairs and were highly engaged in foreign policy making and during their active political career in the position of prime minister they took practical steps to realise their vision of New Zealand’s position in the world. However their manners and mainly ways and areas they wanted to reach their goals by/in significantly varied, i.e. they were built on different ideas and basis.

The prime minister considered a “father of nation” and “father of national identity” of the country is **Norman Eric Kirk** famous by his statement expressing his vision and thoughts concerning the country’s place in the world :...*We have a mind and a voice of our own and we intend to use them...*, ...*small powers are important...*“<sup>13</sup>

However not being in office for a longer period he proved to learn New Zealand to behave as a nation with a clearly felt identity as started by Fraser and took very practical and readable steps to realise his vision of the country in the world. Before being elected he did not prove any interest in this area of politics but it radically changed after his designation and during his administration he was very interested in international affairs and gained reputation of an uncompromising rival, not only in discussions. Very quickly after assuming the office he managed to realize more that his predecessors mainly in the area of extension of the country’s influence in the area of Asia and Africa.

He was the leader of the country in times very turbulent for the country because of many significant events that happened in the world (1972 – 1975). It was the time when New Zealand had to manage to “shape” relations with Great Britain after 70th anew and also deal with consequences World war II as ANZUS establishment and moral dimension of the country’s support provided to USA in Vietnam (situation of New Zealand from 60<sup>th</sup> was marked by e.g. Britain announced its intention to join the EEC and it brought profound problems with diversification of New Zealand’s economy; war in Vietnam made relations with the USA, which replaced Great Britain in defence and security issues, also unclear in defence relation). All this pushed Kirk towards a new way of a new, more independent foreign policy.

The country felt it was the condition that it did not “belong” to Great Britain any more and also that relations with Australia and USA had not fulfilled this vacuum – it was generally felt as the time and the right moment for their truly own and independent foreign politics.<sup>14</sup>

---

<sup>12</sup> Ibid: 255

<sup>13</sup> N. Kirk: „New Zealand in the world in the 1970s“ In: Miller R.: Political leadership in New Zealand. Auckland University Press. 2006. ISBN 1 86940 3584. str. 23

<sup>14</sup> Bassett, M.: 'Kirk, Norman Eric 1923 - 1974'. Dictionary of New Zealand Biography, updated 22 June 2007. <http://www.dnzb.govt.nz/>

If we want to briefly characterise effect, pros, results and characteristic of Kirk's foreign politics, we may use collocation "politics of national identity building". In this context it is necessary to sense whole Kirk's politics that could be summarized into the following steps. In one of his speeches he declared that his administration and he personally "want New Zealand's foreign policy to express New Zealand's national ideals as well as to reflect our national interests".<sup>15</sup>

We may divide his foreign policy steps into the three main categories, as described.

### **1, Attitudes to the world politics**

A, He refused to allow a visit by South African rugby team because the apartheid regime in South Africa that would not accept racial integration in this sport.<sup>16</sup>

B, He was also highly critical towards US foreign policy as he proved speaking before the United Nations of the US-led coup d'etat and massacres in Chile in 1973.

### **2, New Zealand – an antinuclear country!**

In 1985 came into effect New Zealand's ban on port visits by nuclear-powered or nuclear-armed ships distanced New Zealand from its Cold War allies and led the United States to suspend its ANZUS obligations to New Zealand (the coming National Party also adopted Labour's "anti-nuclear" position in 1990). He markedly protested against nuclear weapons testing performed by the French in the Pacific (as already mentioned, one of the consequences was international dispute heard before International Court of Justice in Hague in 1972) and sending two New Zealand navy frigates to the test zone area at Mururoa Atol to take a symbolic act of protest in 1973.

These acts may be considered to be the most significant steps in the foreign policy as he preset and sharply determined direction and character of the country's foreign policy and its perception by its international surrounding, i.e. beginning of the antinuclear politics despite economic impacts.

Policies taken within the above areas both flow into the third and a covering one, national building policy.

### **3, Kirk's national identity building policies**

As he understood that effective economic or political steps were not only and always enough when the country was on the crossroad, he started to promote the newzealanders the particularity and uniqueness of their nation, country. Therefore for example it was the Kirk's government that began the tradition of New Zealand Day in 1973, a year later he introduced legislation to declare the Queen as Queen of New Zealand and through supporting Maori, indigenous population, his government encouraged biculturalism and a sense of New Zealand identity.

His politics was influenced not only by real international circumstances but also by other factors and ideological views. His politics was an expression of his country's desire for their own true and full independence from others – from other more powerful nations of Europe as well as from USA. Here it is important to state that Kirk himself is said to be influenced by the leftist movements expressing ideas of peace movement, principles of environmentalism, anti-racist policy, i.e. ideas and principles based on moral principles. Generally we may state

---

<sup>15</sup> Bassett, M.: Norman Eric Kirk (1923-1974). Stationary engine driver, politician and Prime Minister. [http://www.michaelbassett.co.nz/article\\_kirk.htm](http://www.michaelbassett.co.nz/article_kirk.htm)

<sup>16</sup> Capie, D.: Constructing New Zealand in the world. In: Miller R.: Political leadership in New Zealand. Auckland University Press. 2006. ISBN 1 86940 3584. p. 20

that Kirk struggled to find a place of the country in the world and that was, as already mentioned, the period when New Zealand started to build itself into a Pacific nations and regional power (on the contrary to Australia that gradually developed into a middle power) and started more and more concentrate on its immediate neighbours –Pacific region and also started its policy of help to “small” independent nations.<sup>17</sup>

As a conclusion and summary of Kirk’s policy, he built sense of the national identity both internally and in the world. Internally, except internal policies, in this period New Zealanders became less inclined to think of themselves as British and started to feel Maori heritage as national one much more.

In the area of foreign affairs his policies may be divided into following areas:

- 1, Opposition to French nuclear testing in the Pacific Ocean- idea that the Pacific is New Zealand’s home.
- 2, Recognition of the People's Republic of China as a proof that New Zealand had left its previous positions within the previous decades.
- 3, Compulsory military training was abolished.
- 4, His refusal to allow sporting contacts with apartheid South Africa.
- 5, There were also formed strong ties with black Africa, Asia and the Pacific and started to be a dominant force within the Commonwealth.

Kirk started to be an inspiration for those who came after also because he used his personal charisma.<sup>18</sup>

All the steps taken by N. Kirk concerning keeping strong environmental position were broken in 80<sup>th</sup> during administration of a leader of the National party, Robert Muldoon (1975 – 1984). Before becoming a Prime Minister he did not prove any sufficient or relevant interest in international relations or any expertise. However, after winning the elections, in practice he ruled over this portfolio however never held it formally.

Comparing to N. Kirk, he had different view of diplomacy and purposes of foreign affairs, i.e. foreign policy was a matter of a trade not a matter of national identity and all his steps connected with his effort to solve New Zealand’s economy and its future and the main aim was building and development of economic relations and not a nation building, i.e. there was no space for any “sentimental” approach. All steps he made in the foreign relations area were markedly of pragmatic character, i.e. all were targeted on solution of trade and economic problems the country lived in. All the activities of the representatives and diplomats of the country should open the “door” to trade and business negotiations all around the world.<sup>19</sup>

Despite this fact, he declared his “sentimental” traditional idea of “loyalty” to Great Britain and Britain had become the centre of his personal diplomacy and of foreign policy as proved after Argentina invaded Falkland Islands (1982), he expelled the Argentine ambassador and provided help to Britain. We may say that however being “sentimental” it was also a calculation of interest as he continually lobbied London to extension of New Zealand’s share on the British market lost in 60<sup>th</sup>.

---

<sup>17</sup> David McCraw: Norman Kirk, the Labour Party and New Zealand’s Recognition of the People’s Republic of China. *New Zealand Journal of Asian Studies* 4, 1 (June, 2002): 46-61.p. 15

<sup>18</sup> He died unexpectedly on heart attack and this day is still commemorated in the country.

<sup>19</sup> Capie, D.: *Constructing New Zealand in the world*. In: Miller R.: *Political leadership in New Zealand*. Auckland University Press. 2006. ISBN 1 86940 3584. p. 23

As he also understood that New Zealand was a small nation not able to fully protect itself in case of war and therefore it needed a powerful protector, he reversed ban on nuclear – armed vessels in New Zealand’s ports but this measure did not bring the wished effect.<sup>20</sup>

The most successful measure his administration adopted was that Muldoon initiated in 1983 the CER (Australia-New Zealand Closer Economic Relations Trade Agreement; ANZCERTA), a free-trade programme with Australia to liberalise trade the aim of which was a total free trade between the two countries (as was achieved in 1990). As stated in the Background Guide to the Australia New Zealand Economic Relationship, a positive effect of CER is that these economies have become increasingly integrated as CER proved itself as a dynamic free trade agreement that encouraged businesses to establish manufacturing and services operations on both sides of the Tasman. Another added valued is that over time CER has strengthened the cooperation also in business law, mutual recognition of product standards, and others. The CER Agreement is now generally considered to be one of the most effective bilateral free trade agreements in the world existence (fully in conformity with the requirements set in GATT Article XXIV).<sup>21</sup>

However having achieved economic successes, many remember him and also historians consider him to be one of the most expressive and controversial figures of the modern country’s history not for his achievements in the domestic and foreign policy but mainly because his personal features that so much influenced the mood of his work and way of communication during his administration thanks to which he managed to strongly polarise the society in nearly all the life matters. He had many followers, many resistant, but those of a neutral position were just few.<sup>22</sup>

He has brought a confrontational manner to the politics – uncompromising statements and declarations seemed to him to be the most suitable way how to enforce and articulate the country’s interests –more suitable than diplomacy. His undiplomatic language caused many difficulties to his administration in communication with e.g. Japan, African nations, USA sometimes (e.g. he called J. Carter to be “a peanut farmer who did not understand the realities of US place in the world...”).<sup>23</sup> His foreign policy reflected his own personal preferences, he rarely listened to his advisors

Muldoon strictly distinguished politics from other spheres of the society’s life as proved for example in 1981 when arrival of the South African rugby team provoked mass demonstrations against racism. Then Muldon proclaimed that sports and politics should not be mixed together. As he said, it depended on each of the sportsman whether he/she would fight with the sportsmen from the “apartheid countries”, but he was not prepared to give any negative declaration and as an example he used the USSR that the sporting fights with its sportsmen automatically does not mean support to communism.

Nevertheless, due to his well-directed economic policies and CER establishment, he managed to push the country forward better prepared and stronger.

One of the greatest reformators after R. Moldoon’s period was **David Lange** elected in 1984 as a leader of Labour party. He is well- know for his revival of anti-nuclear policy that meant

---

<sup>20</sup> Ibid. pp 17-31. This pro-nuclear politics had caused that in the following general elections he was defeated by Lange, leader of the Labour party.

<sup>21</sup> Background Guide to the Australia New Zealand Economic Relationship. Closer Economic Relations. Department of Foreign Affairs and Trade. Commonwealth of Australia 1997. ISBN 0 644 39792 6. pp. 5-8

<sup>22</sup> Capie, D.: Constructing New Zealand in the world. In: Miller R.: Political leadership in New Zealand. Auckland University Press. 2006. ISBN 1 86940 3584. p. 25

<sup>23</sup> ibid

the shift back to the Kirk's "moral" position in foreign policy as proved by his famous quotation during an interview ("I can smell the uranium on your breath").<sup>24</sup>

Comparing to all the previous administrations, it was one of the most reforming administrations in the country's history as his government implemented far-reaching free-market reforms as well as this administration clearly defined future foreign policy position and principles of the country. This administration meant a definite return to the idea of a "green country". And immediately after assuming the office, he started to put the fundamental principles of this program into practice and made his name on the international stage with a long-running campaign against nuclear weapons. But it did not always conformed to traditional expectations of a social-democrat party and as he said, he enjoyed foreign affairs portfolio very much.

His government refused to allow nuclear-armed ships into New Zealand waters –New Zealand continues this policy to these days (e.g. he adopted fundamental New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987<sup>25</sup> as amended). Through this act in 1987 New Zealand declared a New Zealand nuclear-free zone. This Act comprises inter alia prohibitions in relation to nuclear explosive devices and biological weapons; prohibition on acquisition of nuclear explosive devices; prohibition on stationing of nuclear explosive devices; prohibition on testing of nuclear explosive devices; prohibition of biological weapons; entry into internal waters of New Zealand and landing in New Zealand; visits by nuclear powered ships.

USA took the view that any subsequent visit by a warship to New Zealand could not be carried out without violating the US security policy of "neither confirming nor denying" nuclear capability of its ships. This displeased the United States of America and Australia: they regarded the policy as a breach of treaty obligations under ANZUS<sup>26</sup>, and as a result the United States announced that it would suspend its treaty obligations to New Zealand until the re-admission of the United States Navy ships to New Zealand ports, characterising New Zealand as "a friend, but not an ally". In 1985 Lange argued that "nuclear weapons are morally indefensible" and it included his memorable statement "I can smell the uranium on it (your breath)..." (as it was the time when French agents bombed and sank the Greenpeace ship called *Rainbow Warrior* in July 1985 in Auckland Harbour and killed one person; as above).

In 1986 his administration indefinitely cancelled military service and 90th New Zealand more and more traded with Asian countries, besides Australia.

## CONCLUSION

Prime minister of New Zealand does not have in its portfolio area of foreign affairs and such are not nor stated in any of his official responsibilities.

---

<sup>24</sup> „And I'm going to give it to you if you hold your breath just for a moment ... I can smell the uranium on it as you lean forward!“ In.: LANGE, D.: Nuclear Weapons are Morally Indefensible. Oxford Union debate, 1985.  
<http://publicaddress.net/default,1578.sm;jsessionid=BA7F494133BCC52B4A7F3EFD79EAB4C1?ppid=1578&start=1#post1578>

<sup>25</sup> <http://www.nzhistory.net.nz/politics/nuclear-free-new-zealand/nuclear-free-zone>

<sup>26</sup> Sinclair, K.: Dějiny Nového Zélandu. NLN s.r.o. Praha 2003. ISBN 80 – 7106-556-0. p.322



According to a convention, a leader of the winning party or a leader of the strongest party of the governing coalition becomes the prime minister. One of his responsibilities within domestic politics is to chair the Cabinet, main decisive-making body. It means that prime minister bears whole coordination responsibility for all the areas of the politics.

After having analysed the prime minister's tasks, roles and responsibilities, one may see that his/her functions are expressly flexible and of extensive volume. There is no another more influential position in the country as the position of the prime minister. As a paradox, there is no job description of the prime minister by law of the country. The Cabinet Manual describes the roles and responsibilities of the prime minister in few austere paragraphs<sup>27</sup>. In point 2.4 of the Cabinet Manual it is provided that the prime minister is a head of the government. Functions and responsibilities of the prime minister are evolving and there does not exist any legal provision establishing Office of the prime minister or defining its role. Prime minister has various key roles. As the prime minister must have a confidence of the House of Representatives, he/she is the main advisor of the Queen, i.e. her representative, Governor- General.

His role and significance in the area of the foreign policy decision-making is strengthened by the fact that based on the convention the prime minister himself has a right to provide advice to the Governor –General as designation, resignation and remove ministers from the function.

As the prime minister is a head of the government, his responsibility is also allocation the portfolios considering the ministers' expert and political skills so as the government's leader he supervises the whole foreign policy direction. Many time he/she has in his/her portfolio security intelligence service as based on the law. This responsibility was extended in 2002 via adoption of law on suppression of terrorism.

In the eyes and minds of the public he is seen higher than just a public servant as he is directly responsible for the whole government management that may be seen through the whole political system and gives the prime minister "added value"<sup>28</sup> due to the most significant role he plays within political leadership, i.e. political management (party work, parliamentary business, Cabinet sessions and promotion of the Cabinet's solutions in the media). Ability of a prime minister to dispose with attention of media through main press conferences may one consider to be a significant manifestation of power as public senses the prime minister as the main government's speaker in all the most crucial matters.

However, position and responsibilities of the prime minister not expressly stated in the Cabinet Manual or any other relevant law, they play crucial and the most decisive role in foreign policy decision-making. The above prime ministers left the picture of New Zealand in the world as a very progressive and environmental country well – known also for continuance of the taken decisions. They gave the world country many times called a "pioneer" in women and minority rights and antinuclear policy.

How crucial role of prime ministers may be proved also by the above mentioned New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987. The responsibility of the prime minister in this area is explicitly stated with extensive powers stated in articles 9, 10 and 17, as follows for example in article 9.

"Art 9 Entry into internal waters of New Zealand

---

<sup>27</sup> Cabinet Manual 2001, Wellington 2002, art. 2.4 - 2.11.

<sup>28</sup> Palmer. G., Palmer. M.: *Bridled Power. New Zealand's Constitution and Government*. 4. vydanie. Oxford University Press, Wellington 2004. p. 70

(1) When the Prime Minister is considering whether to grant approval to the entry of foreign warships into the internal waters of New Zealand, the Prime Minister shall have regard to all relevant information and advice that may be available to the Prime Minister including information and advice concerning the strategic and security interests of New Zealand.

(2) The Prime Minister may only grant approval for the entry into the internal waters of New Zealand by foreign warships if the Prime Minister is satisfied that the warships will not be carrying any nuclear explosive device.”

New Zealand also in the present time keeps the line preset by the above prime ministers, as strongly proved also by H. Clark, i.e. line underlying the country's antinuclear position interconnected with an active environmental policy as well as peace building and peacekeeping (e.g. H. Clark refused to support US in their fight against terrorism by sending military troops to Iraq and Afghanistan) but especially as a Pacific nation building close relations with its neighbours in the area in economic and political area.

#### **BIBLIOGRAPHY:**

1. Aimer P. – Miller R.: New Zealand Politics in the 1990s'. Victoria University Press. Wellington 2000
2. Bassett, M.: Kirk, Norman Eric 1923 – 1974. Dictionary of New Zealand Biography. [www.dnzb.govt.nz](http://www.dnzb.govt.nz).
3. Bassett, M.: Norman Eric Kirk (1923-1974). Stationary engine driver, politician and Prime Minister. [http://www.michaelbassett.co.nz/article\\_kirk.htm](http://www.michaelbassett.co.nz/article_kirk.htm)
4. Boston J. –Levine S.- McLeay E. - Roberts N.:Electoral and Constitutional Change in New Zealand. MMP sourcebook, Victoria University Press. Wellington. 1999
5. Cabinet Manual 2001, Wellington 2002, art. 2.4 - 2.11.
6. Capie, D.: Constructing New Zealand in the World. In: Miller. R.: Political leadership in New Zealand. Auckland University Press 2006. ISBN 1 86940 358 4
7. David McCraw: Norman Kirk, the Labour Party and New Zealand's Recognition of the People's Republic of China. New Zealand Journal of Asian Studies 4, 1 (June, 2002): 46-61
8. Gustafson, B.: Populist Roots of Political leadership in New Zealand. In: Miller R.: Political leadership in New Zealand. Aucklad University Press. 2006. ISBN 1 86940 3584.
9. Helen Clark: Address at the opening of the Australian and New Zealand Society of International Law 14th Annual Conference. <http://law.anu.edu.au>. 29 June, 2006.
10. Holland M. – Boston J.: The Fourth Labour Government: Politics and Policy in New Zealand. II. Vyd. Oxford University Press. Auckland 1990
11. LANGE, D.: Nuclear Weapons are Morally Indefensible. Oxford Union debate, 1985. <http://publicaddress.net/default,1578.sm;jsessionid=BA7F494133BCC52B4A7F3EFD79EAB4C1?ppid=1578&start=1#post1578>
12. Marijke Breuning. 2007. "Chapter 3, How Leaders Make Sense of the World." In *Foreign Policy Analysis. Comparative Introduction*. Basingstoke: Palgrave Macmillan, pp. 53-84
13. Marijke Breuning. 2007. "Chapter 5: Domestic Constraints on Foreign Policy Making" In *Foreign Policy Analysis. Comparative Introduction*. Basingstoke: Palgrave Macmillan. Hereafter: Breuning, pp. 115-141

14. Miller, R.: New Zealand Government and Politics. 3. vydanie. Oxford University Press, Oxford 2003
15. Mulgan R.: Politics in New Zealand. Auckland University Press. Auckland 1997
16. New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987. art. 9
17. Palmer. G., Palmer. M.: Bridled Power. New Zealand's Constitution and Government. 4. vydanie. Oxford University Press, Wellington 2004
18. Patman, R. G.: Globalisation, Sovereignty and the Transformation of New Zealand Foreign Policy. Centre for strategic studies: New Zealand. Victoria University of Wellington, New Zealand. No. 21/05
19. Ramesh Thakur: New Zealand and the South Pacific. The Contemporary Pacific, Vol. 5, 1993
20. Sinclair, K.: Dějiny Nového Zélandu. NLN s.r.o. Praha 2003. ISBN 80 – 7106-556-0
21. Smith, G.-Cox, D. – Burchill, S.: Australia in the World. An Introduction into Australian Foreign Policy. Oxford University Press. 2005. ISBN 0-19-553477-8.
22. Statistics New Zealand; Australia's Trade Outcomes and Objectives Statement. <http://www.mfat.govt.nz/Trade-and-Economic-Relations/0--Trade-archive/0--Trade-agreements/Australia/0-trade-agreement.php>. Page last updated: Monday, 23 June 2008 12:23 NZST
23. STRATEGIC ASSESSMENT 2000. External Assessments Bureau Department of the Prime Minister and Cabinet. <http://executive.govt.nz/MINISTER/burton/defence/strategic/16.htm>
24. Valerie M. Hudson. 2007. "The Level of National Attributes and International System: Effects on Foreign Policy." In *Foreign Policy Analysis*, pp. 143-

Internet sources:

1. <http://www.nzhistory.net.nz/politics/nuclear-free-new-zealand/nuclear-free-zone>
2. <http://www.mfat.govt.nz>
3. <http://www.apecsec.org.sg>
4. [www.dfat.gov.au/facts/index.html](http://www.dfat.gov.au/facts/index.html)
5. [www.nzhistory.net.nz](http://www.nzhistory.net.nz)
6. [www.stats.govt.nz](http://www.stats.govt.nz)
7. <http://www.ausaid.gov.au/country/partnership.cfm>
8. <http://www.mfat.govt.nz/Trade-and-Economic-Relations/APEC/4-Importance-to-NZ.php>

# GEORGIEN ALS BESTANDTEIL ENERGETISCHER SICHERHEIT EUROPAS

George Gamkrelidze & Arkadiusz Modrzejewski

## Abstract

Contemporary Europe is facing serious problems connected with the delivery of energy resources. These problems have geopolitical and geostrategic character and therefore the position of Europe in the world will depend on the solutions of these problems. One of the possible ways of solving them is to introduce the countries situated by the Caspian Sea and in Central Asia into the European power grid network. In order to make the project of diversification of energy resources delivery successful it is necessary to omit Russia which is monopolizing the European market of energy. The only alternative is the Georgian option. The EU energy safety requires the involvement of Georgia into the process of integration and European cooperation.

**Key words:** *energy security, geopolitics, the Nabucco gas pipeline, energy resources*

Der vorliegende Artikel behandelt die Frage energetischer Sicherheit Europas in gegenwärtiger internationaler Hinsicht. Berücksichtigt wird hier die geostrategische Bedeutung Georgiens, als eines potenziellen energetischen Korridors, der die kaspischen und mittelasiatischen Länder mit Europa verbinden könnte. Wegen dieser Lage Georgiens darf es in dem entstehenden europäischen Energiesystem nicht unberücksichtigt werden. Die vorliegende Arbeit ist eine geopolitische Analyse (Potulski 2010: 386).

Forscher betonen die Bedeutung kaspischer und mittelasiatischer Vorräte für die energetische Sicherheit der Europäischen Union (Demir 2010: 63-64). Die geopolitische Rolle Georgiens wird jedoch dabei weit unterschätzt. Es muss bemerkt werden, dass Georgien als Garant von Rohstofflieferungen aus dem kaspischen Raum gilt. Die einzige Alternative ist hier nur die Vermittlung der Russischen Föderation, was die Diversifizierungsidee der Gas- und Erdöllieferanten für europäische Abnehmer in Frage stellen würde. Wir stellen in der Arbeit die These, dass die Realisierung solcher energetischen Projekte wie Nabucco oder ITGI, nur mit Berücksichtigung der Lage Georgiens als eines Transitlandes im System der energetischen Sicherheit Europas erfolgen kann.

## GEOPOLITISCHE VORAUSSETZUNGEN ENERGETISCHER SICHERHEIT EUROPAS

Die energetische Sicherheit ist eines der wichtigsten Probleme der heutigen Welt und der gegenwärtigen internationalen Beziehungen. Sie ist auch Garantie einer gleichmäßigen Entwicklung jedes Staates. Daraus resultiert auch Konkurrenz und Wettbewerb zwischen den Staaten, deren Ziel ist, eine günstige oder sogar privilegierte Position im Wettlauf um Energierohstoffe zu erlangen. In heutiger Welt steigen die Nachfrage nach Rohstoffen, ihre Konsumtion und damit die Preise. Die Rohstoffe verlieren dabei an Qualität (niedrigeres Energiegehalt), das Angebot wird niedriger, was eine Folge der Ausschöpfung der bisherigen, traditionellen Vorkommen ist.

Zum Wettlauf um Energiequellen kommt es nicht nur zwischen einzelnen Staaten, sondern auch zwischen den Weltregionen, wirtschaftlichen und politischen Vereinigungen. Dieser Wettlauf kann also auch als Konkurrenzkampf zwischen Industriestaaten und

Entwicklungsländern, sowie zwischen liberal-demokratischen und autoritären Staaten betrachtet werden.

Es ist von großer Relevanz, die hier angedeuteten Probleme in ihrem vollen Umfang zu verstehen. Es ist vor allem eine offensichtliche Tatsache zu bemerken, dass die Rohstoffverteilung weltweit ungleichmäßig ist. Diese Unterschiede implizieren entweder Kooperation, oder auch das Gegenteil, nämlich Konfrontation zwischen Staaten und Weltregionen. Die energetische Sicherheit Europas hängt im großen Teil von seinen energetischen Strategien ab, die das Gleichgewicht zwischen Kosten und Gewinnen aus der Energieproduktion zu berücksichtigen haben. Die Europäer werden heutzutage immer vorsichtiger beim Thema Atomenergie. Einen nicht zu unterschätzenden Einfluss darauf hatten die Reaktorunfälle, darin der letzte in Fukushima.

Sehr interessant ist aus geopolitischer Hinsicht die Antwort auf die Frage, wie Europa die Energierohstofflieferungen diversifizieren sollte, um den Bedürfnissen von Industrie und individuellen Konsumenten sowie öffentlichen Einrichtungen (Schulen, Krankenhäuser, Betreuungsanstalten usw.) gerecht zu werden. Die Herausforderungen, vor denen die politischen Machthaber stehen, verlangen oftmals einer Neudefinierung der bisherigen Energiepolitik. Bisher hat man nämlich die steigende Bedeutung der Entwicklungsländer als Verbraucher von Energierohstoffen nicht berücksichtigt. Der Westen hört auf, der einzige Importeur zu sein. Der Rohstoffmarkt wird in einem immer höheren Maß zum Angebotsmarkt, was einerseits zur Preissteigerung führt, andererseits müssen nicht mehr die Förderer, sondern die Konsumenten wettbewerbsfähig werden. Es sind die Konsumenten, also die importierenden Länder, die um den Zugang zu Rohstoffquellen ringen.

Es bildet sich auf diese Art und Weise ein System von geopolitischen Verknüpfungen, in dem neben den Rohstoffexporteuren die Entwicklungsländer, insbesondere solche neuen Wirtschaftsmächte wie China und Indien eine Rolle spielen. Die westlichen Machthaber stehen also vor der schwierigen Aufgabe einer Neudefinierung der geopolitischen Strategien und einer neuen Zielsetzung in der Energiepolitik. Welche Länder sollen in der neuen Strategie der energetischen Sicherheit berücksichtigt werden? Unserer Ansicht nach, sind hier drei geostrategische Hauptrichtungen zu berücksichtigen: Russland, Länder des Fernen Ostens sowie Staaten am Kaspischen Meer als eventuelle neue Lieferquelle der Energierohstoffe für Europa.

Russland ist der Hauptexporteur der Energierohstoffe in Europa. Es ist daran interessiert, auf dem europäischen Markt weiter zu expandieren, was zur Stärkung seiner nicht nur ökonomischen, sondern auch politischen Position beiträgt. Die Verknüpfung von ökonomischen und politischen Fragen macht aus Russland einen unvorhersehbaren Exporteur. Ein Bestandteil dieser Außenpolitik ist die sog. „energetische Erpressung“, die in Bezug auf mittel- und osteuropäische Länder angewendet wird. Zu diesem Zweck werden neue Lieferkanäle gebaut, die um die an Russland grenzenden Länder einen Umweg machen. Im Falle einer sich zuspitzenden Lage in den bilateralen Beziehungen zwischen Russland und einem seiner Nachbarstaaten, werden die Rohstofflieferungen nach Westeuropa nicht gestört. Dem bisherigen Transitland kann gedroht werden, dass die Lieferungen gestoppt werden, wobei die guten Beziehungen mit sonstigen importierenden Staaten nicht gefährdet werden (Marušiak 2009: 1). Diesem Zweck sollen die Ostseepipeline (Nord-Stream-Pipeline) sowie die geplante South Stream auf dem Grund des Schwarzen Meeres dienen. Die Behörden im Kreml streben darüber hinaus danach, dass die russischen Gesellschaften die volle Kontrolle über Gasleitungen in den Transitländern übernehmen. Sie versuchen auch die

Entstehung von Alternativstrecken für die Gasleitungen, wie z.B. die Nabucco-Pipeline zu verhindern. Das Ziel dieser Energiepolitik ist es, die osteuropäischen Staaten (die Ukraine, Weißrussland und Moldawien) von Russland abhängig zu machen.

Ein zweites Element dieses geostrategischen Puzzles sind China und Indien als Staaten, die sich dynamisch entwickeln und in denen der Bedarf an Energierohstoffen steigt. Ihre potentiellen Bedürfnisse in der Zukunft sind schwer einschätzbar. Mit dem steigenden Wohlstand der Bevölkerung in diesen Ländern, sowie der ständigen Steigerung der Industrieproduktion, wird ihr Anteil an dem globalen Gas- und Erdölverbrauch immer größer. Nach den von BP veröffentlichten Angaben konsumierte China im Jahr 2010 10,6% der Welterdölförderung. Sein Erdölkonsum nimmt jährlich um etwa einige Prozent zu. Von 2009 bis 2010 wurde die Zunahme um 10% verzeichnet. Auf diese Weise hat China nicht nur das Niveau der zweiten Weltwirtschaft erreicht, sondern wurde auch zum zweitgrößten Erdölkonsumenten nach den USA. Der Erdgaskonsum ist auf einem relativ niedrigen Niveau und man kann seine allmähliche Zunahme erwarten (von 2009 bis 2010 um 20%). China verbraucht weniger als 4% der Weltgasförderung, etwas mehr als Großbritannien und Italien. Ähnlich ist es im Falle Indiens, des zweitbevölkerten Landes der Welt, wo nur 2% der Weltgasförderung konsumiert werden. Auch in diesem Fall steigt der Konsum jährlich um über 20% (Statistical Review of World Energy June 2011; <bp.com/statisticalreview>).

In Anbetracht des stets steigenden Energieverbrauchs suchen die beiden asiatischen Länder nach neuen Erdöl- und Erdgasquellen, die ihre ökonomischen Interessen und den Zuwachs der Industrieproduktion sowie des Innenkonsums sichern würden. Die kaspischen und mittelasiatischen Vorräte werden zum wichtigen Ziel ihres geostrategischen Spiels. China und Indien werden also zu realen Konkurrenten Europas im Wettlauf um diese Quellen. Zu ihrem Gunsten sprechen drei Faktoren: erstens – die geographische Nähe zu den Ländern Mittelasiens, zweitens – die guten Beziehungen mit dem Iran, einem der größten Förderer der Energierohstoffe im kaspischen Raum, drittens – ihre starke, trotz Finanzkrise, ökonomische Lage. Dieser dritte Faktor gibt ihnen die Möglichkeit, neue Energieprojekte zu finanzieren.

Die kaspischen Länder, indem sie ihr eigenes Interesse in Betracht ziehen, versuchen die Abnehmer ihrer Energierohstoffe zu diversifizieren. Solche Vorgehensweise sichert sie vor der ökonomischen und politischen Abhängigkeit von den importierenden Staaten. Der Einfluss Westens auf diese Länder ist relativ begrenzt. Es liegt im Interesse der europäischen Staaten, die Zusammenarbeit mit den Ländern des kaspischen Raumes sowie Mittelasiens zu stärken. Sie sollten dadurch an das westliche System der Rohstofflieferungen angeschlossen werden (Nuriyev 2008: 156).

Eine ernste völkerrechtliche Barriere ist hier der unregelmäßige Status des Kaspischen Meeres, das eine Alternativstrecke für den Erdgasimport aus Mittelostasien darstellt. Russland wird dabei kein Transitland mehr. Erst nach der Feststellung seines Status durch die Staaten um das Kaspische Meer, könnte auf seinem Grund eine Gasleitung gelegt werden, durch die *via* Aserbaidschan, Georgien und die Türkei Erdgas importiert werden könnte. An der Feststellung des Status des Kaspischen Meeres ist vor allem die Russische Föderation nicht interessiert. Dank dem völkerrechtlichen *status quo* behält sie ihre geopolitische Position, indem sie die europäischen Staaten von eigenen Lieferungen abhängig macht. Die erwähnten russischen Projekte – Nord und South Streams verstärken die Abhängigkeit Europas von den russischen Energierohstoffen.

Im Interesse der europäischen Staaten liegt die Unterstützung alternativer Projekte sowie Initiativen, die die Regelung des Status des Kaspischen Meeres zum Ziel haben. Solche

Projekte wie Nabucco und ITGI verstärken die energetische Sicherheit Europas. Dank ihnen kann Erdgas aus dem Raum des Kaspischen Meeres und in weiterer Zukunft sogar aus Ostasien in die europäischen Staaten ohne Vermittlung der Russischen Föderation geliefert werden. Der Erfolg dieser Projekte hängt von der Lösung verschiedener Schwierigkeiten technischer, politischer und finanzieller Natur.

## **GEORGIEN ALS GEOSTRATEGISCHES GLIED EUROPAS**

Georgien betrachtet man als Teil einer geopolitischen Einheit unter dem Namen Raum Schwarzes Meer sowie Südkaukasus. Es hat eine strategische Bedeutung für die energetische Sicherheit Europas. Georgien ist bereits ein Teil energetischer Achse, die Kaspisches, Schwarzes und Mittelmeer miteinander verbindet (Gachechiladze 2002: 113-115).

Die Europäische Union führt keine durchsichtige und längerfristige Politik in Bezug auf Georgien und östlichen Teil des Raumes Schwarzes Meer. Die bisherige Teilnahme der EU hat sich meistens auf Finanzierung verschiedener Projekte beschränkt, die die Entwicklung der demokratischen Institutionen und der Zivilgesellschaft unterstützen sollten. Nach Beendigung des russisch-georgischen Krieges stellt die Union ein Polizeikontingent, der den Waffenstillstand auf der Demarkationslinie zwischen Georgien und separatistischen Republiken Abchasien und Südossetien zu überwachen hat. Die Georgier betrachten diese Anwesenheit als notwendig, aber zugleich unzureichend. Die Staatsbehörden und zugleich ein großer Teil der Öffentlichkeit äußern den Willen, Georgien mit euroatlantischen Strukturen, d.i. NATO und EU zu integrieren. Ein Argument dafür ist einerseits das europäische Erbe Georgiens (Modrzejewski 2011: 89), andererseits seine geostrategische Lage als eines Transitlandes in der Lieferung von Energierohstoffen aus dem Raum des Kaspischen Meeres (Aserbaidshan) und aus Zentralasien (Turkmenistan). Die Georgier schlagen der EU eine strategische Partnerschaft vor, die wenigstens einem Teil der Mitgliedsstaaten Lieferungen von Energierohstoffen (Kaspisches Erdgas und -öl) garantieren wird (Shaffer 2009: 132).

Infolge von Aktivitäten, u.a. polnischer Diplomaten, wird der östliche Aspekt der Außenpolitik der Europäischen Union zum wichtigen Bestandteil der Europäischen Nachbarschaftspolitik. Bemerkt wird dabei auch die Bedeutung der Kontakte mit Georgien als des am meisten proeuropäischen Landes im Südkaukasus. Die polnischen Besterbungen, diese Kontakte zu intensivieren, sollten auch die geostrategische Lage Georgiens betonen, ohne die Projekte energetischer Sicherheit, insbesondere Mittel- und Südosteuropas schwer realisierbar wären. Als Transitland kann Georgien eine Schlüsselposition in der energetischen Strategie der EU haben. Die Außenpolitik sowohl europäischer Institutionen, als auch einzelner Mitgliedstaaten, insbesondere jener, die an der Diversifikation von Energielieferungen interessiert sind, sollte deshalb weiterhin die Demokratisierung, Transparenz und ökonomische Entwicklung dieser südkaukasischen Republik unterstützen. Georgien muss dabei allmählich an dem Prozess der europäischen Integration teilnehmen können (Aufhebung des Visumsregimes, Teilnahme der Georgier an verschiedenen EU-Programmen, wie ERASMUS, Freihandelszone). Es kann beiderseitige Profite mit sich bringen. Für die Georgier ist es wichtig, dass man ihren europäischen Aspirationen und Erwartungen entgegentritt. Sie hoffen aber auch auf eine politische und ökonomische Stabilisierung in der Region, die die euroatlantischen Institutionen als Garanten von Sicherheit und Unversehrtheit Georgiens sichern sollen. Als Gegenleistung kann Europa oder

genauer gesagt die Europäische Union einen stabilen Partner erwarten, der ein wichtiges Glied in der Kette von Rohstofflieferungen auf dem Alten Kontinent sein wird (Gamkrelidze 2010: 223).

Unter den Mitgliedstaaten fehlt jedoch der gemeinsame Wille und Determination bei der „Europäisierung“ Georgiens und der Miteinbeziehung der Südkaukasusregion (Georgien und Aserbaidschan) in das europäische System der energetischen Sicherheit. Es fehlt hier vor allem die Stimme der Hauptakteure der europäischen Politik, d.i. Frankreichs und Deutschlands. Diese beiden Staaten haben für die nächsten Jahrzehnte für ihre energetische Sicherheit gesorgt (Grundlage der französischen energetischen Strategie soll Kernenergie werden, Deutschland hat sich mit dem Bau von Nord Stream direkte Erdgaslieferungen aus der Russischen Föderation gesichert) und sind an der Frage Georgiens und seiner Ausnutzung als eines Transitlandes für den Gas- und Erdöltransport nicht besonders interessiert. Im Zusammenhang damit werden die großen energostrategischen Projekte, deren Ziel ist, die Energielieferungen zu diversifizieren, nicht prioritätsmäßig behandelt und somit hat ihre Verwirklichung in nächster Zukunft keine Erfolgschancen.

Diese Situation wird durch die Wirtschaftskrise weiter verstärkt. Die, die energetische Sicherheit verstärkenden Maßnahmen sollten jedoch langfristig geplant werden. Auch wenn unter heutigen wirtschaftlichen Umständen (Krise der Eurozone, zweite Welle der Wirtschaftskrise, Verlangsamung der Wirtschaft in Europa) die Finanzierung von Energieprojekten (z.B. Bau der Nabucco-Gasleitung) unrealisierbar ist, sollten diese Ideen nicht ganz verworfen werden. Krise, sogar, wenn sie noch einige Jahre dauert, wird einmal sein Ende finden. Energierohstofflieferungen aus dem kaspischen Raum können Europa seine energetische Sicherheit nicht für Jahre, sondern Jahrzehnte garantieren. Eine langfristige Denkweise zieht „langandauernde Vorteile“ dem augenblicklichen Nutzen vor. Vorteile, die aus der Einbeziehung des östlichen Teils der Region des Schwarzen Meeres ins europäische System der energetischen Sicherheit resultieren, werden erst in nächsten Jahrzehnten spürbar sein. Diese Konstatierung bezieht sich vor allem auf die mittel- und südosteuropäischen Länder. Der Prozentsatz der erneuerbaren Energie an dem allgemeinen Energieverbrauch ist in diesen Ländern meistens nicht höher als einige Prozent. Wie keine anderen Staaten sind sie den Unterbrechungen in den Lieferungen der russischen Energierohstoffe ausgesetzt.

Ein wichtiger Faktor, der das Suchen nach neuen, alternativen Transitstrecken für den Transport von Erdgas und –öl nicht begünstigt, sind die Behörden in Moskau. Russland will weiterhin die Kontrolle über den Transport von kaspischen Energierohstoffen behalten. Eine Stärkung geostrategischer Position Georgiens als Transitlandes ist nicht im russischen Interesse (Gachechiladze 2002: 128). Es bedeutet aber nicht, dass es nicht im Interesse der EU ist.

Georgien ist das einzige sichere Land, durch das man Energierohstoffe aus Aserbaidschan und Zentralasien nach Europa transportieren kann (Ismailov, Papava 2008: 290-291). Wegen der angespannten aserbaidshanisch-armenischen und armenisch-türkischen Beziehungen ist der Bau einer Erdöl- und Gasleitung auf einer kürzeren Strecke durch das Gebiet Armeniens aus politischen Gründen unmöglich. Die Situation Georgiens ist also im Falle einer Zustimmung auf Diversifizierung von Gas- und Erdöllieferungen alternativlos. Die einzige Alternative stellt hier die Russische Föderation (seit 1997 existiert die Gasleitung Baku – Noworossiysk) dar. In Anbetracht der Tatsache, dass Europa eine Diversifizierung von Rohstofflieferungen anstrebt, wäre ihr Transfer aus dem Raum des Kaspischen Meeres in die Länder der EU durch das russische Territorium sinnlos. Es



verstärkte noch die sowieso starke geopolitische und geoökonomische Position Russlands als Monopolisten auf dem Rohstoffmarkt.

Das Gebiet des russischen Nordkaukasus, durch den die Gasleitungen aus Aserbaidschan verlaufen müssen, gilt als sehr instabil. Es ist ein Zentrum des Bürgerkrieges; die Zentralbehörden verfügen dort nur über eine Teilkontrolle. Fast jeden Tag kommt es zu Zwischenfällen mit Waffengewalt. Angesichts dieser Tatsache ist mit einer ernsthaften Beschädigung der Transitinfrastruktur zu rechnen, was eine Lieferungsbeschränkung zur Folge haben kann. Dieses Problem kommt im Falle Georgiens nicht vor, weil die Gasleitungen von den separatistischen Republiken entfernt bleiben und verlaufen durch ein Territorium, über das die Behörden in Tiflis volle Kontrolle haben. Georgien ist also eine sicherere Lösung für ungestörte Lieferungen nach Europa.

Derzeit verlaufen durch das Gebiet Georgiens drei Pipelines: seit 1999 Erdölleitung Baku – Supsa (georgischer Hafen am Schwarzen Meer), die 2005 in Betrieb genommene Pipeline Baku – Tiflis – Ceyhan (Südosttürkei), sowie seit 2007 Baku – Tiflis – Erzurum (Osttürkei). Diese Pipelines können in Zukunft zum wichtigen Bestandteil des europäischen Energienetzes werden. Wichtiger als die georgische Aussenpolitik wird hier jedoch die europäische Politik der energetischen Sicherheit sein, die gemeinsam von der EU und den Mitgliedsstaaten geführt wird.

## **STRATEGISCHE BEDEUTUNG DER KASPISCHEN ENERGIEROHSTOFFE UND DES NABUCCO-PROJEKTES**

Der Raum des Kaspischen Meeres gehört zu den weltgrößten Erdgasreservoirien. Nach den BP-Angaben befinden sich in lediglich drei Ländern (Aserbaidschan, Turkmenistan und Usbekistan) fast 11 Billionen Kubikmeter Erdgas, was 5,5% der Weltreserven ausmacht. Die größten Vorräte befinden sich in Turkmenistan, wo 8 Billionen Kubikmeter Erdgas zu finden sind, d.i. 4,3% der Weltreserven. Sie können nicht genutzt werden, bevor der Status des Kaspischen Meeres nicht geregelt wird. Wie es bereits erwähnt wurde, liegt es nicht im Interesse der Russischen Föderation, die den Energiemarkt in Europa zu monopolisieren versucht. Die turkmenischen Vorräte bleiben aus diesem Grund ungenutzt und stellten 2010 lediglich 1,3% der Weltförderung dar. Die befand sich 2010 auf demselben Niveau, wie ein Jahrzehnt früher und betrug 42,5 Milliarden Kubikmeter. Die Erdgasförderung in Aserbaidschan, obwohl sie nur 0,5 der Weltförderung betrug, wurde verdreifacht. Im Jahr 2000 wurden in Aserbaidschan 5,1 Milliarden Kubikmeter Erdgas gefördert, im Jahr 2010 bereits 15 Milliarden Kubikmeter. Die Hauptabnehmer für das aserbaidshische Erdgas sind die Türkei und Russland (Statistical Review of World Energy June 2011; <bp.com/statisticalreview>).

Für die Ausnutzung der kaspischen Vorräte ist der Bau einer entsprechenden Industrieinfrastruktur notwendig. Eines der mutigeren Projekte ist der Bau der Nabucco-Pipeline. Diese Gasleitung ist eines der teuersten und kompliziertesten Energieprojekte und soll endgültig 4.000 Kilometer lang sein. Jährlich sollen auf diesem Weg 31 Milliarden Kubikmeter Erdgas geliefert werden, also dreimal soviel wie die geplante ITGI-Pipeline. Eigentümer und Betreiber der Pipeline ist die Gesellschaft The Nabucco Gas Pipeline. Ihre Gesellschafter sind zu gleichen Teilen (je 16,67%) sechs Anteilseigner: OMV Gas & GmbH (Österreich), MOL Hungarian Oil & Gas plc (Ungarn), SNTGN Transgaz SA (Rumänien), Bulgaria Energy Holding EAD (Bulgarien), BOTAS (Türkei) und RWE (Deutschland).

Die Pipeline beginnt ihren Verlauf an zwei Orten. An der türkisch-georgischen Grenze (aserbaidshanisches Erdgas) und der türkisch-irakischen (irakisches Erdgas). Ihre Route soll durch fünf an dem Projekt teilnehmende Staaten verlaufen: die Türkei (2581km), Bulgarien (412km), Rumänien (469km), Ungarn (384km) und Österreich (47km) (RWE, Nabucco Gas Pipeline Project at a Glance; <<http://www.rwe.com/web/cms/en/257318/rwe/press-news/archive/nabucco-gas-pipeline-project/>>).

Planmäßig soll die jährliche Lieferkapazität ca. 30 Milliarden Kubikmeter Erdgas betragen. Aus den aserbaidshanischen Gasfeldern Shah Deniz II und Umid sollen 21 Milliarden Kubikmeter kommen, wovon 6 Milliarden die Türkei für sich reserviert hat. Die sonstige Gasmenge soll aus dem irakischen Kurdistan kommen. Es wird geschätzt, dass in dieser irakischen Provinz jährlich über 20 Milliarden Kubikmeter Erdgas zur Verfügung stehen werden. Eine zusätzliche Rohstoffquelle kann Turkmenistan sein, wo jährlich 10 Milliarden Kubikmeter Gas gefördert werden können. Solange der Status des Kaspischen Meeres nicht geregelt und die transkaspische Pipeline nicht gebaut ist, hat diese Quelle jedoch nur einen potentiellen Charakter.

Es bestehen einige Faktoren politischen Charakters, die die Realisierung des energetischen Projektes Nabucco erschweren. Erstens, was bereits erwähnt wurde, ist es die Position der Russischen Föderation, die ihr eigenes Konkurrenzprojekt South Stream durchzusetzen versucht. Dieses Projekt stellt eine Konkurrenz nicht nur aus ökonomischer, sondern vor allem aus politischer Hinsicht dar. Russische Behörden wollen ihre europäischen Partner überzeugen, dass South Stream viel rentabler ist. Außer den wirtschaftlichen Vorteilen würde Russland dann ihre politischen Einflüsse erweitern. Die Folge der Monopolisierung von Rohstofflieferungen wäre die ungünstige Position europäischer Staaten. Ihre Widerstandsfähigkeit gegen energetische Erpressung und politischen Druck Russlands wäre geringer. Der russische Exporteur könnte darüber hinaus lange Zeit seine eigene Preispolitik führen.

Wenn man die Lieferkapazität berücksichtigt, stellt die Nabucco-Pipeline keine Konkurrenz für das russische Projekt South Stream dar. Die Kapazitäten werden hier auf 63 Milliarden Kubikmeter jährlich geschätzt, also doppelt so viel, wie im Falle der Nabucco-Pipeline. Der Verzicht auf das Nabucco-Projekt würde jedoch die energetische Sicherheit Europas stark gefährden. Die Abhängigkeit von russischen Lieferungen würde entsprechend steigen. Derzeit sind 25% der Erdgasimporte in der EU russischer Herkunft. Sieben Mitgliedstaaten sind von diesen Lieferungen fast vollständig abhängig. Die Verwirklichung nächster russischer Projekte kann diese Abhängigkeit noch vertiefen. Russland betrachtet die South Stream-Pipeline als sein politisches Projekt, das die geopolitische Position Russlands in Europa stärken soll. Auf dieselbe Weise ist das Projekt Nabucco zu behandeln. Die Favorisierung nur ökonomischer Aspekte kann langfristig in einer Sackgasse enden. Nabucco sollte ebenfalls als ein politisches Projekt behandelt werden, das die energetische Sicherheit der Europäischen Union vergrößert.

Wie hoch sind die Kosten energetischer Sicherheit? Im Jahr 2005 wurden sie auf knapp 8 Milliarden Euro geschätzt. Das Projekt sollte von den europäischen Finanzinstitutionen (70%) und die an dem Projekt beteiligten Staaten (30%) mitfinanziert werden (Gulf Oil & Gas, Nabucco Pipeline Project Focus; <<http://www.gulfoilandgas.com/webpro1/projects/3dreport.asp?id=102885>>). Heute scheinen diese Kosten viel zu niedrig eingeschätzt worden zu sein. BP schätzte letztes Jahr die Gesamtkosten der Investition auf 14 Milliarden Euro. Jedesmalige Projektverschiebung

erhöht seine Kosten, wodurch der Bau der russischen South Stream-Pipeline immer realistischer erscheint.

## ZUSAMMENFASSUNG

Wenn es den Europäern gelingt, als Folge einer einheitlichen geopolitischen Vision, gemeinsame strategische Ziele zu formulieren, kann Georgien die wichtige Rolle eines Energiekorridors und loyalen Verbündeten des Westens spielen. Prioritäten georgischer Aussenpolitik werden sich nach der Integration mit den euroatlantischen Strukturen richten. Was hier auch von Bedeutung ist, nehmen auch die Georgier mehrheitlich eine positive Einstellung gegenüber Europa und der EU. Sie fühlen sich ein Teil der europäischen Völkerfamilie. Es wurden viele Bürgerinitiativen ins Leben gerufen, um die proeuropäische Einstellung zu propagieren. Die Integration Georgien in euroatlantische Strukturen kann für alle Beteiligten von Vorteil sein. Die Georgier werden sich geopolitisch sicherer fühlen, ihre Lebensqualität wird steigen und es kommt zu weiterer Demokratisierung des öffentlichen Raumes. Die Bürger der Europäischen Union bekommen dafür einen sicheren Partner, der ein wichtiges Glied im europäischen System der energetischen Sicherheit sein wird.

## Literatur

- Demir, I. 2010. Turkish Gate In Global Energy Security: Baku-Tbilisi-Ceyhan Pipeline. *Journal of World of Turks* 2: 53-66.
- Gachechiladze, R. 2002. Geopolitics in the South Caucasus: Local and External Players. *Geopolitics* 1: 113-137.
- Gamkrelidze, T. 2010. The Contractedness of Georgian's European Identity. In: *Europe and the World in the face of Integration and Disintegration Processes*, Kuczur, T., and Modrzejewski, A. (Eds.). Toruń: Mado.
- Ismailov, E., and Papava, V. 2008. A new concept for the Caucasus. *Southeast European and Black Sea Studies* 3: 283-298.
- Marušiak, J. 2009. Gas conflict between Russia and Ukraine and its impact on the energy policy of Poland. *Despite Borders* 6: 1-19.
- Modrzejewski, A. 2011. The Concepts of Eastern Borders of Europe and European Identity of Georgia, In: *Challenges of Integration and Globalization*. Gamkrelidze, G., and Modrzejewski, A. (Eds.). Tbilisi: SfN Press.
- Nuriyev, E. 2008. Azerbaijan and the European Union: new landmarks of strategic partnership in the South Caucasus—Caspian basin. *Southeast European and Black Sea Studies* 2: 115-168.
- Potulski J. 2010. Wprowadzenie do geopolityki. Gdańsk: Uniwersytet Gdański.
- Shaffer, B. 2009. The Geopolitics of Caucasus. *Brown Journal of World Affairs* 2: 131-141.

# CATHOLIC FUNDAMENTALISM

Sylwia Górzna

„Religious fundamentalism is the most powerful and at the same time most attractive ideology, one that rouses the masses most, which is why any dictator will always seek to set some religion or faith to work for his own goals”<sup>1</sup> Hubertus Mynarek

## Abstract

The author of this article will present the notions of fundamentalism, integrity and traditionalism. She stresses that religious fundamentalism is a disturbing phenomena from the ecumenical and interreligious point of view. She will discuss the fiercest opponent of the Pope John Paul II, the archbishop Marcel Lefebvre's opinions. Lefebvre and his followers criticized inter alia: the pontifical strategy of building the unity of Christians through prayers, calling other faiths' followers brothers were considered as a work of Satan, pontifical meetings with the followers of other religions in Assisi, documents of the Second Vatican Council (1962-1965). The author emphasizes that John Paul II wanted to reconcile with the archbishop. A protocol of the agreement was prepared on 8<sup>th</sup> May 1988 but Lefebvre rejected it. The archbishop carried out ordinations to four bishops and therefore the Pope announced a decree on the exclusion of Lefebvre and the Society of St. Pius X which he established from the community of the faithful. In 2009 Benedict XVI (at present the retired Pope) cancelled the excommunication from four bishops ordained by the archbishop. After his resignation, the Pope forwarded the case of the Society to his successor Pope Francis.

**Key words:** *fundamentalism, Marcel Lefebvre, the Society of St. Pius X, the Second Vatican Council, interreligious dialogue*

## 1. Introduction

The definition „fundamentalism” was created in 19<sup>th</sup> century but not with reference to the world of Islam but in the context of the United States where Christian, Protestant and ultra- Protestant groups claimed that they knew the only true manner of conduct which one should follow, supported “the foundation”, that is they propagated the purity of the faith<sup>2</sup>. It

---

<sup>1</sup> H. Mynarek, *Zakaz myślenia. Fundamentalizm w chrześcijaństwie i islamie*, Gdynia 1996, p. 17.

<sup>2</sup> E. Sakowicz, *Rozmowy o islamie i dialogu*, Lublin 2007, p. 57.

is the definition of classical fundamentalism in the exact sense<sup>3</sup>. In some cases it concerns integrity rather than fundamentalism, however, in a common use both definitions overlap<sup>4</sup>.

When we talk about fundamentalism in Christianity, this word is generally associated with Protestant Biblical fundamentalism, despite the fact that there is also a doctrinal fundamentalism - called integrism - present rather on the Catholic site<sup>5</sup>. For fundamentalists "The Bible is the work of God, not man. God gave precise words of Biblical text to saint people"<sup>6</sup>. Inspiration spreads not only in every part of the Bible, but it also makes it absolutely infallible; it does not contain any mistake, ever from the historical, geographical and scientific site, therefore for fundamentalists the Bible must be interpreted literally<sup>7</sup>.

Fundamentalism in Catholicism<sup>8</sup> means a tendency to build a theology on the basis of Biblical sources (and their patristic interpretation) as well as expresses a conservative and reducing approach to the deposit of Christian faith and institutional structures of the life of the Church. It is close to traditionalism, it creates the attitude of rigorous preservation of basic truths of faith and Christian morality<sup>9</sup>. For about 30 years the evolution of doctrine and the attitude of the faithful towards the fundamentalisation has been observed in Catholicism<sup>10</sup>.

To some extent Protestant fundamentalism and Catholicism agree on the content of the truths of faith; however they differ with regards to methods of expressing the sources of faith and their interpretation. For Catholicism Holy Bible and Tradition, so the whole historical-salvific activity of God, as it was reflected in the Holy Bible, for fundamentalists the Holy Bible is the source of faith in a literal sense, without any "interpretation"<sup>11</sup>. The slogan of Catholic fundamentalists is *semel verum, semper verum* (*what was once true, is always true*)<sup>12</sup>.

The Pope John Paul II (pontificate from 1978 to 2005) and some aspects of pastoral work have become the objects of criticism from various people and circles, including inter alia: the members of the Catholic Church. The Pope was criticized for conservatism, inconsequent ecumenism. The opponents of ecumenical dialogue<sup>13</sup> considered the Pope as a modernist<sup>14</sup>. The term modernism was used for the first time in 1904 to define the movement for the benefit of structural reforms of the Catholic Church. In 1907 it appeared in the encyclical of Pius X *Pascendi*<sup>15</sup> as a name for the collection of „false views” in the field of theology of philosophy and history<sup>16</sup>. Modernists did not have any common policy but

---

<sup>3</sup> D. Motak, *Nowoczesność i fundamentalizm. Ruchy antymodernistyczne w chrześcijaństwie*, Cracow 2002, p. 64.

<sup>4</sup> *Od krucjat ku spotkaniu z muzułmanami w duchu św. Franciszka z Asyżu*, edited by S.B. Brzuszek and others, Warsaw – Rome 2005, p. 160.

<sup>5</sup> Z. Kubacki, *Religia a terroryzm*, „Przegląd Powszechny” 2002, no. 2, p. 158.

<sup>6</sup> G. de Rosa, *Relatywizm współczesny*, translated by J. Drabik, „Przegląd Powszechny” 2006, no. 10, p.65.

<sup>7</sup> Ibidem.

<sup>8</sup> See A. Małaszewski, *Poza Kościołem nie ma zbawienia!*, „Zawsze Wierni” 2001, no. 5, p. 56-65.

<sup>9</sup> M. Rusecki, *Fundamentalizm*, in: *Encyklopedia katolicka*, vol. 5, edited by L. Bieńkowski, Lublin 1989, col. 763.

<sup>10</sup> R.S. Czarnecki, *Fala fundamentalizmu*, „Dziś” 2007, no. 7, p. 75.

<sup>11</sup> P. Henrici, *Czy istnieje katolicki fundamentalizm?*, translated by B. Floriańczyk, „Communio” 2002, no. 4, p. 42.

<sup>12</sup> Ibidem, p. 43.

<sup>13</sup> A dialogue of the Catholic Church with other Christian religions.

<sup>14</sup> *Krytyka papieża Jana Pawła II*,

[http://pl.wikipedia.org/wiki/Krytyka\\_papieża\\_Jana\\_Pawła\\_II/5.12.2007](http://pl.wikipedia.org/wiki/Krytyka_papieża_Jana_Pawła_II/5.12.2007).

<sup>15</sup> Pius X, *Encyklika Pascendi*, <http://ekai.pl/bib.php/dokumenty/pascendi/pascendi.htm/15.04.2008>.

<sup>16</sup> D. Motak, *Nowoczesność i fundamentalizm...*, p. 52.

they were connected by the desire to remain in the Church, they did not want to resign from certain modern ideas and they were striving to purify Catholicism from some "obsolete" elements. So-called modernist crisis released the application of methods of historical criticism in the research on the Bible by young exegetists and French historians<sup>17</sup>, which led to the integristic reaction whose peak was between 1912-1913<sup>18</sup>.

The term integrism<sup>19</sup> functions in the literature as a conceptual equivalent to the term fundamentalism but its scope of applicability is much narrower, that is limited to Catholicism<sup>20</sup>. Modern integrism does not oppose modernism but it opposes liberalism, and in attempts for the benefit of the restoration of traditional *status quo* of institutional Catholicism it shows such a great uncompromising attitude that "the Catholics rejecting integrism feel pushed towards political leftists."<sup>21</sup> Integrists strongly oppose the solutions of the Second Vatican Council (1962-1965), accusing it of modernism, betrayal of traditional religion, heresy as well as undermining the authority of God and the Church<sup>22</sup>.

The term traditionalism<sup>23</sup> refers to 19<sup>th</sup>-century theological and philosophical trend critical towards the Enlightenment interpretation of historical process, especially the idea of progress, but in a broader sense religious traditionalism means persistence by tradition, but at the same time the understanding of tradition is stiff<sup>24</sup>, static and ahistorical. Catholic traditionalism is in fact a form of fundamentalism, which has been proved by essential convergence of characteristics of both trends<sup>25</sup>.

While considering Catholic traditionalism we can distinguish 3 basic doctrinal trends: traditionalism represented by the supporters of the Society of Pius X, traditionalism of the Catholics from *Ecclesia Dei*, who aim at taking the fullest advantage and if possible, extending the scope of obligatory concessions done seldom by Vatican for the benefit of pre-conciliar liturgy i sedevacantism (priest Rafał Tyrek represents this attitude<sup>26</sup>), which rejects the heritage of the Second Vatican Council and teaching of „council popes” based on it from John XXIII (1958-1963) undermining the legality of their pontificates<sup>27</sup>.

## 2. Marcel Lefebvre and the Society of Pius X

Marcel Lefebvre<sup>28</sup>, a French archbishop, is considered the main representative of Catholic traditionalism. He was born in Tourcoing in France. In 1929 he was ordained and two years later he joined missionary Congregation of the Holy Spirit. In 1932 he went to the mission in Gabon (Africa) and between 1947 and 1962 he was an apostolic vicar, and then an

---

<sup>17</sup> Ibidem, p. 52, fn. 59.

<sup>18</sup> Ibidem, p. 53.

<sup>19</sup> M. Karas, *Status Ecclesiae indirecte subordinatur. Koncepcja wzajemnych relacji Kościoła i państwa we współczesnym integryzmie rzymskokatolickim*, „Archiwum Historii Filozofii i Myśli Społecznej 2004”, vol. 49, p. 234, fn. 4.

<sup>20</sup> D. Motak, *Nowoczesność i fundamentalizm...*, p. 50.

<sup>21</sup> Ibidem, p. 54, fn. 66.

<sup>22</sup> Ibidem.

<sup>23</sup> M. Karas, *Status Ecclesiae indirecte subordinatur...*, p. 234, fn. 4.

<sup>24</sup> D. Motak, *Nowoczesność i fundamentalizm...*, p. 55, fn. 69.

<sup>25</sup> Ibidem, p. 56-57.

<sup>26</sup> M. Błaza, *Nowinkarstwo tradycjonalistów*, „Przegląd Powszechny” 2008, no. 5, p. 80.

<sup>27</sup> T. Niecikowski, *Sedewakantyzm (radikalny katolicki ruch tradycjonalistyczny)*, „Nomos” 2000, no. 30/31, pp. 101-102.

<sup>28</sup> Life and activity of Lefebvre See. Z. Pawłowicz, *Lefebvre i lefebryści. Schizma u schyłku XX wieku*, Gdańsk 1998, pp. 5-39.

archbishop of Dakar in Senegal. In 1948 he became an apostolic delegate for French-speaking Africa which "consisted" in 18 countries and while holding his office he established 36 dioceses. Pope John XXIII appointed the archbishop to the preparatory commission for the Second Vatican Council. In 1962 he was chosen a general of Congregation of the Holy Spirit. After his resignation from this post he became a bishop of Tulle in France<sup>29</sup>.

In 1970 Lefebvre set up a traditionalist higher clerical seminary in Ecône in Switzerland, in order to educate and create new priests "in the spirit of faithfulness to the holy Tradition of the Church"<sup>30</sup>. In the same year he also set up the Society of Pius X, which consisted of integrists, canonically established by the bishop Francois Charrierre in the diocese of Lausanne, Geneva and Freiburg in Switzerland<sup>31</sup>. The main aim of the Society, outlined by the archbishop Lefebvre is to organize and set up clerical seminaries which strive for forming and ordaining priests according to the integral and true faith of the Catholic Church"<sup>32</sup>. According to the principles it is a priestly society „common life without orders, in the tradition of mission societies"<sup>33</sup>. Lefebvre developed his activity also outside Switzerland, creating new centers in France (5), the USA (4), Switzerland (2), England (2), in Belgium (1), in Federal Republic of Germany, in Italy and in Poland<sup>34</sup>.

### 3. The criticism of the Second Vatican Council and its documents

During council proceedings Lefebvre was organizing together with other conservative participants of the Council conservative group of conciliar fathers (International Group of Conciliar Fathers), led by the Brazilian bishop Proença Sigauda and played a leading role in its activity. The abovementioned organization comprised of about 250 bishops who was opposed the deep changes in the Church<sup>35</sup>. He attacked the notion of so-called *aggiornamento*, which meant a process of adjusting Christian teaching to the situation and challenges of modern world<sup>36</sup>. He called the Second Vatican Council<sup>37</sup> „criminal”, and in his opinion the Popes John XXIII and Paul VI (pontificate between 1963 and 1978), announcing the Vatican Council as „pastoral” and not dogmatic and putting forward the postulates of *aggiornamento* and ecumenism from the beginning they took away the possibility of intervention by means of infallibility from the Vatican Council and themselves<sup>38</sup>, and this possibility could protect them from all the mistakes<sup>39</sup>.

<sup>29</sup> E. Sakowicz, *Katolickie tradycjonalistyczne Bractwo Świętego Piusa X wobec ekumenizmu i dialogu międzyreligijnego*, in: *Fundamentalizm i kultury*, edited by M. Szulakiewicz and Z. Karpus, Toruń 2005, pp. 251-252; See Lefebvre Marcel, in: *Wielka Encyklopedia Jana Pawła II*, vol. 4, edited by G. Polak, Warsaw 2005, p. 27.

<sup>30</sup> Ibidem, p. 252.

<sup>31</sup> Ibidem, p. 252, fn. 6.

<sup>32</sup> *Lefebryści a religie niechrześcijańskie*, „Homo Dei” 2001, no. 2, p. 44.

<sup>33</sup> Ibidem, pp. 44-45.

<sup>34</sup> J. Dębiński, *Integryzm i tradycjonalizm posoborowych kontestatorów Kościoła rzymskokatolickiego u schyłku XX wieku*, in: *Fundamentalizm i kultury*, edited by M. Szulakiewicz and Z. Karpus, pp. 270-271.

<sup>35</sup> M. Karas, *Bractwo Św. Piusa X, katolicki ruch tradycjonalistyczny w dobie posoborowej*, „Nomos” 2000, no. 30/31, p. 80.

<sup>36</sup> E. Sakowicz, *Katolickie tradycjonalistyczne Bractwo Świętego Piusa X...*, pp. 249-250, 253.

<sup>37</sup> K. Lubczyński, *Promienie integryzmu*, „Dziś” 1997, no. 12, p. 52 adds that in 1969 archbishop Lefebvre stated publicly: „The Second Vatican Council was worse than the French Revolution because then the Church did not undertake a dialogue with Satan”.

<sup>38</sup> See J. Borucki, *Prymat i nieomylność papieża według Bractwa Kapłańskiego św. Piusa X w kontekście nauki Soboru Watykańskiego I i Watykańskiego II*, „Studia Koszalińsko-Kołobrzeszkie” 2008, no. 13, pp. 117-132.

<sup>39</sup> M. Lefebvre, *Oni Jego zdetronizowali. Od liberalizmu do apostazji. Tragedia soborowa*, Warsaw 1997, p. 151.

Lefebvre claimed that the Second Vatican Council was taking pleasure in praising salutary values of other religions in which there are some healthy elements, however in his opinion none of these values belongs to these false religions, but they belong by virtue of law to one true religion, that is to the religion of the Catholic Church and only it can work by means of them<sup>40</sup>. According to Lefebvre and his followers<sup>41</sup>, a dialogue with the world, including the ecumenism<sup>42</sup> and interreligious dialogue<sup>43</sup>, mean opting for the ideologies hostile to Christianity and their ultimate aim is to destroy the Church<sup>44</sup>. According to the archbishop, the Council did not do anything but to popularize a classical doctrine of tolerance<sup>45</sup>, and religious freedom of the Council is found on the antipodes of fundamental laws defined by Pius XI (pontificate 1922-1939) and Pius XII (pontificate 1939-1958)<sup>46</sup>. The archbishop's Manifesto from 21<sup>st</sup> November 1974<sup>47</sup> is a summary of his teaching; he writes: „We reject and we have always rejected following the Rome of modernistic and neo-protestant tendency, which was clearly noticeable during the Second Vatican Council and after the Council in all reforms resulting from it”<sup>48</sup>.

Traditionalists regard a dialogue as a fatal threat to the Catholic Church and only the Society is a guarantor of preserving the Tradition of the Catholic Church<sup>49</sup>. They indicate five conciliar documents which play a destructive role: 1) Decree on ecumenism *Unitatis redintegratio*<sup>50</sup>, 2) Dogmatic constitution on the Church *Lumen gentium*<sup>51</sup>, 3) Declaration on relation of the Church towards non-Christian religions *Nostra aetate*<sup>52</sup>, 4) Declaration on religious freedom *Dignitatis humanae*<sup>53</sup>, 5) Pastoral constitution on the Church in the contemporary world *Gaudium et spes*<sup>54</sup>.

Traditionalists believe that „the whole Decree” (Decree on ecumenism – added S.G.) and actually the whole ecumenism represented today, focuses on the fact to reach a great agreement between various religions, in order to cause the progress of nations, development of culture, spread of peace in the world, environment protection, human rights defence, fight against racism, involvement in the matters of the Third World; so first and foremost a more humanitarian and more politically bearable world. However, the Church does not share the same opinion here, at least not in the first place”<sup>55</sup>.

<sup>40</sup> Z. Pawłowicz, *Stanowisko Lefebvre’a i lefebrystów wobec wolności religijnej*, „Collectanea Theologica” 2001, no. 2, p. 187.

<sup>41</sup> M. Karas, *Bractwo Św. Piusa X...*, p. 80 adds that perjorative definition *Lefebvre’s followers* refers not only to direct followers of Catholic traditionalism but also various conservative attitudes and behaviours in Catholic circles.

<sup>42</sup> See J. Poniewierski, *Ekumenizm – Kościół – lefebryzm*, „Znak” 2009, no. 3, pp. 8-9.

<sup>43</sup> Meetings of the representatives of two or more religions.

<sup>44</sup> E. Sakowicz, *Katolickie tradycjonalistyczne Bractwo Świętego Piusa X...*, p. 261.

<sup>45</sup> M. Lefebvre, *Oni Jego zdebronizowali...*, p. 176.

<sup>46</sup> Ibidem, p. 171.

<sup>47</sup> See *Deklaracja abp Marceliego Lefebvre’a from 21 November 1974*, <https://pelagiusasturiensis.wordpress.com/deklaracja-abp-marceliego-lefebvre-a-z-21-listopada-1974-roku/14.04.2013>.

<sup>48</sup> J. Dębiński, *Integryzm i tradycjonalizm...*, p. 271, fn. 44.

<sup>49</sup> E. Sakowicz, *Lefebryści a religie...*, p. 56.

<sup>50</sup> Document content See *Sobór Watykański II. Konstytucje, dekryty, deklaracje. Tekst polski*, edited by J. Grobicki, E. Florkowski, Poznań 1986, pp. 203-218.

<sup>51</sup> Ibidem, pp. 105-170.

<sup>52</sup> Ibidem, pp. 334-338.

<sup>53</sup> Ibidem, pp. 414-425.

<sup>54</sup> Ibidem, pp. 537-620; F. Schmidberger, *Bomby zegarowe Soboru Watykańskiego II*, Warsaw 1997, p. 8.

<sup>55</sup> F. Schmidberger, *Bomby zegarowe...*, p. 11.



Traditionalists claim that new ecclesiology which distorts present teaching of the Catholic Church is presented in the Constitution *Lumen Gentium*<sup>56</sup>. Lefebvre criticized the idea of „God’s people” which “leads to the conviction that Protestantism is one of the forms of Christian religions. Moreover, this document indicates a true bond in the Spirit with Protestant sects” (nr 14)<sup>57</sup>.

According to the Society the Declaration *Nostra aetate* „emphasizes alleged bonds linking the Catholicism with false religions”<sup>58</sup>. The Society accuses the Hinduism of inter alia total lack of love, and Hinduists – of lack of mercy and compassion, and Buddhism, being a religion of levelling human suffering, through its thesis on self-salvation of „radical opposing the Christianity”<sup>59</sup>. Traditionalists state: „We look at the Pope leaving Jewish synagogue with sadness. We look at the Pope who calls together various religions of the world in order to pray together for peace in Assisi. To which God should we deliver our prayers? To divine beings of Hinduism and Buddhism, which are identified with the being itself? Or to Allah who is in opposition to the live Trinity? Our God, my Friends, is a crucified and resurrected Jesus, God in the Holy Trinity. We do not know any other”<sup>60</sup>. The Society thinks that „only believing Jews of the Old Testament, Abraham, Isaac and Jacob can be called „elder brothers in the faith”<sup>61</sup>. Franz Schmidberger (born in 1946) thinks that „ (...) the Jews of our times are not only considered our brothers in the faith, as it was stated by the Pope during his visit to the synagogue in Rome in 1986; they are rather accomplices in murdering God, until they distance themselves by recognizing the divinity of Christ and baptism from the fault of their ancestors”<sup>62</sup>.

*Gaudium et spes* Constitution „may be, from a historical point of view and from the point of view of social impact, the most harmful in the whole Council, because it proclaims unlimited, free hurra-optimism, creating paradise on earth through technology, knowledge and progress under the cover of only describing the facts”<sup>63</sup>.

Lefebvre did not sign two conciliar documents: *Gaudium et spes* Constitution and *Dignitatis humanae* Declaration<sup>64</sup>. In his opinion collegiality, ecumenism and religious freedom are three main issues which caused the most heated debates of the Council, corresponding to three liberal principles: freedom, equality and brotherhood<sup>65</sup>. He believed that *Dignitatis humanae* Declaration resolves to the fact that the state cannot belong to a true religion but on the contrary, it should allow all the religions to develop in full freedom, which is absolutely contradictory with the reign of Christ and the interests of the Catholic Church itself, it destroys all deep foundations of missionary spirit of the Church, is a text ruining all the states and all Catholic societies<sup>66</sup>. Moreover, in the Declaration „whose last paragraph was rejected by many Fathers”, Paul VI personally added the paragraph which sounded essentially: „Nothing that this declarations speaks about is in opposition to

---

<sup>56</sup> E. Sakowicz, *Lefebryści a religie...*, p. 47, fn. 16.

<sup>57</sup> Ibidem.

<sup>58</sup> E. Sakowicz, *Katolickie tradycjonalistyczne Bractwo Świętego Piusa X...*, p. 256, fn. 17.

<sup>59</sup> Ibidem, p. 259.

<sup>60</sup> F. Schmidberger, *Bomby zegarowe...*, p. 21.

<sup>61</sup> E. Sakowicz, *Katolickie tradycjonalistyczne Bractwo Świętego Piusa X...*, p. 260.

<sup>62</sup> F. Schmidberger, *Bomby zegarowe...*, p. 20.

<sup>63</sup> Ibidem, p. 24.

<sup>64</sup> Z. Pawłowicz, *Stanowisko Lefebvre’a i lefebrystów...*, p. 186.

<sup>65</sup> M. Lefebvre, *Kościół przesiąknięty modernizmem*, Chorzów-Poznań 1995, p. 61; See B. Fellay, *Kryzys w Kościele. Przyczyny i środki zaradcze*, translated by A. Gwiazda, Warsaw 1996, p. 39.

<sup>66</sup> Ibidem, pp. 64-65.

Tradition. But everything which this declaration contains" according to Lefebvre, „is in opposition to Tradition”<sup>67</sup>.

The prospect of salvation of non-Christians, in the frame of integrism, is unclear, unreal and a believer of this religion will not reach salvation<sup>68</sup>. According to the Society, the Church through reversal from sinister ecumenism<sup>69</sup> and interreligious dialogue<sup>70</sup> will return to truth about itself<sup>71</sup>.

Lefebvre emphasised that he had sufficient contact with religions of Africa (animism, Islam)<sup>72</sup>, but it can also be said about the religion of India (Hinduism) in order to state that tragic effects of original sin manifest themselves in the believers of the abovementioned religions, especially in „blindness of their intellect and superstitious fear”<sup>73</sup>. In his opinion ecumenism is an aberration and a fatal threat to the Church<sup>74</sup>.

After Lefebvre's death, priest Franz Schmidberger<sup>75</sup> became his successor. He also criticises the Council highlighting the fact that since the Council the life of the Church derives first and foremost from four poisoned sources: collegiality, religious freedom, ecumenism and new liturgy<sup>76</sup>. He called *Dignitatis humanae* Declaration blasphemous which to a great extent violates the dignity of the Church and is harmful to the salvation of souls<sup>77</sup>. In his opinion non-Christian religions „prevent people from the truth, from the crucified and resurrected Christ, rather than lead them to it”<sup>78</sup>.

The Society, remaining by Roman rite codified by the Pope Pius V (pontificate 1566-1572)<sup>79</sup>, uses liturgical books published during the pontificate of John XXIII in 1962 rejecting partially reformed missal from 1965 and a new missal of Paul VI from 1969<sup>80</sup>. The issue of collegialism concerns a gradual passing away from strict principles of individual exercise of authority by particular representatives of the hierarchy in the Church<sup>81</sup>. The society considers collegialism as a dangerous blurring of responsibility, delegating decisions to multi-person organization and increasing democracy in the Church<sup>82</sup>.

It should be emphasized that according to Catholic traditionalists interreligious dialogue is a synonym to ecumenism, and these terms are used interchangeably<sup>83</sup>. According to Lefebvre ecumenism is a work of a devil. A false ecumenical spirit is responsible for everything that happened during the Vatican Council, putting us in an equal position with all

---

<sup>67</sup> M. Lefebvre, *Oni Jego zdetrzonizowali...*, p. 156.

<sup>68</sup> E. Sakowicz, *Lefebryści a religie...*, p. 49.

<sup>69</sup> See R. Amerio, *Ekumenizm*, „Zawsze Wierni” 2000, no. 2, pp. 10-33.

<sup>70</sup> See E. Sakowicz, *Die Kritik Am Interreligiosen Dialog durch die Priesterbudschaft St. Pius X*, „Nurt SVD” 2002, no. 2, pp. 51-66.

<sup>71</sup> E. Sakowicz, *Katolickie tradycjonalistyczne Bractwo Świętego Piusa X...*, p. 254.

<sup>72</sup> See *Czy islam jest autentyczny?*, „Zawsze Wierni” 1999, no. 31, pp. 22-45.

<sup>73</sup> M. Lefebvre, *Oni Jego zdetrzonizowali...*, p. 182.

<sup>74</sup> J. Dębiński, *Integryzm i tradycjonalizm...*, p. 269.

<sup>75</sup> D. Motak, *Nowoczesność i fundamentalizm...*, p. 129.

<sup>76</sup> F. Schmidberger, *Przekazałem to co otrzymałem. Konsekracje biskupów dokonane przez abpa Marcela Lefebvre 30 czerwca 1988 r.*, Warsaw 1997, p. 5; See F. Schmidberger *Sobór Watykański II – rewolucja kopernikańska w Kościele*, „Zawsze Wierni” 1999, no. 31, pp. 18-20.

<sup>77</sup> F. Schmidberger, *Przekazałem to co otrzymałem...*, p. 11.

<sup>78</sup> F. Schmidberger, *Bomby zegarowe...*, p. 15.

<sup>79</sup> M. Karas, *Status Ecclesiae indirecte subordinatur...*, p. 239 adds that Pius X codified the Roman Rite in the bull *Quo primum*, after the Council of Trent (1545-1563), therefore called the Tridentine mass.

<sup>80</sup> M. Karas, *Bractwo Św. Piusa X...*, p. 88.

<sup>81</sup> Ibidem, p. 90.

<sup>82</sup> M. Karas, *Status Ecclesiae indirecte subordinatur...*, p. 240.

<sup>83</sup> E. Sakowicz, *Katolickie tradycjonalistyczne Bractwo Świętego Piusa X...*, p. 258, fn. 21.

religions<sup>84</sup>. Bernard Fellay (General Superior of the Society since 1994 residing permanently in Menzigen in Switzerland<sup>85</sup>) emphasises that in the Catholic Church a great mistake is spreading out, and the mistake is calling followers of other religions believers and that they have other faith and in fact there is one supernatural faith – the Catholic faith<sup>86</sup>.

#### 4. Archbishop Lefebvre's conflict with the Apostolic See

In 1974 Lefebvre fell into disagreement with Swiss bishops and the Apostolic See. On 26<sup>th</sup> March 1974 he was requested to come to Rome and he had a talk in Vatican. In June Paul VI established a commission in order to conduct an inspection in Ecône<sup>87</sup>. A Swiss bishop of Lausanne, the successor of Charriera, Pierre Mamie, waived the decree of recognition on 6<sup>th</sup> May 1975, issued by the predecessor, concerning a further activity of the Society<sup>88</sup>. Lefebvre was ordaining despite Paul VI's warnings, who submitted two letters to him. Due to the fact that Lefebvre disregarded legal regulations, Paul VI decided to dissolve the Society on 6<sup>th</sup> May 1975<sup>89</sup>. However, on 29<sup>th</sup> June 1976 the archbishop ordained about 100 candidates receiving a suspense<sup>90</sup>, which was imposed on 23<sup>rd</sup> June 1976<sup>91</sup>. On 11<sup>th</sup> September Paul VI received the archbishop in Castel Gandolfo but Lefebvre was still ordaining unlawfully<sup>92</sup>. Then Karol Wojtyła (as the Cracow Cardinal) expressed his negative opinion<sup>93</sup>.

Lefebvre repeatedly criticized the popes John Paul II and Paul VI, whom he considered as liberal and modernistic<sup>94</sup>. He confessed inter alia that: „In the light of the whole Tradition, an order given by John Paul II in his encyclical *Redemptor hominis*: «Never destruction but taking values into consideration, new creation» is nothing more than the utopia of theologist-theoretician. In fact, regardless of whether it has been thought over or not, it is a clear appeal for religious syncretism”<sup>95</sup>.

On 18<sup>th</sup> November 1978 John Paul II granted an audience to the archbishop Lefebvre who quoted considerations given to him by the Pope: „Do you know”, he told me that „religious freedom was very useful in Poland, against communism”<sup>96</sup>. I wanted to answer: “It was very useful, maybe as an argument *ad hominem* because communistic regimes had freedom of faith included in their Constitutions<sup>97</sup>, but not as a principle of the Catholic Church!”<sup>98</sup> In the next few years the Curia through the Congregation for the Doctrine of Faith

---

<sup>84</sup> M. Lefebvre, *Kościół przesiąknięty modernizmem...*, p. 96.

<sup>85</sup> M. Karas, *Bractwo Św. Piusa X...*, p. 97.

<sup>86</sup> B. Fellay, *Kryzys w Kościele...*, pp. 49-50.

<sup>87</sup> J. Dębiński, *Integryzm i tradycjonalizm...*, p. 271, fn. 46.

<sup>88</sup> Ibidem, p. 271, fn. 47.

<sup>89</sup> Ibidem, p. 271-272, fn. 50.

<sup>90</sup> *Suspensa*, in: *Wielka Encyklopedia PWN*, vol. 26, edited by J. Wojnowski, Warsaw 2005, col. 263 adds that *suspensa* in the Roman Catholic and Orthodox Churches is a church punishment for a clergyman who has violated the regulations of Canon Law, means a prohibition to perform some or all priestly activities.

<sup>91</sup> J. Dębiński, *Integryzm i tradycjonalizm...*, p. 272, fn. 51.

<sup>92</sup> Ibidem, p. 272, fn. 53.

<sup>93</sup> Ibidem, p. 272, fn. 55.

<sup>94</sup> Z. Pawłowicz, *Stanowisko Lefebvre'a i lefebrystów...*, p. 192.

<sup>95</sup> Ibidem, p. 187; See M. Lefebvre, *Oni Jego zdebronizowali...*, p. 164.

<sup>96</sup> M. Lefebvre, *Oni Jego zdebronizowali...*, p. 172.

<sup>97</sup> Ibidem, p. 172-173, fn. 1.

<sup>98</sup> Ibidem, p. 173.

and its prefect Joseph Ratzinger (at present a retired Pope Benedict XVI) had some negotiations in order to settle the conflict<sup>99</sup>.

It should be added that on 13<sup>th</sup> May 1982 on the first anniversary of a Muslim Ali Agca's assassination of John Paul II, the Pope arrived at Fatima in order to thank God and Mary for saving his life. During his stay in Fatima's basilica, a supporter of Marcel Lefebvre, a Spanish priest. Juan Fernández Khron was trying to kill the Pope and attacked him with the knife shouting: „Away with this Pope! Away with the Second Vatican Council”<sup>100</sup>.

Due to the 20<sup>th</sup> anniversary of the Second Vatican Council (1963) archbishop Lefebvre wrote: „An open letter to the Pope John Paul II”, in which he stated that „for twenty years the situation of the Church has reminded of an occupied city. Due to «self-destruction of the Church» thousands of the priests and millions of the faithful live in confusion and uncertainty. Mistakes included in the documents of the Second Vatican Council, post-conciliar reforms, especially the reform of the liturgy, wrong notions popularized by official documents and the abuse of authority done by the hierarchy lead to confusion and anxiety!”<sup>101</sup>. Then there is „a list of main mistakes, which are the cause for this tragic situation, and these mistakes have already been condemned by the predecessors of Your Holiness”<sup>102</sup>.

Lefebvre also criticised the meeting in Assisi (1986)<sup>103</sup>, saying inter alia: “(...) the Second Vatican Council invites our Lord to come, organize and revive the society together with Luther, Mahomet and Buddha! That is what John Paul II wanted to have in Assisi! What an anti-religious and blasphemous plan!”<sup>104</sup> The representatives of the Catholic Church say that every man is free and that we can gather all religions and pray like in Assisi. It is a disgusting thing and on a day when the Lord gets angry, it will be a real anger. If Jesus punished the Jews in a particular way, he made it because they did not want to believe in Him”<sup>105</sup>. Integrists think that „depravation of human life” in all dimensions results from John Paul II's contempt of most sacred things<sup>106</sup>. Moreover, he considers Lepanto battle (7.10.1571) and Kahlenberg battle near Vienna (12<sup>th</sup> September 1683) as a symbol of the Catholic Church's triumph over Islam and also as a confirmation of lack of authenticity of this religion<sup>107</sup>.

On 14<sup>th</sup> July and 18<sup>th</sup> November 1987 Lefebvre met Joseph Ratzinger (at present a retired Pope)<sup>108</sup>. In the second half of 1980's archbishop Lefebvre (due to his advanced age) decided to give bishop ordains to four priests from the Society<sup>109</sup>.

On 8<sup>th</sup> April 1988 John Paul II submitted a letter to the prefect of the Congregation for the Doctrine of Faith, explaining the reasons due to which he may exclude the archbishop Lefebvre from the community of the Catholic Church<sup>110</sup>. On 12<sup>th</sup> April there was a meeting of Lefebvre's theologians with the Vatican theologians in Rome and this meeting led to signing a

<sup>99</sup> D. Motak, *Nowoczesność i fundamentalizm...*, p. 127.

<sup>100</sup> *Wielcy Polacy. Jan Paweł II. Pielgrzym pojednania*, vol. 1, Warsaw 2007, p. 27.

<sup>101</sup> Z. Pawłowicz, *Stanowisko Lefebvre'a i lefebrystów...*, p. 189.

<sup>102</sup> Ibidem.

<sup>103</sup> See Bractwo Św. Piusa X, *Od ekumenizmu do milczącej apostazji. 25 lat pontyfikatu*, Warsaw 2004, p. 9.

<sup>104</sup> Z. Pawłowicz, *Stanowisko Lefebvre'a i lefebrystów...*, p. 188.

<sup>105</sup> M. Lefebvre, *Kościół przesiąknięty modernizmem...*, p. 57.

<sup>106</sup> E. Sakowicz, *Lefebryści a religie...*, p. 49, fn. 25.

<sup>107</sup> Ibidem, p. 53.

<sup>108</sup> E. Sakowicz, *Bractwo Świętego Piusa X*, in: *Jan Paweł II. Encyklopedia dialogu i ekumenizmu*, edited by E. Sakowicz, Radom 2006, p. 86.

<sup>109</sup> M. Karas, *Bractwo Św. Piusa X...*, p. 84.

<sup>110</sup> *Lefebvre Marcel*, w: *Wielka Encyklopedia...*, edited by G. Polak, p. 29; Letter content See Z. Pawłowicz, *Lefebvre i lefebryści...*, pp. 212-215.

protocol of the agreement between Vatican and the Society on 5<sup>th</sup> May. On 25<sup>th</sup> May Ratzinger suggested during the talk with the archbishop that the Pope agreed to ordain the bishops under certain conditions<sup>111</sup>. On 2<sup>nd</sup> June 1988 the archbishop wrote a letter in which he violated the provisions of the protocol 5<sup>th</sup> May 1988<sup>112</sup>.

## 5. Excommunication of archbishop Lefebvre

On 9<sup>th</sup> June 1988 John Paul II sent a letter to the archbishop asking him to resign from the intention of ordaining the bishops: „From the bottom of my fatherly heart, and at the same time with all the gravity which the circumstances require, I appeal to you Honourable Brother, to resign from the intention, which if it is realized, will be nothing more than just schismatical act, whose theological and canonical consequences are obviously known to Your Excellency. I appeal Your Excellency to return in humility to a full obedience to the Successor of Christ”<sup>113</sup>.

On 30<sup>th</sup> June 1988 there were bishop consecrations of the following priests Bernard Fellay, Richard Williamson, Bernard Tissier de Mallerais and Alfons de Galetta in Ecône<sup>114</sup>. The archbishop violated 1382 article of Canon Law. Then there was the first in 20th century split in the Church<sup>115</sup>.

On 1<sup>st</sup> July 1988 Lefebvre was excommunicated<sup>116</sup>. John Paul II emphasized that everybody who would like to question the heritage of the Council whose the Pope is a guarantor, must take into account the highest punishment, that is exclusion from the Church<sup>117</sup>. The Society regarded the excommunication as invalid right from the beginning due to the fact that Lefebvre committed a forbidden act believing that it was done in the state of higher necessity connected with the crisis in the Church, and according with Canon Law it exempts him from the excommunication even if he was mistaken<sup>118</sup>. The next day 2<sup>nd</sup> July, John Paul II submitted a letter *motu proprio* (that is on his own initiative) starting with the words „Ecclesia Dei”<sup>119</sup>, by means of which he expressed sadness as a result of bishop ordains<sup>120</sup>. In the letter he wrote inter alia: „in the present situation I would like to appeal solemnly to those who have been involved in the movement of archbishop Lefebvre so that they fulfill their sound obligation to remain in unity with the Successor of Christ, in union with the Catholic Church and they do not support the movement in any way”<sup>121</sup>.

---

<sup>111</sup> D. Motak, *Nowoczesność i fundamentalizm...*, p. 127.

<sup>112</sup> E. Sakowicz, *Bractwo Świętego Piusa X*, in: *Jan Paweł II...*, edited by E. Sakowicz, p. 86.

<sup>113</sup> *Lefebvre Marcel*, in: *Wielka Encyklopedia...*, edited by G. Polak, p. 29.

<sup>114</sup> M. Karas, *Bractwo Św. Piusa X...*, p. 84, fn. 12; Lefebvre's sermon on ordaining four bishops See F. Schmidberger, *Przekazałem to co otrzymałem. Konsekracje biskupów dokonane przez abpa Marcela Lefebvre 30 czerwca 1988r.*, pp. 71-79.

<sup>115</sup> K. Lubczyński, *Promienie integralizmu...*, p. 55.

<sup>116</sup> *Lefebvre Marcel*, in: *Wielka Encyklopedia...*, edited by G. Polak, p. 29; M. Karas, *Bractwo Św. Piusa X...*, p. 93, fn. 24 adds that in case of the archbishop Lefebvre's excommunication by the Apostolic See there are no doctrinal accusation (heresy accusation) but an accusation of disobedience motivated by „incomplete and internally contradictory understanding of Tradition”.

<sup>117</sup> J. Makowski, *Papież wody i ognia, „Przekrój”* 2006, no. 13, p. 17.

<sup>118</sup> *Bractwo Świętego Piusa X*,

[http://pl.wikipedia.org/wiki/Bractwo\\_%C5%9Awi%C4%99tego\\_Piusa\\_X/5.12.2007](http://pl.wikipedia.org/wiki/Bractwo_%C5%9Awi%C4%99tego_Piusa_X/5.12.2007).

<sup>119</sup> See Z. Pawłowicz, *Lefebvre i lefebryści...*, pp. 225-227.

<sup>120</sup> M. Karas, *Bractwo Św. Piusa X...*, pp. 84-85.

<sup>121</sup> Z. Pawłowicz, *Stanowisko Lefebvre'a i lefebrystów...*, p. 194.

John Paul II decided to establish the Commission *Ecclesia Dei* enabling former supporters of the Society who will leave their present superior and accept the conformity of conciliar reforms with "live Tradition" of the church to remain at the old liturgy. In October 1988 Priestly Fraternity of St. Peter was established and it was accepted by the Apostolic See. The Fraternity has two priestly seminaries (one in Germany and one in the USA) and its Superior General was then a Swiss priest Joseph Bisig<sup>122</sup>.

In the interview from 22<sup>nd</sup> October 1989 Lefebvre stated that John Paul II is certainly involved in international freemasonry: "In Rome heresy has nested. If bishops are heretics, it does not happen without the influence of Rome. If we separate from these people, it is similar to a situation when we separate from those with AIDS, a contagious disease. They have spiritual AIDS. There is no willingness to accept it"<sup>123</sup>.

The archbishop Lefebvre<sup>124</sup> died on 25<sup>th</sup> March 1991 at the age of 85 in Martigny (Switzerland). According to the message printed in „L'Osservatore Romano", John Paul II was hoping for some gesture of repentance in order to be able to free him from ecclesiastical punishments. The Pope prayed for his soul entrusting him to God's mercy<sup>125</sup>.

On 27<sup>th</sup> October 1999 bishop Bernard Fellay (Superior General of the Society of Pius X) wrote a letter<sup>126</sup> to John Paul II criticizing interreligious meeting in Rome<sup>127</sup> writing inter alia: "By means of such «interreligious» meetings, instead of confirming the brothers in faith, on the contrary, you propagate awful indifference and cause a schism inside the Church. Moreover, humanistic, ordinary and naturalistic issues of these meetings cause that the Church is losing its totally divine, eternal and supernatural mission following freemasonry ideals of the world peace, peace without the only Prince of Peace, Our Lord Jesus Christ"<sup>128</sup>. The date of submitting this letter was not accidental; it was the 13<sup>th</sup> anniversary of World Day of Prayer for Peace in Assisi and 28<sup>th</sup> October – 34<sup>th</sup> anniversary of announcing the *Nostra aetate* Declaration by the Council<sup>129</sup>.

## 6. The activity of the Society of Pius X in Poland

The Society of Pius X started its activity also in Poland on 15<sup>th</sup> July 1996<sup>130</sup>. The priorate of St. Pius X is located in Warsaw and it encompasses Central and Eastern Europe, and is run by an Austrian priest Karl T. Stehlin, working with two priests: Anzelm Ettelt and Edward Wośłek – a Polish Jesuit who in 1997 left his convent, and by starting to cooperate with the Society on 8<sup>th</sup> December 1999 he formally left the convent<sup>131</sup>. The Society has its own publishing house *Te Deum*, which publishes books devoted to the traditionalistic issues and a

<sup>122</sup> M. Karas, *Bractwo Św. Piusa X...*, p. 85.

<sup>123</sup> Z. Pawłowicz, *Stanowisko Lefebvre'a i lefebrystów...*, p. 192.

<sup>124</sup> M. Woźniak, *Najwięksi przeciwnicy papieża*, „Dziennik” 2003, from 16.10., pp. 12-13 adds that besides M. Lefebvre and Hans Küng two theologians of liberation - priest Gustavo Gutierrez from Peru and father Leonardo Boff from Brazil were the opponents of John Paul II.

<sup>125</sup> Z. Pawłowicz, *Lefebvre i lefebryści...*, p. 38.

<sup>126</sup> See B. Fellay, *List biskupa Bernarda Fellaya do Jego Świątobliwości Jana Pawła II*, „Zawsze Wierni” 1999, no. 31, pp. 11-12.

<sup>127</sup> See *Ohyda spustoszenia w Rzymie!*, edited by S. Cenckiewicz and others., „Zawsze Wierni” 1999, no. 31, pp. 80-83.

<sup>128</sup> Z. Pawłowicz, *Stanowisko Lefebvre'a i lefebrystów...*, p. 191.

<sup>129</sup> E. Sakowicz, *Lefebryści a religie...*, p. 42.

<sup>130</sup> J. Dębiński, *Integryzm i tradycjonalizm...*, p. 277; See D. Motak, *Antimodern Tendencies in Roman-Catholicism in Present-Day Poland*, „Przegląd Religioznawczy” 2002, no. 1, pp. 47-56.

<sup>131</sup> M. Karas, *Bractwo Św. Piusa X...*, p. 98.

bimonthly „Zawsze wierni”<sup>132</sup>. Since 1997 it has also got its own website<sup>133</sup>. The chapels of the Society can be found in Gdynia, Bajer, Toruń, Warsaw, Łódź, Częstochowa, Lublin, Chorzów, Cracow, Tuchów, Rzeszów<sup>134</sup>.

Some followers of the Society belong to small, non-parliamentary monarchical and nationalistic groups. According to Sławomir Cenckiewicz, the then editor of „Zawsze wierni” (at present Edward Wesołek is the editor<sup>135</sup>), a common denominator of political views of the whole traditionalistic group is the dissatisfaction with the changes which occurred in Poland after 1989<sup>136</sup>.

Polish traditionalists gained media publicity<sup>137</sup> after the Tridentine mass conducted by Karol Stehlin<sup>138</sup> on 15<sup>th</sup> and 30<sup>th</sup> August 1998 for about 200 people gathered in Oświęcim<sup>139</sup>. On 15<sup>th</sup> August Edward Wesołek was calling: “In Oświęcim there is our Polish Westerplatte! (...) We cannot agree on false world peace which will be established at the expense of Christ”<sup>140</sup>, and on 30<sup>th</sup> August Stehlin opposed the Polish Episcopal Council which, in his opinion, gathers “the opponents of the cross” and stigmatized “this awful ecumenism”<sup>141</sup>. It can be said that traditionalists connected with the Society joined the crusade against the dialogue with Judaism, secularization of the state, liberalization and modernizing tendencies in the Church<sup>142</sup>.

## 7. A dialogue of the Apostolic See with the Society of Pius X after 2000

In 2000 the talks with Vatican Curia were renewed. The talks concerned regulating the status of the Society and introducing general indult<sup>143</sup> for Tridentine mass which in 2003 resulted in the announcement issued by the Pontifical Commission *Ecclesia Dei* stating that the Catholics can fulfill their Sunday duty without sin and participate in the masses conducted by the Society<sup>144</sup>.

In August 2005 Benedict XVI granted the audience to the bishop Fellay. A breakthrough in the attempts to finish the schism was the Pope’s permit to conduct the mass in Latin without the need to ask the bishop for a consent. Pontifical document *Summorum Pontificum* from July 2007 says that: „in order to conduct a traditional mass, known as Tridentine, that is a mass from before the reform in 1970, no consent from the local bishop is needed”<sup>145</sup>.

---

<sup>132</sup> D. Motak, *Nowoczesność i fundamentalizm...*, p. 129.

<sup>133</sup> See [www.piusx.org.pl/5.12.2007](http://www.piusx.org.pl/5.12.2007).

<sup>134</sup> *Kaplice w Polsce*, <http://www.piusx.org.pl/kaplice/5.12.2007>.

<sup>135</sup> *Zawsze wierni*, [http://pl.wikipedia.org/wiki/Zawsze\\_Wierni/29.12.2007](http://pl.wikipedia.org/wiki/Zawsze_Wierni/29.12.2007).

<sup>136</sup> D. Motak, *Nowoczesność i fundamentalizm...*, p. 140, fn. 72.

<sup>137</sup> K. Lubczyński, *Promienie integralizmu...*, p. 56 adds that among the activists in Polish Catholic fundamentalist circle one can mention inter alia: Marek Jurek, Jan Łopuszański, Walerian Piotrowski.

<sup>138</sup> K. Stehlin, *Islam a Kościół katolicki*, „Zawsze Wierni” 1999, no. 31, pp. 46-63.

<sup>139</sup> D. Motak, *Nowoczesność i fundamentalizm...*, pp. 140-141.

<sup>140</sup> Ibidem, p. 141, fn. 73.

<sup>141</sup> Ibidem, p. 141, fn. 74.

<sup>142</sup> Ibidem.

<sup>143</sup> E. Wilemska, *Indult*, in: *Encyklopedia katolicka*, vol. 7, edited by S. Wielgus, Lublin 1997, col. 146 adds that indult is an act of a competent Church superior who releases from the obligation given by law issued on somebody’s request in the form of rescript.

<sup>144</sup> *Bractwo Świętego Piusa X*, [http://pl.wikipedia.org/wiki/Bractwo\\_%C5%9Awi%C4%99tego\\_Piusa\\_X/5.12.2007](http://pl.wikipedia.org/wiki/Bractwo_%C5%9Awi%C4%99tego_Piusa_X/5.12.2007).

<sup>145</sup> K. Wiśniewska, *Papież przywraca mszę łacińską*, <http://wyborcza.pl/1,76842,4487112.htm/5.03.2009>.

On 24<sup>th</sup> January 2009 Benedict XVI removed the excommunication from four bishops – Lefebvre’s followers – Bernard Fellay, Alfonso de Galaret, Tissier de Mallerais and Richard Williamson, ordained without the Pope John Paul II’s consent in 1988<sup>146</sup>. The message published by the Apostolic See says that Lefebvre’s followers declared obedience towards the teaching of the Church and confirmed the primacy of the bishop of Rome, then superior general of the Society the bishop Fellay upheld “some reservations” towards the Second Vatican Council underlying that „we are remaining in line with the archbishop Marcel Lefebvre”<sup>147</sup>.

On 27<sup>th</sup> January the bishop Fellay apologised Benedict XVI for anti-Semitic declarations of the bishop Richard Williamson and he prohibited him to express his opinions on the issues of history<sup>148</sup>. Williamson claims that “there is no evidence for the existence of gas chambers. The Holocaust is the invention of the Jews”<sup>149</sup>. Numerous Catholics and Jews criticize the Pope that before removing the excommunication, he did not impose on Williamson a public cancellation of declaration negating the Holocaust<sup>150</sup>.

Lack of Williamson’s repentance caused even greater crisis in the Catholic-Jewish relations during the pontificate of Benedict XVI, who tried to alleviate the mutual relations during his audience on 28<sup>th</sup> January saying: “Let Shoah will be a warning against oblivion, against negation or reduction of committed crimes. Because violence committed on another human being is violence towards all”<sup>151</sup>. General rabbinate of Israel cancelled a meeting with the Pope’s envoys planned for March and officially froze contacts with Vatican<sup>152</sup>.

Although Vatican secretary of state cardinal Tarcisio Bertone explained that the Catholic Church gave all the explanations in the case of the bishop Williamson, on 2 February Vatican issued first official message referring to the case of the bishop: “The views of Williamson in the case of Shoah are absolutely unacceptable. If he wants to be allowed to perform the bishop functions, he must adjust to them interchangeably and publicly deprecate”<sup>153</sup>.

On 12<sup>th</sup> February while making a speech to American rabbis Benedict XVI officially confirmed a visit to Israel planned for May 2009. Rabbi Artur Schneier said: „Thank you for the meeting. It will help us to understand and improve the situation”<sup>154</sup>. The Pope referred to the prayer of John Paul II, which was put into the Western Wall in 2000 in which he asked God for forgiveness w for all the sufferings and injustice which Jewish people had to go through in the past<sup>155</sup>.

In the Letter<sup>156</sup> (10<sup>th</sup> March 2009) proclaimed to the Catholic bishops from all over the world Benedict XVI admitted that Vatican made some serious mistakes in the case of

---

<sup>146</sup> *Benedykt XVI unieważnił decyzję Jana Pawła II*, [http://wiadomosci.gazeta.pl/Wiadomosci/1,81048,6197894,Benedykt\\_XVI\\_uniewaznil\\_ decyzje\\_Jana\\_Pawla\\_II.htm/5.03.2009](http://wiadomosci.gazeta.pl/Wiadomosci/1,81048,6197894,Benedykt_XVI_uniewaznil_ decyzje_Jana_Pawla_II.htm/5.03.2009).

<sup>147</sup> T. Bielecki, *Po co papieżowi lefebryści*, „Gazeta Wyborcza” 2009, no. 21, p. 2.

<sup>148</sup> T. Bielecki, *Papież pod pręgierzem*, „Gazeta Wyborcza” 2009, no. 23, p. 11.

<sup>149</sup> T. Bielecki, *Zagubiony Watykan*, „Gazeta Wyborcza” 2009, no. 25, p. 1.

<sup>150</sup> Ibidem.

<sup>151</sup> T. Bielecki, *Burza wokół papieża*, „Gazeta Wyborcza” 2009, no. 24, p. 9.

<sup>152</sup> Ibidem.

<sup>153</sup> T. Bielecki, *Watykan stawia ultimatum biskupowi negującemu Holocaust*, „Gazeta Wyborcza” 2009, no. 30, p. 10.

<sup>154</sup> T. Bielecki, *Papież jedna się z Żydami*, „Gazeta Wyborcza” 2009, no. 37, p. 10.

<sup>155</sup> Ibidem.

<sup>156</sup> See *List Jego Świątobliwości Benedykta XVI do biskupów Kościoła katolickiego dotyczący zniesienia ekskomuniki z czterech biskupów wyświęconych przez abp. Lefebvre’a*, „Niedziela” 2009, no. 15, pp. 4-5.



excommunication removal from four bishops who were Lefebvre's followers. He confessed: "I could not predict the unfortunate case that the excommunication removal was overlapped with Williamson's case. A discreet gesture of mercy towards the four bishops ordained in an important yet illegal manner, seemed suddenly as something totally different; as a denial of reconciliation between the Christians and the Jews, and therefore a set-back of what was indicated in the matter by the Council as a path for the Church"<sup>157</sup>.

On 30<sup>th</sup> June 2009 Benedict XVI submitted an open letter to bishop Fellay emphasizing that the condition for the unity of the Society with Rome is the acceptance of the Council and post-conciliar magisterium. French bishop Tissier de Mallerais stated in relation to this demand that „we cannot lay down our arms, we will nor strive for ceasing fire when the war is going on: which manifestation is last year's meeting in Assisi, beatification of false blessed, the Pope John Paul II (...) or requirement which is constantly reminded by Benedict XVI to accept the Council and the reforms of post-conciliar magisterium"<sup>158</sup>.

From October 2009 to April 2011 there were right meetings of the representatives of the Society and Vatican. On 14<sup>th</sup> September 2011 Vatican submitted a document to Lefebvre's followers. The document was so-called „Doctrinal preamble" which was a condition of a full unity with the Apostolic See<sup>159</sup>. On 16<sup>th</sup> March 2012 there was a meeting of the prefect of the Congregation for the Doctrine of the Faith, cardinal William Levada with bishop Fellay. The Apostolic See recognized that the response of the superior of the Society to this document is insufficient to overcome existing doctrinal problems<sup>160</sup>.

After the appointment of the new Pope Francis (pontificate since 19<sup>th</sup> March 2013) the prefect of the Congregation for the Doctrine of the Faith the archbishop Gerard Ludwik Müller, emphasized that if the Society wants to return to the Church unity, it will be necessary for its representatives to sign „the Doctrinal preamble" and stated that „everybody who does not accept them (the Councils, including the Second Vatican Councils – added S.G.) is not a Catholic"<sup>161</sup>. Time will show whether the Pope Francis will contribute to the improvement of the relations with Lefebvre's followers and will lead to reconciliation.

## 8. Summary

To sum up it must be indicated that the archbishop Lefebvre in a fanatic and undisputed way remained by his integrist principles. Nobody, including the Popes, could convince the archbishop that his principles are wrong and his attitude is anti-ecclesiastical<sup>162</sup>. The archbishop and his followers used a war language in their discussions, a language such as "Holy Roman Church has been occupied by the enemy"<sup>163</sup>. We should agree with

---

<sup>157</sup> Benedykt XVI, *List Benedykta XVI w sprawie lefebrystów*, translated by S. Tasiemski, <http://info.wiara.pl/index.php?grupa=4&cr=0&kolej=0&art=1236882385/17.03.2009>.

<sup>158</sup> *Lefebryści coraz ostrzej*, <http://kosciol.wiara.pl/doc/1306880.Lefebrysci-coraz-ostrzej/14.04.2013>.

<sup>159</sup> *Sentire cum Ecclesia?*,

<http://www.znak.org.pl/?lang1=pl&page1=news&subpage1=news00&infopassid1=12917&scrt1=sn/14.04.2013>.

<sup>160</sup> K. Gołębiowski, *Lefebryści – trudny dialog*, [http://ekai.pl/wydarzenia/temat\\_dnia/x53701/lefebrysci-trudny-dialog/?print=1/14.04.2013](http://ekai.pl/wydarzenia/temat_dnia/x53701/lefebrysci-trudny-dialog/?print=1/14.04.2013).

<sup>161</sup> J. Pytel, *Rzym: Abp Müller powraca do kwestii FSSPX*, <http://news.fsspx.pl/?p=2562/14.04.2013>.

<sup>162</sup> Z. Pawłowicz, *Stanowisko Lefebvre'a i lefebrystów...*, p. 193.

<sup>163</sup> J. Dębiński, *Integryzm i tradycjonalizm...*, p. 275, fn. 82.

Eugeniusz Sakowicz, the consultant of the Council for Religious Dialogue for Polish Episcopal conference, on the fact that the Society simply stopped while the Church went further on<sup>164</sup>.

Marcin Karas, an assistant professor in the Department of Ontology of the Institute of Philosophy at Jagiellonian University, dealing with study of religions in his research, emphasizes that many traditionalists are young people, what proves that „integrism” is not only a sentimental attachment of some elder people to the previous epoch, and the number of the opponents of „the modernization of Catholicism” will increase, which is proved by inter alia developing apostolate of the Society in Poland and other countries<sup>165</sup>.

The magisterium of the blessed John Paul II, especially during the ecumenical and interreligious dialogue, constitutes a very valuable contribution in overcoming fundamentalism and integrism<sup>166</sup>. The more the Pope was criticised, the more radical his attitude became, and the pontifical strategy for rejecting the extremes in their pure form and searching for an indirect way allowed him to escape the classification and he managed to convince almost the whole Catholic world to this style<sup>167</sup>. Even the critics of the Pope who think that his pontificate was an obstacle to the development of the Catholic Church are able to separate the person of Karol Wojtyła from his activity<sup>168</sup>.

Artur Domosławski, a Polish journalist and publicist of „Gazeta Wyborcza”, dealing with the issues of inter alia social conflicts and religious problems, emphasizes that Catholic fundamentalism differs from the Islamic one, it does not use physical violence, it confines itself to striving for legal guarantees for truth, it does not formulate openly the postulate of a confessional state because in a secular world it is a public suicide. If there is a possibility, it is willing to change religious orders into bills, it supports secular authority, it teaches and supervises the morality by means of the institution of the state and law<sup>169</sup>.

The Catholic Church with the same firmness opposes the determination of conviction about having religious truth and about obligation to accept it and proclaiming it the religious fundamentalism. While proclaiming a discovered and recognized truth, nobody can be forced to accept it because truth can only be presented and suggested for acceptance<sup>170</sup>. Zbigniew Kubacki in the article entitled „Religion and terrorism” emphasizes that the Catholic Church by means of interreligious dialogue should promote culture of tolerance and peace among nations and in this way, right at the source, fight the terrorism and fanaticism of religious basis<sup>171</sup>.

The pontificate of John Paul II opened new directions and new space for activity for Catholicism, but on the other hand it gave a reason and attitude for Catholic fundamentalism to offensive and attempts to appropriate the surrounding reality<sup>172</sup>.

---

<sup>164</sup> E. Sakowicz, *Lefebryści a religie...*, p. 56.

<sup>165</sup> M. Karas, *Bractwo Św. Piusa X...*, p. 99.

<sup>166</sup> L. Balter, *Fundamentalizm, integrizm, modernizm*, „Communio” 2002, no. 4, p. 37.

<sup>167</sup> J. Makowski, *Papież wody...*, p. 19.

<sup>168</sup> K.L. Woodward, *Jan Paweł Wielki*, „Newsweek Polska” 2005, supplement to no. 14, p. 11.

<sup>169</sup> A. Domosławski, *Wolność i fundamenty*, „Gazeta Wyborcza” 2003, no. 244, p. 22.

<sup>170</sup> M. Machinek, *Religia źródłem terroryzmu?*, „Homo Dei” 2006, no. 2, p. 37.

<sup>171</sup> Z. Kubacki, *Religia a terroryzm...*, p. 161.

<sup>172</sup> R.S. Czarnecki, *Fala fundamentalizmu...*, p. 76.

## Chosen bibliography:

- Blaza M., *Nowinkarstwo tradycjonalistów*, „Przegląd Powszechny” 2008, no. 5, pp. 73-88.
- Borucki J., *Prymat i nieomylność papieża według Bractwa Kapłańskiego św. Piusa X w kontekście nauki Soboru Watykańskiego I i Watykańskiego II*, „Studia Koszalińsko-Kołobrzeszkie” 2008, no. 13, pp. 117-132.
- Czarnecki R.S., *Fala fundamentalizmu*, „Dziś” 2007, no. 7, pp. 66-79.
- Fellay B., *Kryzys w Kościele. Przyczyny i środki zaradcze*, translated by Adam Gwiazda, Warsaw 1996.
- Fundamentalizm i kultury*, edited by M. Szulakiewicz and Z. Karpus, Toruń 2005.
- Henrici P., *Czy istnieje katolicki fundamentalizm?*, translated by Barbara Floriańczyk, „Communio” 2002, no. 4, pp. 38-47.
- Jan Paweł II. *Encyklopedia dialogu i ekumenizmu*, edited by E. Sakowicz, Radom 2006.
- Karas M., *Bractwo Św. Piusa X, katolicki ruch tradycjonalistyczny w dobie posoborowej*, „Nomos” 2000, no. 30/31, pp. 79-99.
- Karas M., *Status Ecclesiae indirecte subordinatur. Koncepcja wzajemnych relacji Kościoła i państwa we współczesnym integralizmie rzymskokatolickim*, „Archiwum Historii Filozofii i Myśli Społecznej” 2004, vol. 49, pp. 53-84.
- Lefebvre M., *Kościół przesiąknięty modernizmem*, Chorzów-Poznań 1995.
- Lefebvre M., *Oni Jego zdetronizowali. Od liberalizmu do apostazji. Tragedia soborowa*, Warsaw 1997.
- Lubczyński K., *Promienie integralizmu*, „Dziś” 1997, no. 12, pp. 52-57.
- Motak D., *Antimodern Tendencies in Roman-Catholicism in Present-Day Poland*, „Przegląd Religioznawczy” 2002, no. 1, pp. 47-56.
- Motak D., *Nowoczesność i fundamentalizm. Ruchy antymodernistyczne w chrześcijaństwie*, Cracow 2002.
- Mynarek H., *Zakaz myślenia. Fundamentalizm w chrześcijaństwie i islamie*, Gdynia 1996.
- Od krucjat ku spotkaniu z muzułmanami w duchu św. Franciszka z Asyżu*, edited by S.B. Brzuszek and others, Warszawa-Rzym 2005.
- Pawłowicz Z., *Lefebvre i lefebryści. Schizma u schyłku XX wieku*, Gdańsk 1998.
- Pawłowicz Z., *Stanowisko Lefebvre’a i lefebrystów wobec wolności religijnej*, „Collectanea Theologica” 2001, no. 2, pp. 180-194.
- Sakowicz E., *Die Kritik Am Interreligiösen Dialog durch die Priesterbuiderschaft St. Pius X*, „Nurt SVD” 2002, no. 2, pp. 51-66.
- Sakowicz E., *Lefebryści a religie niechrześcijańskie*, „Homo Dei” 2001, no. 2, pp. 42-56.
- Sakowicz E., *Rozmowy o islamie i dialogu*, Lublin 2007.
- Schmidberger F., *Bomby zegarowe Soboru Watykańskiego II*, Warsaw 1997.
- Schmidberger F., *Przekazałem to co otrzymałem. Konsekracje biskupów dokonane przez abpa Marcela Lefebvre 30 czerwca 1988 r.*, Warsaw 1997.
- Schmidberger F., *Sobór Watykański II – rewolucja kopernikańska w Kościele*, „Zawsze Wierni” 1999, no. 31, pp. 18-20.

