

POLSKO-ARMEŃSKI ROCZNIK Z ZAKRESU HISTORII, PRAWA I NAUK POLITYCZNYCH

**ԼԵՀ-ՀԱՅԿԱԿԱՆ ՏԱՐԵԳԻՐԸ. ՊԱՏՄՈՒԹՅՈՒՆ,
ԻՐԱԿՈՒՆԸ, ԶԱՂԱՔԱԳԻՏՈՒԹՅՈՒՆ**

**THE POLISH-ARMENIAN YEARBOOK:
HISTORY, LAW, POLITICAL SCIENCE**

**ПОЛЬСКО-АРМЯНСКИЙ ЕЖЕГОДНИК
ПО ПРОБЛЕМАМ ИСТОРИИ, ПРАВА И ПОЛИТОЛОГИИ**

Pod redakcją:

prof. Ruben A. Safrastyan
dr Jarosław Turlukowski
mgr Michał P. Sadłowski



**INSTYTUT
PRAWA WSCHODNIEGO**
im. Gabriela Szerszeniewicza

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Instytut Prawa Wschodniego im. Gabriela Szerszeniewicza

Centrum Badań nad Prawem Europy Wschodniej i Azji Centralnej
Wydziału Prawa i Administracji Uniwersytetu Warszawskiego

Armeńska Akademia Nauk

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WPROWADZENIE

Z wielką przyjemnością prezentujemy Państwu pierwszy numer „Polsko-Armeńskiego Rocznika z zakresu Historii, Prawa i Nauk Politycznych” („Польско-армянский ежегодник по проблемам истории, права и политологии”).

Rocznik jest wspólnym dziełem pracowników Centrum Badań nad Prawem Europy Wschodniej i Azji Centralnej Wydziału Prawa i Administracji Uniwersytetu Warszawskiego, Instytutu Prawa Wschodniego im. G. Szerszeniewicza oraz Ormiańskiej Akademii Nauk. Wpływy ormiańskie (ze względu na historyczne perypetie celowo nie odwołuję się do państwowości) zawsze były obecne w Polsce, współtworzyły jej kulturę. Część niniejszego tomu jest poświęcona ukazaniu tych związków. Na szczególne podkreślenie zasługuje to, że rok 2017 był jubileuszowy – minęło 650 lat od nadania przez Kazimierza Wielkiego przywileju dla Ormian w Polsce. Oczywiście, nadanie to było swojego rodzaju ustabilizowaniem wcześniejszego osadnictwa ludności ormiańskiej w Polsce. Szkieletowe opisanie osiągnięć diaspory ormiańskiej w Polsce zajęłoby kilka tomów, właściwie wspólnota ormiańska stała się częścią narodu polskiego, zachowując przy tym swoją odrębność. Niestety, za wielowiekową lojalność i pracę nie zawsze Polska odpowiednio się odpłacała – wypada tu wspomnieć zmuszanie polskich Ormian przemocą do przyjmowania unii z kościołem rzymskokatolickim, częściowo skuteczną próbę oderwania od Świętego Apostolskiego Kościoła Ormiańskiego.

Rocznik nie ma wszakże charakteru wyłącznie historycznego. Rozpatrujemy dzisiejsze stosunki polsko-ormiańskie nie pod kątem przeszłości, lecz jako pole do owocnej współpracy dwóch narodów i państw. Mimo że oba kraje łączą poprawne stosunki polityczno-prawne, wiele do życzenia pozostawia poziom wiedzy o współczesnej polityce i prawie Polski w Armenii oraz Armenii w Polsce. Wydanie rocznika ma na celu ukazanie różnych aspektów prawa i obecnej polityki poprzez połączenie sił naukowców z obu krajów. Od strony kulturowej i geograficznej Armenia jest wyjątkowo interesującym chrześcijańskim krajem sąsiadującym z regionalnymi i światowymi graczami politycznymi jak Rosja, Iran,

Gruzja, Azerbejdżan czy Turcja. Znajomość realiów tych krajów w Armenii jest dość wysoka, z czego Polska mogłaby skorzystać.

Mamy nadzieję, że rocznik będzie platformą naukową, miejscem spotkania myśli polskich i ormiańskich naukowców o profilu historycznym, prawniczym i politologicznym.

Доктор права ЯРОСЛАВ ТУРЛУКОВСКИ

*Глава Фонда Институт Восточного Права
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ПРЕДИСЛОВИЕ

С огромным удовольствием представляем Вам первый номер („Польско-армянского ежегодника по проблемам истории, права и политологии”).

Ежегодник является общим делом Центра Исследований Восточной Европы и Центральной Азии факультета права и администрации Варшавского университета, Института Восточного Права им. Габриеля Шершеневича и Национальной академии наук Армении. Армянское влияние (учитывая исторические перипетии я сознательно не говорю о государственности) всегда присутствовало в Польше, создало ее культуру. Часть представленных работ подчеркивает такие связи. Нельзя не вспомнить, что 2017 год был юбилейным – прошло 650 лет со времени получения армянами от Короля Казимира Великого привилегий в Польше. Без сомнения, получение привилегий было своеобразным санкционированием ранее существующего поселения армян в Польше. Даже короткое описание армянской диаспоры в Польше заняло бы несколько томов, собственно говоря армянская община стала частью польского народа, сохраняя свою самобытность. К сожалению, за многовековую преданность и труд Польша не всегда платила благодарностью, следует вспомнить принуждение польских армян к принятию унии с римо-католическим костелом, частично удавшуюся попытку отрыва от Святой Апостольской Армянской Церкви.

Тем не менее, ежегодник не носит исключительно исторический характер. Сегодняшние польско-армянские отношения рассматриваются не с точки зрения прошлого, но как поле плодотворного сотрудничества двух народов и государств. Не смотря на то, что обе страны связаны хорошими политико-правовыми отношениями, оставляет желать лучшего уровень знаний о современной политике и праве Польши в Армении и Армении в Польше. Задачей издания ежегодника является презентация разных аспектов права и современной политики через взаимосвязь научных кругов наших стран.

С географической и культурной точек зрения Армения является интересной христианской страной соседствующей с такими региональными и мировыми политическими игроками как Россия, Иран, Грузия, Азербайджан или Турция. Понимание реалий этих стран в Армении довольно глубокое, чем Польша могла бы воспользоваться.

Надеемся, что ежегодник станет научной площадкой, местом встречи идей польских и армянских ученых в области истории, юриспруденции и политологии.

Academician, Prof. Dr. prof. RUBEN A. SAFRASTYAN

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Armenian State Pedagogical University after Kh. Abovyan*

ДВА СЛОВА

Инициаторами издания настоящего сборника выступили Институт востоковедения Национальной Академии Наук Республики Армения (ИВ НАН РА) и Факультет права и администрации Варшавского университета (ФПА ВУ), которые совместными усилиями организовали в ноябре 2017 года в Ереване Круглый стол, посвященный историческим контактам между польским и армянским народами на протяжении нескольких столетий, а также современному их состоянию. Организаторами двигало стремление не только попытаться пролить дополнительный свет на особенности этих контактов, берущих свое начало еще в средние века, но и заложить основу для дальнейшего научного сотрудничества между двумя научными центрами.

В ходе подготовки материалов Круглого стола к публикации возникла идея расширить тематику и круг авторов будущего сборника за счет привлечения специалистов также из других научных центров и университетов как Польши, так и Армении, а также сделать его периодическим изданием. В результате, подготовительный период, необходимый для издания сборника, несколько затянулся. Вместе с тем, удалось, выйдя за рамки исследований в области исключительно армяно-польских отношений, сделать более разнообразной тематику включенных в сборник статей. Думается, создан неплохой задел для дальнейших совместных научных изысканий и новых томов армяно-польского сборника.

Prawnik, historyk prawa, ekspert ds. obszaru poradzieckiego. Naukowo związany z Centrum Badań nad Prawem Europy Wschodniej i Azji Centralnej WPiA UW, Instytutem Historii Prawa UW oraz Fundacją Instytut Prawa Wschodniego im. Gabriela Szerszeniewicza. Obecnie zawodowo zajmujący stanowisko specjalistyczne w Departamencie Współpracy Międzynarodowej Ministerstwa Edukacji Narodowej RP.

WSTĘP

Fakt wydania „Polsko- Armeńskiego Rocznika z zakresu Historii, Prawa i Nauk Politycznych” to ważne wydarzenie nie tylko z punktu widzenia rozwoju relacji między ekspertami i naukowcami z Polski i Armenii, ale i w zakresie całokształtu stosunków między Warszawą i Erywaniem. Nasze państwa i narody, mimo, że wydawałoby się odległe geograficznie, z racji historii oraz podobieństw religijno-kulturowych, są sobie bliskie. Ormiańska diaspora budowała niegdyś rzeczywistość i potęgę dawnej Rzeczypospolitej. I dzisiaj Ormianie są dość aktywni w Polsce, a Polacy coraz częściej rozpatrują Armenię jako cel swoich wypraw turystycznych, czy miejsce do prowadzenia handlu. Dla naszej dyplomacji obecność w regionie Kaukazu Południowego i współpraca z Armenią to szansa na lepsze rozumienie coraz bardziej komplikującego się świata. Dla Armenii, zwłaszcza po tzw. aksamitnej rewolucji z 2018 r., współpraca z Polską to szansa na zintensyfikowanie dążeń do modernizacji swojego państwa i wzmocnienia stopnia jego bezpieczeństwa. Dlatego też każda działalność w sferze współpracy naukowej pomiędzy naszymi państwami jest dla nas wymierną korzyścią i wzbogaca nasz wspólny dziejowy dorobek. Wpisuje się ona zresztą w realizację Umowy między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Armenii o współpracy kulturalnej i naukowej, sporządzonej w Warszawie w dniu 27 stycznia 1998 r.

Niniejszy Rocznik, stanowiący efekt pierwszych wizyt naukowców związanych z Centrum Badań nad Prawem Europy Wschodniej i Azji Centralnej WPiA UW oraz Fundacją Instytut Prawa Wschodniego im. Gabriela Szerszeniewicza w Erywaniu, otwiera niejako kolejną płaszczyznę wymiany doświadczeń, informacji oraz wiedzy. Jako jeden z redaktorów niniejszego Tomu mam nadzieję, że posłuży on do lepszego poznania naszych krajów, a także jeszcze bardziej zbliży bardzo prężne ormiańskie środowiska naukowe ku współpracy z ośrodkami z naszego państwa.

МИХАЛ ПАТРЫК САДЛОВСКИ

Юрист, историк права, эксперт по постсоветскому пространству. Научно связан с Центром исследований по праву Восточной Европы и Центральной Азии на Факультете Права и Администрации Варшавского университета, Институтом истории права Варшавского университета, Фондом Института Восточного права имени Габриэля Шерзеневиц. В настоящее время занимает должность старшего специалиста в Департаменте международного сотрудничества Министерства национального образования Республики Польша.

ВВЕДЕНИЕ

Факт издания «Польско-армянского Ежегодника по проблемам истории, права и политологии» - это важное событие не только с точки зрения развития отношений между экспертами и учеными из Польши и Армении, но также совокупности отношений между Варшавой и Ереваном. Наши государства и народы, несмотря на, казалось бы, географическую удаленность, в силу истории и религиозно-культурных сходств, близки друг другу. Армянская диаспора оказывала когда-то воздействие на повседневную жизнь Речи Посполитой и строила ее могущество. Также сегодня Армяне довольно активны в Польше, а поляки рассматривают Армению как цель своих туристических выездов, либо место ведения торговли. Для нашей дипломатии присутствие в регионе Южного Кавказа и сотрудничество с Арменией является шансом на то, чтобы лучше понять все более усложняющийся мир. Для Армении, особенно после так называемой бархатной революции 2018 г., сотрудничество с Польшей дает шанс интенсифицировать стремления к модернизации своего государства и укреплению уровня его безопасности. Поэтому любая деятельность в сфере научного сотрудничества между нашими государствами является для нас взаимно выгодой и обогащает наше совместное историческое достояние. Оно впрочем вписывается в осуществление Договора между правительством Республики Польша и правительством Республики Армения о культурном и научном сотрудничестве, заключенного 27 января 1998 г. в Варшаве.

Настоящий Ежегодник, являющийся эффектом первых визитов ученых, связанных с Центром исследования Права Восточной Европы и Центральной Азии Факультета права и администрации Варшавского университета и Фондом «Институт восточного права им. Габриэля Шерзеневица»

в Ереване, создает ещё одну возможность обмена опытом, информацией и знаниями. Как один из редакторов настоящего Тома я надеюсь, что он будет способствовать лучшему познанию наших стран, а также еще больше сблизит очень динамичную армянскую научную среду с научными центрами из нашей страны.

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ARMENIAN COMMUNITY OF USA: LOBBING AND GEOPOLITICS

ABSTRACT

The article examines some important directions of lobbying activities of the Armenian community in the United States. It is shown that in some cases it receives a geopolitical significance.

Key words: Armenian Diaspora, Armenian lobby of the USA, 907th amendment, Armenian Genocide, Baku-Tbilisi-Kars railway

ԱՄՆ-Ի ՀԱՅ ՀԱՄԱՅՆՔԸ. ԼՈՒԲԻՍՏԱԿԱՆ
ԳՈՐԾՈՒՆԵՈՒԹՅՈՒՆԸ
ԵՎ ԱՇԽԱՐՀԱՔԱՂԱՔԱԿԱՆՈՒԹՅՈՒՆԸ

Հոդվածում քննության են առնվում ԱՄՆ-ի հայ համայնքի լոբիստական գործունեության մի շարք կարևոր ուղղություններ: Ցույց է տրվում, որ այն որոշ դեպքերում ստանում է աշխարհաքաղաքական նշանկություն:

ARMENIAN COMMUNITY OF USA: LOBBING AND GEOPOLITICS

The Armenian Diaspora is one among the largest diasporas in the world: more than two thirds of all Armenians, that is about seven million, live outside of Armenia. The largest Armenian communities of the Western countries live in the USA and France. In those countries, where a significant number of Armenians live compactly, the Pan-Diaspora organizations set before themselves foreign policy objectives besides those of Inner-Diaspora or Armenian significance; they are trying to influence the foreign policy of their country of residence through their lobbying structures. They focus their attention mainly on the questions of recognition and condemnation of the Armenian Genocide in the Ottoman Empire at the beginning of the 20th century as well as on helping Armenia and Nagorno-Karabakh.

In some cases, the influence of Armenian lobby is gaining geopolitical importance, making an impact on foreign political processes at the regional and, even more, over regional level. The present article deals with the geopolitical component of foreign policy vector of lobbying activities of the pan-diaspora organizations on the example of Armenian Diaspora in the USA, where about a million and six hundred thousand Armenians live according to the latest data of the Ministry of Diaspora of Armenia.

The Armenian lobby of the USA succeeded particularly in creating the greatest "potential of influence"¹, which make it possible time after time to achieve the inclusion of elements of pro-Armenian agenda in the decision making and implementation process within the sphere of foreign policy. In those cases the Diaspora organizations act like "groups of interests"², having been integrated in the political life of the host country. Starting with 1995, a bipartisan group acts in the US Congress on the promotion of questions, related to Armenians; that is the so-called "Armenian Caucus". This group consists of more than hundred people. At present, 125 lawmakers are members of this entity³.

As consideration of different cases of the lobbying influence on foreign policy shows, the relevant structures of the Pan-Diaspora organizations concentrate their activities in the legislative bodies, applying, at the same time, various methods

¹ We borrowed the term from I. D. Loshkarev, offering to use it when making a detailed description of the influence of ethnic lobby on the foreign policy of the host country. See Loshkarev Ivan D., *Resources of Ethic Lobbying in US Foreign Policy: Theoretical Aspects*, - *World Economy and International Relations*, 2017, vol. 61, no. 3, p. 81. (In Russian).

² Shain Yossi, Barth Aharon, *Diasporas and International Relations Theory*, - *International Organization*, - Volume 57, Issue 3, Summer 2003, p. 453.

³ Congressional Caucus on Armenian Issues. URL: <https://cqrcengage.com/aaainc/caucus> (Accessed: 20.10.2018).

of indirect lobbying – operation with the expert community and Mass Media, organization of mass actions, publishing activities etc.

Armenian lobbyists have to overcome the fierce resistance of both Azerbaijani and Turkish Diaspora organizations as well as the state structures of both Azerbaijan and Turkey, which invest huge financial resources in organizing anti-Armenian activities. In the periods when it was possible to gain a favorable attitude from the executive power the lobbying activities was the most successful.

The potency of the Armenian Diaspora of the USA came to its peak in 1990s. In those years there were a considerable number of people of Armenian descent, working in the administrations of presidents D. Reagan and G. Bush Sr., or supporters of rapprochement with Armenia, which was considering as a potential ally of the USA while President G. Bush was in power. For this period the Armenian Diaspora of the USA reached the point that Washington provided annual assistance to Armenia at about 90 million dollars, an amount quite significant for the blockaded Armenia in those times. The Congress adopted the 907th amendment to the "Act in support of freedom", which was possible to maintain despite the violent resistance of Clinton's administration and various influential inside American "groups of interests" and lobbying organizations, including those of Turkish Azerbaijani, which excluded the possibility of transactions for the sale of American weapons to Azerbaijan⁴. As will be shown below, in 2006 the Armenian lobby succeeded in obtaining the support of the US president's administration as well, G. W. Bush's this time. It is typical that in 2006 Zbigniew Brzezinski considered the lobbying structures of the Armenian Diaspora in the USA as the most effective organizations along with those of Israeli and Cuban⁵.

At the same time, there were many cases when the opponents of the Armenian lobbying structures were the higher executive authorities of the host country, the United States, who qualified the foreign policy objectives of the Armenian Diaspora as incompatible with the national interests and priorities of the USA. The most successful result of activities of Armenian lobby in the USA, having gained geopolitical significance as well, is undoubtedly the 907th amendment to the "Act in support of freedom", adopted by the US Congress in 1992. It forbids the United States to provide any kind of assistance to the government of Azerbaijan until that time when Azerbaijan "will stop all kinds of blockades and the offensive use of force against Armenia and Nagorno-Karabakh". The amendment limited Azerbaijan's ability to achieve victory in Karabakh war. Along with that and according to the Amendment, Azerbaijan was becoming the only post-soviet state, deprived

⁴ Gregg H. S. Working paper #13: Divided they conquer: the success of Armenian ethnic lobbies in the United States//DSpace@MIT. URL: <http://hdl.handle.net/1721.1/97604> (Accessed: 20.10.2018).

⁵ Brzezinski Z. A Dangerous Exemption: Why should the Israel lobby be immune from criticism? - *Foreign Policy*, July/August 2006, N 155, FP Roundtable, p. 63, - URL: <http://mearsheimer.uchicago.edu/pdfs/A0042.pdf> (Accessed: 20.10.2018).

of the American assistance and gotten into situation of pariah in this way. And this is then when the state, possessing rich hydrocarbon reserves and bordering Iran, presented significant interest for the regional strategy of the USA. The American authors tend to consider the adoption of the 907th amendment one of the most successful examples of lobbying activities as a whole⁶.

The years that passed since the adoption of the 907th amendment convinced the administrations of President B. Clinton and J. W. Bush that it seriously limits the ability of the United States not only to increase its influence in Azerbaijan, but also in the region as a whole, affecting negatively the American strategy to establish its control over the entire post-Soviet space. This amendment was described as contradicting the national interests of the United States. In a letter, sent by the Secretary of State of the time, Madeline Albright, in September 1998 to the President of the House of Representatives of the United States Congress⁷.

However, the attempts initiated by the administration of Clinton to achieve the abolition of the 907th Amendment by the Chamber of Representatives failed. The Armenian lobby succeeded in defending it. The Armenian lobby had to fight not only the executive power, but also the great influence of the "oil lobby" in Washington, which was representing 14 oil companies and the Israeli lobby, supported by the pro-Turkish organizations⁸.

Only after the terrorist act of September 11, 2001, the administration of George W. Bush succeeded in 2002 in securing the right to temporarily suspend the 907th amendment under the pretext of intensifying the fight against international terrorism and using the capabilities of Azerbaijan for this purpose. In a statement delivered on this issue and circulated by the Armenian National Committee of America, one of the two main lobbying structures of the US Armenian Diaspora, noted that the State Department could not, however, succeed in gaining the right uncontrollably, without reporting to Congress, to use the possibilities of a presidential decree⁹.

Although the executive authorities managed to circumvent finally the 907th amendment, the damage to the US strategic goals in the South Caucasian region was substantial from a geopolitical point of view. The ethnic lobby of a small country, located thousands of kilometers from the most powerful country in the world, managed to become a factor in geopolitics for quite a long time.

⁶ Goltz T. A Montana perspective on international aid and ethnic politics in Azerbaijan. URL: <http://www.zerbaian.com/azeri/goltz1.htm> (Accessed: 20.10.2018).

⁷ Cornell S. E. Small nations and great powers: a study of ethnopolitical conflict in the Caucasus. London, 2001, p. 377.

⁸ Gregg H. S. Working paper #13: Divided they conquer: the success of Armenian Ethnic Lobbies in the United States//DSpace@MIT. URL: <http://hdl.handle.net/1721.1/97604> (Accessed: 20.10.2018).

⁹ Armenian national committee of America. Press release: President Bush waives section 907. URL: http://web.archive.org/web/20100615111241/http://anca.org/press_releases/press_releases.php?prid=151 (Accessed: 20.10.2018).

As noted earlier, one of the priorities of the Armenian Diaspora and its lobbying organizations is the official acceptance and condemnation by the United States the fact of the Armenian Genocide in the Ottoman Empire. This activity is of great importance for consolidating the identity of Armenians and mobilizing them around Diaspora organizations. At the same time, it contains significant geopolitical potential, as it threatens the allied relations of the USA with Turkey, a member of NATO and an important center of power in Eurasia.

In the US, the issue of recognition and condemnation of the Armenian genocide has become the subject of political speculation. The oppositionist politicians generously give promises that after they come to the White House they will officially recognize this historical fact of the tragic history of Armenian people, but after winning the elections they forget about their promises. A recent example is the 44th President of the United States, Barack Obama, who stated during the election campaign that "the Armenian Genocide is not an allegation, a personal opinion, or a point of view, but rather a widely documented fact supported by an overwhelming body of historical evidence. The facts are undeniable."¹⁰

Although the recognition of genocide has so far been achieved at the federal level, on several occasions, when the goal was especially close, there was a serious danger to the continuation of allied relations between the United States and Turkey. The White House, which was subjected to strong pressure from Turkey, managed to rectify the situation only at the cost of enormous efforts. It is interesting to note that Armenian lobbying organizations are well aware of the geopolitical implications of the US recognition of Armenian Genocide¹¹.

At present, when tensions in the US-Turkish relations are increasing once again, we should expect the next stage of intensifying the efforts of Armenian lobby towards the recognition of the fact of Armenian Genocide and its condemnation by the USA. In the struggle for recognition of genocide, the Armenian lobby coordinates its activities with Greek organizations. In addition, the parties also cooperate in making efforts to stop providing assistance to Turkey from the United States. To counter the activity of both Armenian and Greek lobbies and their supporters in the Congress, Turkey uses a wide range of means of pressure, including the threat to restrict the admission of the US military to the base at Incirlik, which plays an important role in ensuring the advancement of American military-political interests in the Middle East¹². This threat has not been carried

¹⁰ See Armenian Revolutionary Federation, Western U.S.A.: A.R.F. News, October 2008, - <http://www.stopterroristparole.org/assets/a13-arf-west-ayf-aggression.pdf> (Accessed: 20.10.2018).

¹¹ See Armenian Genocide – ANCA Position: Truth & Justice for the Armenian Genocide. URL: <https://anca.org/armenian-genocide-anca-position/> (Accessed: 20.10.2018).

¹² Shenin A. S., Ethnic Lobbyism and Washington's Turkish Policy in the End of the 1990s, - Izvestia of Saratov University. New Series. Series: Sociology. Politology, 2014, T. 14, № 2, p. 115 (In Russian).

out so far, but the next stage of revitalization of Armenian-Greek lobby, which seems to be coincided with the period of the greatest deterioration in US-Turkish relations, makes the prospect of its realization more real.

The Armenian lobby of the United States counteracted actively the plans of American financing for the construction of the Baku-Tbilisi-Kars railway (BTK), which was supposed to link Azerbaijan, Georgia and Turkey, leaving aside Armenia, which in turn was linked to Turkey via the Gyumri-Kars railway line. This railway was built at the end of the 19th century, at a time when both cities were part of the Russian Empire. In 1993, Turkey unilaterally closed it, thereby joining the blockade of Armenia by Azerbaijan.

One of the geopolitical goals of the construction of the Baku-Tbilisi-Kars railway was to strengthen the isolation of Armenia in order to force it to make concessions when dealing with disputed issues with Turkey and Azerbaijan¹³. It is noteworthy that preliminary discussions on this project between the parties began in July 1993, immediately after the last train passed through Gyumri-Kars in June of the same year. In May 2005, the leaders of the three countries made an official statement about their intention to build the Baku-Tbilisi-Kars railway. It was announced that construction should begin in the next 2006 and end in two years - in 2008.

However, the construction was possible to start in 2007 only. The construction was delayed for almost ten years instead of two and ended in 2017. The reason for the delay was the lack of funding: the participants themselves had to find the necessary funds, because the US and EU refused to finance the construction.

The refusal of the United States was conditioned by the activities of Armenian lobby, which included not only the relevant structures of the Armenian Diaspora of the United States, but also the government of Armenia, as well as the population of the Armenian region of Javakhk as part of modern Georgia, through which the railway passed. In particular, the leader of Armenians, living in Javakhk, Vahagn Chakhkalyan made a strong condemnation of BTK¹⁴.

The fight against BTK showed a fairly high level of coordination of efforts between the Armenian Diaspora of the United States and Armenia. Thus, Armenian Foreign Minister V. Oskanian expressed concern over the BTK project during a meeting with Secretary of State, C. Rice, when visiting the USA in June 2005; and the next month the members of the House of Representatives, F. Pallone and J. Knollenberg, who were co-chairmen of the Armenian Support Group, as well as the member of the House of Representatives, J. Radanovich, introduced a bill

¹³ See in detail Usta M., The Possible Effects of the KATB Project over the Caucasus. URL: www.metinusta.net/events/caucasus2.pdf (Accessed: 20.10.2018).

¹⁴ Cm. Ziyadov T., Officials meet to discuss south Caucasus rail system // Eurasia daily monitor, Volume: 2 Issue: 232, December 14, 2005. URL: <https://jamestown.org/program/officials-meet-to-discuss-south-caucasus-rail-system/> (Accessed: 20.10.2018).

to Congress that was called the "Act on the integration of the South Caucasus and on open railways".

The bill noted that BTK "deliberately bypasses Armenia" and aims to "isolate it from the East-West trade corridors," which is contrary to the US regional policy¹⁵. On this basis, the bill prohibited the support of the United States to any railway line that connects Baku, Tbilisi and Kars and "deliberately excludes cities in Armenia"¹⁶. The co-authors of the bill were 90 congressmen. In March 2006, a similar bill was submitted to the Senate. The name and text of the Senate draft law were identical to the draft, submitted to the House of Representatives a year earlier¹⁷.

Over the next several months, both the House of Representatives and the Senate voted for the adoption of the provisions of the draft laws, previously submitted for discussion in the form of an amendment to the "Act confirming the powers of the Export-Import Bank". Thus, by law, the US Congress banned the financing of the BTK. Speaking at a debate in one of the House of Representatives' committees, Congressman J. Crowley said: "The American taxpayer is not obliged to finance a project that is contrary to the interests of the United States government in the South Caucasus."¹⁸ Mentioning the government interests by the congressman was not accidental: the bills received support from the administration of President George W. Bush¹⁹. Thus, this time the activities of Armenian lobby on the sidelines of legislative power received support from the executive branch.

The geopolitical implications of successful lobbying activities in 2005-2006 are still being felt. The protracted construction of the BTK slowed down the process of creating a geopolitical axis in the South Caucasus to a certain extent, that is, Turkey-Azerbaijan-Georgia, which threatens to seriously change the balance of power in the region.

Based on the analysis, one can conclude that the lobbying activities of the US Armenian Diaspora have a geopolitical component. Further strengthening of the relationship between Homeland-Diaspora will enhance the geopolitical capabilities of Armenian lobby of USA.

¹⁵ See in the text of the bill: H.R.3361 - South Caucasus Integration and Open Railroads Act of 2005, 109th Congress (2005-2006), Congress.gov, - URL: <https://www.congress.gov/109/bills/hr3361/BILLS-109hr3361ih.pdf> (Accessed: 20.10.2018).

¹⁶ Ibid.

¹⁷ See in the text of the bill: S. 2461 (109th): South Caucasus Integration and Open Railroads Act of 2006 // Congress.gov, - URL: <https://www.govinfo.gov/content/pkg/BILLS-109s2461is/pdf/BILLS-109s2461is.pdf> (Accessed: 20.10.2018).

¹⁸ ANCA welcomes Committee adoption of Crowley amendment to block U.S. subsidy for Armenia railroad bypass: House Financial Services Committee Approves Measure by Unanimous Voice Vote, - Armenian National Committee of America: Press Release, June 14, 2006, - URL: <https://anca.org/press-release/anca-welcomes-committee-adoption-of-crowley-amendment-to-block-u-s-subsidy-for-armenia-railroad-bypass/> (Accessed: 20.10.2018).

¹⁹ Lussac S. The Baku-Tbilisi-Kars railroad and its geopolitical implications for the South Caucasus // Caucasian review of international affairs. - Autumn 2008. - Vol. 2 (4). - P. 216.

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PRIEST HAKOB SARIKYAN'S MEMOIRS ON THE POLISH PEOPLE AND POLAND IN HIS DIARY OF "EIGHT MONTHS IN THE WESTERN FRONTS OF THE GREAT WAR"

ABSTRACT

Being as a military priest Hakob Sarikyan during World War Second in 1914-1915 about eight months was in the western front, visited in different cities and villages. In his diary he described what he saw, whom he met.

Priest Hakob Sarikyan's memoir-diary, entitled as "Eight months in the Western fronts of the Great war" is an important and interesting source not only in connection with the participation of the Armenians in the Western fronts of the First World War, but it also gives interesting information on Poland and the Polish people, inhabiting The Eastern and the Western Galicia, on a number of questions concerning the everyday life, habits of the latter, their attitude towards the war and some other issues.

Հակոբ քահանա Սատիկյանի տեղեկությունները Լեհաստանի և լեհերի մասին իր "Ութ ամիս Մեծ պատերազմի արևմտյան ռազմավայրերում" հուշագրության մեջ Բանալի բառեր. Հակոբ Սատիկյան, զինվորական քահանա, Երկրորդ համաշխարհային պատերազմ, Արևմտյան ռազմաճակատ, Գալիցիա, լեհաստան, լեհ ժողովուրդ Երկրորդ համաշխարհային պատերազմի տարիներին 1914-1915 թվականներին Հակոբ քահանա Սատիկյանը որպես զինվորական քահանա մոտ ութ ամիս գտնվել է արևմտյան ռազմաճակատում՝ այցելելով գանազան քաղաքներ և գյուղեր, նկարագրել է այն ինչ տեսել է և նրանց ում հանդիպել է:

Քահանա Հակոբ Սատիկյանի օրագիր-հուշագրությունը, որը վերնագրված է "Ութ ամիս Մեծ պատերազմի արևմտյան ռազմավայրերում" կարևոր և հետաքրքիր աղբյուր է ոչ միայն առաջին աշխարհամարտին արևմտյան ռազմաճակատում հայերի մասնակցության վերաբերյալ, այլև այն տալիս է հետաքրքիր տեղեկություններ Լեհաստանի և լեհերի մասին, որոնք բնակվում էին Արևելյան և Արևմտյան Գալիցիայում, վերջիններիս առօրեա կյանքի, սովորույթների, նրանց պատերազմի նկատմամբ ունեցած վերաբերմունքի և մի շարք այլ հարցերի վերաբերյալ:

Key words: Hakob Sarikyan, military priest, World War First, Western front, Galicia, Poland, polish people

ԱՄՆ-Ի ՀԱՅ ՀԱՄԱՅՆՔԸ. ԼՈՒԻՍՏԱԿԱՆ
ԳՈՐԾՈՒՆԵՈՒԹՅՈՒՆԸ
ԵՎ ԱՇԽԱՐՀԱՔԱՂԱՔԱԿԱՆՈՒԹՅՈՒՆԸ

Հոդվածում քննության են առնվում ԱՄՆ-ի հայ
համայնքի լուրջագրական գործունեության մի շարք
կարևոր ուղղություններ: Ցույց է տրվում, որ այն
որոշ դեպքերում ստանում է աշխարհաքաղաքական
նշանկություն:

PRIEST HAKOB SARIKYAN'S MEMOIRS ON THE POLISH PEOPLE AND POLAND IN HIS DIARY OF "EIGHT MONTHS IN THE WESTERN FRONTS OF THE GREAT WAR"

Pastor Hakob Sarikyan (1872-1945) was one of the Armenian spiritual activists who equally used his sword, his cross, his pen and thought in his activities and struggle in the name of his nation, without any doubts to exchange either of them for another. Being the son of an ordinary peasant, Hakob Sarikyan gets his initial education in Yerevan, then at Nersisyan School of Tiflis. In his school years he gets carried away with the revolutionary and populist ideology, which was widely spread in those days. Graduating from Nersisyan School in 1890, he starts his career as a teacher. Soon Hakob Sarikyan becomes a member of the Armenian Revolutionary Dashnakcutyun party, inside which he starts his vigorous social-political activity. In July 25, 1897, as the commander of the Armenian voluntary troops, Sarikyan participates in the famous Khanasor incursion, the purpose of which was to punish the Kurdish Mazrik tribe which initiated a massacre of the Armenians who were immigrating from Van. Sarikyan the Commander was entrusted with carrying the main standard of the campaign, sawn by the Armenian women of Artsakh, with "Revenge! Revenge!" words embroidered on it. Based on family circumstances, fidayi Sarikyan shortly works at the Mother Church of Holy Etchmiadzin. Sarikyan himself mentions in 1898, "... as the Armenian schools were closed and there was no place for an Armenian teacher", the latter decides to be consecrated as a pastor. Thus, the period of Hakob Sarikyan's spiritual activities begins. The latter firstly goes through his spiritual service in Mazdok, then in Astrakhan, in Vladikavkaz in 1902 at St. Gregory the Illuminator church. Hereafter, for almost two decades, before Sarikyan's return to already sovietized Armenia, the latter continues his activities in the North Caucasus.

On August 1, 1914 Germany declared war against Russia. The First World War broke out. It was a war which had its inevitably grievous consequences for the people of Armenia. These were the Genocide, deprivation of lands and thousands of refugees, spread all over the world. In this respect pastor Sarikyan writes, "1914 started as a year of the war which shocked the whole world. The Armenian nation had no chance to escape the overall maelstrom. In such cases nations like ours become toys in the hands of the World Powers". Thousands of Armenians received military appeals to serve the confrontational armies. Apart from the Armenians who served inside voluntary troops, 200-250 Armenians were appealed for military service in the Russian Army. During the First World War Russia considered the European front of great importance, as it defined the outcome of the war. That's why the forces are aimed in this direction from the very beginning of the war.

As a rule, the Armenian soldiers, appealed for military service from Armenia and Caucasus, were serving in the western fronts for obvious reasons.

In August 1914 Etchmiadzin Synod applies to the Joint Staff of the Russian army for permission to allow Armenian pastors to be sent to the army in the field in order to satisfy the spiritual necessities of the Armenian soldiers. The main headquarters of Russian army allows the Armenian pastors to head to the army in the field. Armenian military pastors are firstly sent to the western front since autumn of 1914. Numerous clergymen of the Armenian church from various dioceses express their desire to head to the army in the field as "voluntary militants", or as so-called military clergymen. Hakob Sarikyan, who was the pastor of the Armenian diocese of Vladikavkaz in Astrakhan was among the clergymen who applied as volunteers to head to the front. As Sarikyan writes in the conditions of the newly broken war, "I couldn't remain as a spectator or a writer who received letters-articles", "I wished to live through the war, to feel it. I wished to have a personal participation in it, but this time not with weapons in my hands, but with the words of consolation, comfort and assurance". On October 17, 1914 Army General Staff demands in a written form from the Mother Church of Etchmiadzin to send to the army in the field a clergyman who was to be sent straight away to Brest which was in the south-west of the front. The choice of the Mother Church falls on a pastor from Vladikavkaz and that was Hakob Sarikyan. At the beginning of November, 1914, pastor Hakob Sarikyan is already in Brest in the position of a military clergyman. In general, Sarikyan spends in the front over eight months. The latter describes at his best these eight months, spent in the western front, in a personal diary, "... if my being a pastor ever gave me spiritual and moral satisfaction, then these were these eight months, spent among 30 thousand Armenian soldiers, detached from their motherland and relatives". After spending eight months in the western front, Sarikyan returns to Vladikavkaz once again. "The only reason for which I left the theatre of military operation was being infected with *golitzin malaria*", that's how pastor Sarikyan commented on his refusal from being a military clergyman in 1915.

At the beginning of 1915 the chief commandment of Russian army issues "Directives for military clergymen" guide, which was to be used by the clergymen serving in the acting army. According to these "Directives" the clergymen were demanded to have a register where they had to enlist all the soldiers of the regiment and the necessary information about them. Apart from this register pastor Hakob Sarikyan possessed a notebook, where he wrote down his impressions of the eight months spent in the front, as well as all the other things he witnessed himself. This notebook, entitled as "Eight months spent in the western front of the Great War" consists of 84 hand-written pages and is kept at the museum of Literature and Art after E. Charents (MLA). These memoirs are important and interesting sources for those who study the period of the First World War. The author reports

interesting information about the Armenian soldiers, about different interesting incidents taking place at the western front, about the peoples inhabiting the territory of the military actions and their attitude towards the warring parties, about the German and Austrian armies and prisoners. In his diary pastor Sarikyan often described the terrifying scenes of the war and raises his voice of protest against them. "Sometimes the word and the pen are powerless to describe what you see or hear, cause these can be horrible and disgusting things", this is what pastor Sarikyan writes on his impressions of the war.

In another Diary, speaking of his military service as a clergyman in the western front in various towns, pastor Sarikyan signifies four directions,"1. Brest-Litovsk-Ivan-gorod-Keltsi-Pradlo-Sokolnik, 2. Brest-Litovsk-Lvov-Rusaka-Rovno-Yaroslav-Dem-britsa-Radomisl, 3. Brest-Litovsk-Warsaw-Sedlets, 4. Livblin-Kholm-Kin-Lvov-Sambor-Peremishl, on the shores of Bulgaria". That is to say, these were mainly the residencies situated on the territory of Ukraine, Poland, Western and Eastern Galicia, which were historically inhabited by numerous Polish people. Visiting the mentioned towns and a number of villages military clergyman Sarikyan delivered extremely interesting information on Poland and the Polish people.

First of all, eye-catching are his data on the Polish residences, everyday life and habits. Galicia in those days was mainly inhabited by the Polish as well as the Jews, the Russians and the Ukrainians, although the "cultural masters" of the country, according to pastor Sarikyan, were the Polish, whose cultural influence on other nations, inhabiting Galicia, was enormous. Conditioned by this circumstance, the Polish language was spread among other nations inhabiting Galicia, and many Rusins and Ukrainians even adopted Catholicism under the Polish influence. The first Polish village visited by pastor Sarikyan was Niglovitse, situated about 50 versts far from Kelets, which the latter describes as follows, "There were about 100 houses with inhabitants, very tidy and clean. Almost all of them are built along the road, just like in Sweden, Denmark, Holland, Norway, etc. The dwellings are neat, with necessary conveniences. The floors in the rooms are covered with wood, the walls are white, the windows are larger than in Ukraine. Household items like tables, chairs, beds, cupboards, plates, napkins, cups, knives, samovars - are of vital importance for the Polish villagers. The beds are clean, covered with blankets and soft pillows. With stoves inside. One of the corners is full of icons, especially those of Virgin Mary. These icons can even be seen in the fields, on the crossroads. The Polish, especially the villagers, are very fanatic in their faith... The people are wearing rather clean, neat clothes, especially the youth, who behave themselves rather frivolously. They don't feel shy of any foreigners. There is a strict habit of kissing the hands of the elderly people... They eat well. Most of all they like geese and potatoes. Hot food is available everyday and for everyone". On the further pages of his diary Sarikyan often describes the scenery, the Polish residences. Speaking on Kelets he writes, "... with richly plowed fields, forests.

The main population consists of the Polish, then come the Jews, then the Russians. Everywhere you go you feel the influence of the first ones. There are almost no Russians or Jews who cannot speak Polish. Mixed marriages are concluded in accordance with Catholic sermons, the language they speak at home is Polish". In his other notes on the Polish people pastor Sarikyan mentions, "The Polish attract attention by their cleanliness, punctuality, by chauvinistic patriotism, by hard work and by foppishness".

During his presence at the western front Hakob Sarikyan also visits Warsaw - the centre of Poland. "Warsaw is beautiful, rich and clean. By its qualities it can be considered among the leading cities of Russia if not the first one. Here one can clearly see the power and strength of the Polish civilization. Anywhere you go, be it a theatre, a cinema, a library, a reading-hall, a bookstore, a church, a cafe, a tea-house... In spite of the military situation the city is so clean that you find it hard to drop even a match in the street... Exemplary are the citizens themselves... Everywhere you go people react to what you say only in Polish".

In his diaries pastor Sarikyan very often refers to the Polish-Jewish relations and the attitude of the Polish towards the Jews. Sarikyan remembers that anywhere he met the Polish, the latter were filled with deep hatred towards the Jews. The Jews are accused not only by the Polish but by the Russians as well of betrayal and cooperation with the Germans. During a meeting, Yevgeni Elsner, one of the generals of the western front, told Sarikyan, "I have no time for reading military telegrams. Whenever I go out, I look at the faces of the Jews. If they look sad, this means that we succeed and vice versa". In some other place, going on with the subject, Sarikyan once again cites the soldiers' words on the Jews, "They are traitors, corrupt. The Germans are informed of our positions through them. They did so in Warsaw, where they gave away our positions by making bonfires". Mildly speaking, negative attitude of the Polish towards the Jews was conditioned by a number of economic and political reasons. Sarikyan mentions these reasons in his notes, "The Jews are the economic proprietors of the country (i.e. Poland - E.H.). It's strange that the Polish cannot compete with them. They are engaged in trade everywhere. They enjoyed all sorts of loyalties under the domination of Austria, they were inside the army, the courts, the schools, etc. The property of the Polish aristocracy later on gradually passes on to them", then he continues, "For political reasons, Russian government turned Poland into a residency for the Jews, where they gradually initiated extensive economic invasions, occupied rural lands, appropriated incomes of the landowners, and inside the cities they occupied houses, banks, large enterprises and factories. This circumstance heavily annoys the Polish, who considered the Jews to be a serious barrier on the way to the realization of their national strives".

The same hatred was experienced by the Jews towards the Polish. The Jews accused the latter of slander and of spreading false information about them. Sarikyan

testifies that everywhere expression like "Jews the traitors", "Polish the slanderers" were heard. According to Sarikyan, the Jews "... in all possible ways try to hamper the liberation of the Polish". In this respect interesting is the conversation between Sarikyan and a Jewish doctor, where the interlocutors discussed the aggravated Jewish-Polish relations, the aspirations of the Polish towards independence and the attitude of the Jews to it. The discussion of this issue is wound up by the Jewish doctor with the following sentence, which, in some respect, expresses the general opinion of the Jews on the Polish aspirations for independence. "We (i.e. the Jews - E.H.) will stand everything but autonomous or independent Poland. I emphasize it".

Another characteristic feature of the Polish described in Sarikyan's diaries is an emphasized anti-Russian position. For multiple times pastor Sarikyan speaks in his diaries on the hatred of the Polish towards the Russian. "The Polish look at the Russian from above and find there is nothing to learn from the latter", "... They attribute the word "savage" to the Russians and they don't like them", "Russian culture is powerless to have any sort of influence here. They only fear the Russians and detest them", writes Sarikyan on different pages of his memoirs. Sarikyan also mentions that in the period of being a part of the Russian Empire, the Polish continued to preserve their identity, language and culture and the Russian cultural influence on the Polish was minor and even the opposite, "The influence of the Russian culture on this nation (i.e. the Polish) is very weak". Many of the Russians themselves seem to have turned into Polish, they speak Polish", as we learn from the memoirs of the military clergyman.

Sarikyan also refers to the exhortation of the Great Prince Nikolay Nikolaevich, the Commander in Chief of the Russian Army, made on August 1(14), 1914, during the first years of the First World War, directed to the Polish people, in which, based on the military situation, the Russian wanted to draw the Polish in the ranks of the Russian army. The latter mentions that this exhortation was received very negatively and doubtfully on the part of the Polish. "The Great Prince Nikolay's decree was accepted with laughter in Poland", writes Sarikyan and then cites the response to this decree on the part of the Polish daily newspaper «Piast» which was published in Krakov, "... for over 150 years tsars used to torture, martyr the Polish, almost depriving them of the right to live, and now, all of a sudden, finding themselves in the tight corner, they turned to our help... with promises. We remember perfectly well the amities of tsar, too vivid are in our memories the barbaric suppresses, murders, expropriations of our properties in 1863 and 1905. Too vivid are the hundreds of gallows, on which they used to hang the noblest of our people. Too vivid are the memories of the chimes of the chains, which were carrying on themselves thousands of victims of the Polish trials towards Siberia.... You know perfectly well, that if not for the necessity, if not for the fear of defeat, moskals (i.e. the Russians) would come to us not with a decree but with sword and fire". This was the response of the Polish to tsar's promises.

It would be interesting to cite pastor Sarikyan's memoir on the captives inside Russian army, "We came across at least 10.000 captives from Lvov up to here. All of them were exhausted, tortured and lightly dressed... The Polish and the Russins are set free after giving an oath, whereas the Hungarians are preserved and chased inside the country". Factually, the Russians showed some kind of a discriminating attitude towards their captives, and, according to Sarikyan's memoirs, the Polish received some kind of a so-called positive attitude along with the Russins. Though this concerned only ordinary soldiers, whereas, according to Sarikyan, the officers weren't granted such kind of an attitude and despite their nationality the captured officers weren't set free.

On the pages of his diaries pastor Sarikyan often spoke of the Armenian-Polish relations, on the attitude of the latter towards the Armenians. There were numerous cases when the Polish who met pastor Sarikyan, learning about his nationality and about his being a clergyman, expressed emphasized good and amicable attitude towards him. "My overall impression during my stay here (i.e. in Galicia - E.H.) is that the Armenians have a good reputation and are fully respected. Perhaps, it's the only country in this respect", writes Sarikyan.

Thus, although the memoirs catch one's eye by their subjectivity, anyway, they sometimes can serve as irreplaceable sources for historic studies. Pastor Hakob Sarikyan's memoir-diary, entitled as "Eight years in the Western fronts of the Great war" is an important and interesting source not only in connection with the participation of the Armenians in the Western fronts of the First World War, but it also gives interesting information on the Polish, inhabiting The Eastern and the Western Galicia, on a number of questions concerning the everyday life, habits of the latter, their attitude towards the war and some other issues.

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*Вопрос Карабаха для Азербайджана – вопрос амбиций,
для Армении же это вопрос жизни и смерти
/Андрей Сахаров/*

ЛОББИНГ АРМЯНСКОЙ ДИАСПОРЫ В США В СФЕРЕ ВОПРОСА НАГОРНОГО КАРАБАХА

КРАТКОЕ СОДЕРЖАНИЕ

Целью представленного текста является показать, какими группами интереса обладает армянская диаспора в Соединенных Штатах и как выглядит ее лоббинговая деятельность в сфере, которая считается приоритетной для всех армян мира – то есть сфере помощи Нагорному Карабаху. Будет показано значение карабахского вопроса для двух крупнейших организаций диаспоры - Armenian National Committee of America (ANCA) и Armenian Assembly of America (AAA). Автор постарается объяснить, какие факторы были решающими для эффективности деятельности армянского лобби, а также попробует предвидеть, будет ли она возрастать в будущем, либо же скорее уменьшаться.

Ключевые слова: армянская диаспора, Нагорный Карабах

ЛОББИГ АРМЯНСКОЙ ДИАСПОРЫ В США В СФЕРЕ ВОПРОСА НАГОРНОГО КАРАБАХА

Диаспора в обыденном понимании тождественна сообществу, живущему вне своей родины. Уильям Сафран – создатель современного понимания этого термина – по его мнению, диаспорой следует называть меньшинственное эмигрантское сообщество, представители которого обладают 6 основными качествами: 1) эмиграция и расселение по двум или более периферийным либо заграничным регионам; 2) сохранение общей памяти, мифа о своей первичной родине; 3) ощущение чужеродности и отчуждения, следующее из убеждения в неполном принятии «хозяйского» общества; 4) признание родины предков идеальным домом и местом будущего возвращения – их либо их предков, при благоприятных обстоятельствах; 5) убежденность в общем обязательстве по отношению к родине – обеспечения ей безопасности, содержания либо возрождения; 6) пребывание в прямом или косвенном отношении к родине, в значительной степени определяющем их этнически-групповое самосознание, как и солидарность¹. При этом подходе ключевую роль играет отношение эмигрантского сообщества к родине, которое определяет мотивы, цель и способ ее деятельности. К одному из качеств этой деятельности относится лоббизм. Действующий в политической терминологии англосаксонский термин «лоббирование», вызывает много проблем для политологов в разных странах. Под этим термином мы понимаем механизмы воздействия групп интересов на центры принятия решений – законодательную власть через посредничество депутатов. Он определяется как способность убедить оппонента принять либо отвергнуть некое решение, будучи одновременно убежденным, что без давления со стороны лоббиста не удалось бы этого сделать. Итак, он является влиянием на правящие лица, которое должно привести к полезным для влияющего решениям². Очень часто речь идет о влиянии на институты и итоговые программные документы, ответственные за формирование внешней политики. Это особенно заметно в случае Соединенных Штатов, где наибольшее влияние в этом отношении оказывается на президента и обе палаты Конгресса. Очень часто концепции лобби и группы давления используются взаимозаменяемо, хотя следует помнить, что последняя концепция имеет гораздо более широкий смысл. Группы интересов также затрагивают организации, ассоциации

¹ W. Safran, *Diaspora in Modern Societies: Myths of Homeland and Return*, „Diaspora” 1991, vol. 1, nr 1, s. 83-84.

² D. Mastromarco, A. Saffer, M. Zieliński, U. Biedrzycka, K. Gryciuk, *Sztuka lobbingu w Polsce*, Warszawa 2005, s. 10.

и учреждения, таким образом, они осуществляют гораздо более широкую деятельность, направленную на максимальное давление для достижения намеченной цели. Хотя начало лоббирования в Соединенных Штатах датируется 19-м веком, только в 1946 году он был юридически санкционирован Федеральным законом о лоббировании (*Federal Regulation Lobbying Act*). Он определяет лобби «как группу индивидуальных интересов, пытающуюся повлиять на законодательную процедуру в Конгрессе»³.

Влияние этнического лобби на внешнюю политику США обусловлено исторически. Американское общество построено в большей степени из представителей волн иммигрантов, прибывавших в США в течение последних 200 лет. Вследствие этого во внутренней и внешней политике этого государства принимаются во внимание предпочтения избирателей, происходящих из диаспорных сообществ. Модель лоббистской деятельности диаспорных организаций является отражением их силы и диапазона воздействия. Рональд Дж. Хребенар и Брайсон Б. Морган утверждают, что существование групп интереса и проводимой ими лоббистской деятельности является типичным для всех сообществ и известным с древних времен⁴. В Соединенных Штатах этнические группы интересов давно присутствуют на политической сцене. Ранее их деятельность сосредоточивалась на вопросах внутренней политики. С определенного момента постепенно растет их активность по отношению к внешней политике – особенно, если речь идет о политике по отношению к странам, с которыми связаны данные диаспоры. Неоднократно они обладают значительным влиянием на формирование политики в отношении вопросов, которыми интересуются. Американские лобби подверглись как институциональным ограничениям, так и контролю Конгресса⁵.

Диаспоры могут сыграть двойную роль в формировании конфликтов, войн, а также мирных процессов. Они могут способствовать обострению конфликтов, например, посредством прямой или косвенной поддержки сражающихся сторон (логистической, финансовой). Они могут также способствовать смягчению или преодолению споров посредством поддержки процессов демократизации, а также способствовать развитию посредством трансфера денежных средств. Йоси Шайн обращает внимание на еще один повод, влияющий на ангажированность диаспор в конфликты. Их существование часто поддерживается травмой их прошлого. Диаспоры

³ W. Jednaka, *Proces lobbingu na wybranych przykładach (Francja, Niemcy, Wielka Brytania, USA) [w:] Grupy interesu. Teorie i działania*, red. Z. Machelski, L. Rubisz, Toruń 2003, s. 388.

⁴ R.J. Hrebienar, B.B. Morgan, *Lobbying in America, ABC-CLIO*, Santa Barbara 2009.

⁵ Законные акты, регулирующие эти вопросы это *Federal Regulation Lobbying Act* из 1946 г., *Federal Election Campaign Act* из 1971 г., *Ethics in Government Act* из 1978 г., *Ethics Reform Act* из 1989 г., *Lobbying Disclosure Act* из 1996 г.

построили себе отличную от оставшихся на родине нарратив, касающуюся собственной виктимизации и травмы⁶.

В настоящее время в Республике Армении проживает неполных 3 млн. армян, в то время как на чужбине их число вдвое больше. Диаспорность является одним из качеств армянского народа, а сформировалась она как следствие многих веков существования в условиях эмиграции, которая была вызвана трагической историей этого народа.

К самым крупным относится армянская диаспора в Соединенных Штатах (ок. 650 тыс.), разраставшаяся в период с конца XIX до конца XX в. Первый исход армян в США был вызван погромами, жертвами которых они стали на территории Османской империи в 1894-1896 годах. До 1914 г. в США было ок. 100 тыс. постоянно проживающих армян⁷. Большая волна притока армян в США имела место в 1915-1925 годах (т. наз. великая эмиграция) и являлась следствием геноцида, произведенного в отношении этого народа младотурецким правительством Османской империи (1915), а также потери новоприсоединенной государственности в результате экспансии большевиков (1921). Армяне – выходцы из этих эмиграций – называются армяноамериканцами. Следующие эмиграционные группы прибыли в США после революции в Египте в 1952 г., ливанской гражданской войны в 1975 г. и исламской революции в Иране в 1978-1979 годах (это т. наз. армяне Среднего Востока). Одна из последних волн армянской эмиграции была связана с распадом Союза Советских Социалистических Республик, началом конфликта в Нагорном Карабахе, а также катастрофическими экономическими условиями, имевшими место в возрожденной Республике Армении. Последняя группа носит название хаястанцев⁸. Современные армяне, живущие в США, наиболее многочисленны в Лос-Анджелесе, Фресно (Калифорния), Нью-Йорке, Бостоне, Чикаго, Детройте, Филадельфии, Провиденсе, Сан-Франциско, Вашингтоне⁹. Следует подчеркнуть, что на фоне других этнических групп, проживающих в США, армяне составляют небольшую группу. Однако, американцы армянского происхождения принадлежат к группам, занимающим уровень выше среднего, если речь идет об уровне благосостояния. Среди них много очень состоятельных

⁶ Y. Shain, *Ethnic Diaspora and U.S. Foreign Policy*, "Political Science Quarterly" 1994, vol. 109, nr 5, s. 130.

⁷ L. Ritter, *Ormiańskie losy. Historia i przyszłość diaspory*, tłum. R. Stryjewski, Warszawa 2009, s. 35. R. Mirak podaje jednak o wiele mniejszą liczbę – 60 tys, zob. idem, *Torn Between Two Lands: Armenians in America 1890 to World War I*, Cambridge 2008, s. 45.

⁸ A. Bakalian, *Armenian Americans: From Being to Feeling Armenian*, New Brunswick-New York 1994, s. 9-14; P. Nieczuja-Ostrowski, *Migracje ludności ormiańskiej w przeszłości i współcześnie* [w:] *Current issues of society and politics*, red. T. Tökölýová, A. Modrzejewski, Tbilisi 2012, s. 75-80; L. Ritter, *Ormiańskie losy...*, s. 35.

⁹ A. Bakalian, *Armenian Americans...*, s. 14-23.

лиц, что имеет огромное значение с точки зрения собирающих средства лоббистских организаций¹⁰.

Армяне в американской диаспоре разделены политически, а истоки этого разделения следует искать в конце XIX в., когда начали создаваться армянские эмигрантские партии, организованные вокруг идеи обретения Арменией независимости. Основной причиной разделения было отношение двух наиболее существенных партий, действовавших в США – «Дашнакцутюн» лево-народного характера и «Рамгаварс» консервативного характера – к включению Армении в состав СССР. В результате этого идейно-политического разделения армянские организации гражданского общества создавались в двойном количестве, что делало их более слабыми. На их дальнейшее ослабление повлияло разделение, произошедшее в рамках Церкви, которая у армян сильно связана с самосознанием и политикой. Дашнаки не приняли признания Армянской Апостольской Церкви советской власти и создали Армянскую Национальную Апостольскую Церковь, католикос которой находится в Антилиас в Ливане. Дашнаки первыми основали в 1918 г. именно политическую организацию лоббистского характера American Committee for the Independence of Armenia, переформированную в 40-ых годах в Армянский национальный комитет Америки (Armenian National Committee of Armenia – ANCA). В диаспоре армяне создали сотни организаций культурного и образовательного, поддерживающего (благотворительные фонды), отраслевого, общинного характера, а также связанных с профессией, возрастом или полом. Они создали также организации, представляющие этнические интересы всего сообщества на данной территории, по отношению к этнически чуждым факторам официальных и внешних армянских институтов, как армянских, так и диаспорных. ANCA стала официальной лоббистской организацией в 1983 г. В 1972 г. была создана Армянское ассамблея Америки (Armenian Assembly of America – AAA), сформированная противниками дашнаков, которая должна была объединять американских армян вопреки политическим разделениям с целью представления и продвижения этнических интересов¹¹. Самой молодой крупной лоббистской организацией американских армян является американо-армянская комиссия по связям с общественностью (Комитет по связям с общественностью США-Армения - USAPAC), основанная в 2006 году

¹⁰ K. Oświecimski, *Lobby etniczne a polityka zagraniczna USA – wybrane przykłady*, Kraków 2014, s. 128.

¹¹ Ibidem, s. 130-133; P. Nieczuja-Ostrowski, *Diaspora ormiańska w polityce Armenii: relacje i obszary oddziaływania* [w:] *Armenia dziedzictwo a współczesne kierunki przemian kulturowo-cywilizacyjnych*, red. P. Nieczuja-Ostrowski, Poznań 2016, s. 158; Our Mission-Armenian Assembly of America, http://www.aaa-inc.org/fileadmin/aaa-inc/pdf/Annual_Reports/AAA-INC_AR_2006.pdf (18 V 2017); ANCA Priorities, Armenian National Committee of America, <https://anca.org/issue> (18 V 2017).

известным армянским бизнесменом и филантропом Джерардом Кафесчяном, проживающим в США. Директором организации является Росс Вартян, который много лет работал в ААА в качестве исполнительного директора. Штаб-квартира организации находится в Вашингтоне. Цели USPAC сопоставимы с целями двух вышеупомянутых лоббистских организаций. Основные из них включают в себя поддержку программ, направленных на обеспечение безопасности, процветания, демократии, верховенства закона и рыночных реформ для жителей Армении и Нагорного Карабаха, а также углубление взаимовыгодных отношений между США-Арменией и США-Карабахом¹².

Армянский национальный комитет Америки (ANCA) и Армянская ассамблея Америки (ААА) являются основными лоббистскими организациями армянской диаспоры в Соединенных Штатах. Обе владеют офисами как в Вашингтоне, так и Ереване, а их воздействие не ограничивается лишь территорией Соединенных Штатов. ANCA активизирует людей на локальном уровне, а его деятельность основывается на стратегии низового лоббирования – активизирует рядовых членов и энтузиастов. В этой связи его структура более рассеяна и децентрализована. Помимо головного офиса, он обладает региональными офисами, а также более чем 39 локальными отделениями в 25 штатах. Это упрощает контакты с конгрессменами. ААА не имеет локальных отделений организации – у нее в наличии лишь головной офис и один региональный офис. Она ищет для сотрудничества влиятельных и состоятельных людей среди армянской диаспоры – с целью получения у них финансирования отдельных проектов. В вопросах, связанных с внешней политикой, обе организации строят коалиции с другими организациями. ANCA охотно сотрудничает с лоббистскими организациями других этнических групп, например, ливанцев, греков, киприотов. ААА опирается, в основном, на хорошие отношения с Организацией Объединенных Наций – она получила даже статус консультанта в Экономическом и Социальном Совете ООН. Армянская ассамблея Америки придает очень большое значение образованию и исследованиям вопросов, имеющих наибольшее значение для диаспоры – используемый ей язык также более научен. Армянский национальный комитет Америки концентрируется, в свою очередь, на тщательном наблюдении за политическим процессом и прямым побуждением граждан к принятию конкретных мер. Поэтому он имеет больше финансовых ресурсов для выполнения своих задач. Обе организации обладают очень широким аппаратом, используемым для проведения прямого лоббирования – штаб образованных лиц, проводящих

¹² A. Hambardzumyan, *Analysis of the Armenian – American lobby in the light of general factors contributing to the effectiveness of ethnic group lobbying*, Yerevan 2010, s. 17-19.

экспертизы, а также типичных лоббистов, связывающихся с конгрессменами¹³.

Интересы и цели, которых хотят достигнуть обе организации, являются сходными, а отличия заключаются лишь в поиске поддержки конкретного проекта среди членов армянской диаспоры. Это ведет к явлению гипермобилизации – члены армянской диаспоры более мотивированы к действию, чем если бы существовала одна организация вне конкуренции. Это же относится и к лоббинговым усилиям. Обе организации обладают дополняющими друг друга ресурсами, которые могут быть использованы в лоббинговой деятельности – как прямой, так и при инициативе снизу¹⁴. Влияние армянских лоббистов возросло после создания в 1999 году Армяно-Американской торговой палаты, целью которой было развитие сотрудничества между США и Арменией. Предпринимателям удалось получить дополнительное влияние в законодательном органе США¹⁵. Армянские лоббисты концентрируют свою деятельность в США по трем вопросам: проблеме нагорно-карабахской принадлежности, признанию геноцида армян 1915 года и распределению средств в Армению.

Одной из основных политических целей, к которым стремится организованное лобби, представляющее армян, проживающих в США, является вопрос поддержки независимости и возможности самоопределения Нагорного Карабаха. Это нелегкий вопрос, поскольку он связан с взаимоотношениями Соединенных Штатов со странами региона – Азербайджаном и Турцией – особенно важными для геополитических интересов США, но находящимися в состоянии конфликта с Республикой Арменией. С момента эскалации конфликта за Карабах армянская диаспора в США начала различными способами участвовать в поддержке своих соотечественников. Обе крупнейших армянских организации сделали вопросы Карабаха приоритетными в своих действиях. Председатель Восточного региона ANCA Шаристан Ардахальджан заявил в 2001 г., что каждый желающий видеть Карабах частью Азербайджана допускает игнорирование истории, поддержку агрессии и нарушение прав человека, а также противоречит неотчуждаемым правам единиц на свободу¹⁶. ANCA организовывала сборы и оказывала гуманитарную помощь, а в период наибольшего усиления конфликта участвовала в доставках оружия и рекрутов

¹³ K. Oświęcimski, *op. cit.*, s. 132-136.

¹⁴ Ibidem, s. 137.

¹⁵ М.А. Сучков, Влияние лобби-групп на формирование внешней политики США на Южном Кавказе, „Международные отношения” 2013, н. 3 (30), с. 20.

¹⁶ H. S. Gregg, *Divided They Conquer: The Success of Armenian Ethnic Lobbies in the United States*, „The Rosemary Rogers Working Paper Series”, August 2002, s. 21.

в Карабах¹⁷. В 1990-1994 годах армянская диаспора в Соединенных Штатах собрала 10 миллионов долларов, которые были переданы в Армению с целью финансирования войны в Карабахе¹⁸.

ANCA, а также другие армянские организации прилагали все усилия, чтобы конфликт в Карабахе представить в контексте армян как жертв и Азербайджана как агрессора. Это стало проще после введения Азербайджаном блокады Нагорного Карабаха и Армении. В риторике без смущения использовался религиозный фактор как построение образа армянина-христианина-жертвы и азербайджанца-мусульманина-агрессора. При описании армяно-азербайджанских взаимоотношений умело использованы были вопросы геноцида армян турками, совершенного почти на сто лет ранее. С точки зрения рекламной кампании это было весьма благоприятно. Азербайджан был представлен американцам как страна, тесно связанная с Турцией (как культурно, так и политически) – что позволяло обратить внимание на возможность проведения им чистки среди населения Карабаха¹⁹.

Облегчало Армении получение поддержки для Карабаха то, что часть ее политиков была связана с армянской диаспорой в США, либо сами они происходили из нее, как хотя бы первый министр иностранных дел Республики Армения Раффи Ованнисян²⁰, переехавший в 1990 г. из США в еще советскую Армению. Армянскому лобби удалось привлечь на свою сторону наиболее влиятельных американских политиков. Среди сенаторов наиболее горячим защитником армянских интересов был связанный с партией республиканцев Боб Доул (кандидат в вице-президенты и президенты)²¹.

Одним из очень важных лоббинговых действий армянских организаций является снабжение Нагорного Карабаха американской гуманитарной и финансовой помощью. Ежегодно с 90-ых годов Нагорный Карабах получает от 5 до 10 миллионов долларов в год²². Сам факт такой помощи для страны, которая не признана на международном уровне является большим достижением армянского лобби. Часть денег, передаваемых США ежегодно, идет напрямую в Нагорный Карабах, а часть – в Республику Армению,

¹⁷ Ibidem; Армянский вопрос, Армянское лобби, <http://www.virtualkarabakh.az/read.php?lang=3&menu=79&id=208#.WSkFTtSLTwc> (26 V 2017).

¹⁸ Армянский вопрос, Армянское лобби, <http://www.virtualkarabakh.az/read.php?lang=3&menu=79&id=208#.WSkFTtSLTwc> (26 V 2017).

¹⁹ K. Oświećmiński, *Lobby etniczne...*, s. 142-143; Армянский вопрос, Армянское лобби, <http://www.virtualkarabakh.az/read.php?lang=3&menu=79&id=208#.WSkFTtSLTwc> (26 V 2017).

²⁰ W październiku 1988, Hovannisian opublikował w „Los Angeles Times” artykuł wspierający ruch Karabachu.

²¹ T. de Waal, *Black Garden: Armenia and Azerbaijan through Peace and War*, New York-London 2003, s. 234.

²² I. Zarifian, *The Armenian-American Lobby and Its Impact on U.S. Foreign Policy*, „Society” 2014, vol. 51, nr 5, s. 510.

которая делится ими с Карабахом – это сумма в 90 млн. долларов. Дейвид Кинг и Майлс Помпер обращают внимание на то, что деньги, которые в 1999 г. получила Армения, составляли больше, чем общая сумма иностранной помощи, оказанной 43 другим государствам²³. В 2000 г. Республика Армения получила 102,4 млн. долларов США американской помощи – это было второе по величине в истории американское пожертвование (после Израиля)²⁴. Год спустя Подкомиссия по делам иностранных операций Сената приняла проект ограничения помощи Армении с 90 млн. до 82,5 млн. долларов²⁵. Однако, армянскому лобби удалось заблокировать принятие этого проекта большинством голосов. Как заявил в 2001 г. представитель ANCA Арам Сарафян, его организация будет последовательно добиваться сохранения американской помощи Армении и Нагорному Карабаху «посредством усилий по просвещению подкомиссий Сената»²⁶. Власти ААА заверили, что помимо действий по сохранению американской помощи на сумму 90 млн. долларов они захотят получить еще дополнительных 15 миллионов с целью внедрения новых технологий (т. наз. Фонд внедрения Синхротрона). В связи с величиной средств, передаваемых в Армению, эта страна называется также «Израилем Кавказа»²⁷.

Самым крупным успехом армянских организаций было приведение в 1992 г. к принятию Конгрессом США поправки 907²⁸, являющейся дополнением к FREEDOM²⁹ Support Act. Целью самого закона было оказание помощи странам бывшего СССР, чтобы облегчить им трансформацию и переход от коммунизма к демократии и свободной рыночной экономике. Благодаря успешным попыткам армянского лобби удалось в поправке 907 к вышеуказанному закону ввести формулировку, исключавшую Азербайджан, как единственную постсоветскую республику, из получения американской помощи, пока Азербайджан продолжает блокаду Армении и Нагорного Карабаха и проводит по отношению к ней враждебные действия. Эту формулировку удалось получить благодаря солидарным стараниям объединенного армянского лобби, которое в то время еще не имело конкуренции со стороны азербайджанского лобби. Следует иметь в виду, что традиция

²³ D. King, M. Pomper, *The U.S. Congress and the Contingent Influence of Diaspora Lobbies: Lesson from U.S. Policy Toward Armenia and Azerbaijan*, „Journal of Armenian Studies” vol. VIII (2004), nr 1, s. 8.

²⁴ T. de Waal, *Black Garden...*, s. 234.

²⁵ Key Congressional Panel Reduces U.S. Assistance to Armenia from \$90 million to \$82.5 million, ANCA 27 VI 2001, <https://anca.org/press-release/anca-disappointed-by-eight-percent-cut-in-aid-to-armenia> (22 V 2017).

²⁶ H. S. Gregg, *Divided They Conquer...*, s. 24.

²⁷ Ibidem.

²⁸ Распространено также определение «секция 907».

²⁹ FREEDOM (Freedom for Russia and Emerging [Eurasian] Democracies and Open Markets Act).

армянского лоббирования в США намного старше - ее происхождение восходит к мирной конференции в Париже в 1919 году, в ходе которой Армянское Национальное Объединение Америки (Armenian National Union of America) стремилось охватить протекторатом молодую Республику Армения³⁰. Власти Азербайджана были уверены, что им удастся быстро победить армян в Карабахе. Лишь после поражений своих войск они решились на расширение собственного лоббингового аппарата в США³¹. Хотя после подписания в 1994 году соглашения о прекращении огня между Арменией и Азербайджаном армяне из Карабаха вышли из войны в качестве победителей, раздел 907 не был приостановлен. Армяне были восприняты как жертвы преследований из-за поддержки, оказанной Турцией Азербайджану. Армянские сторонники утверждали что сохранение раздела необходимо, чтобы заставить Азербайджан провести мирные переговоры и остановить локальную экономическую блокаду Армении³². В таких условиях Азербайджану пришлось быстро искать союзников. Имело место создание азербайджанско-турецкой лоббинговой коалиции, которая вела действия по исключению поправки 907, а также отдачи Нагорного Карабаха Азербайджану. Однако, когда и ее действия оказались недостаточными, в альянс было привлечено произраильское лобби, являющееся наиболее влиятельной силой среди организаций этнических лобби в США. Это было возможно благодаря близкому израильско-турецкому сотрудничеству. Для Израиля было важно укрепить Азербайджан, являющийся региональным соперником Ирана, который, в свою очередь, угрожает безопасности государства Израиль³³. В поддержку интересов Азербайджана были вовлечены также американские фирмы из нефтяного сектора, а также те политики американской администрации, для которых стратегический альянс с Азербайджаном, Турцией и Израилем был приоритетным³⁴. Американские исследователи, пишущие об успехе армянского лобби в принятии поправки 907, обращают также внимание на полное отсутствие знаний об Азербайджане в Соединенных Штатах, следствием чего была плохо определяемая политика американцев по отношению к этой стране³⁵. Другим успехом армян было так называемое Портерская поправка,

³⁰ М.А. Сучков., *op. cit.*, с. 19.

³¹ K. Oświęcimski, *Lobby etniczne...*, s. 144-145.

³² David C. King & Miles Pomper., "Congress and the Contingent Influence of Diaspora Lobbies: U.S. Foreign Policy toward Armenia." *Journal of Armenian Studies*, summer 2004 (VIII, 1), https://www.researchgate.net/publication/258910301_David_C_King_Miles_Pomper_Congress_and_the_Contingent_Influence_of_Diaspora_Lobbies_US_Foreign_Policy_toward_Armenia_Journal_of_Armenian_Studies_December_2004.

³³ K. Oświęcimski, *Lobby etniczne...*, s. 145-146.

³⁴ Ibidem, s. 147; H. S. Gregg, *Divided They Conquer...*, s. 22.

³⁵ S. Avetisyan, *The Role of the Armenian Diaspora in the U.S.A. The Challenge of Connection*

принятая Палатой представителей в 1997 году, в которой говорилось об оказании помощи Азербайджану и Нагорному Карабаху в соотношении 7: 1. Эта формулировка означала признание отчетливости Нагорного Карабаха. Резкий протест правительства Азербайджана, который использовал энергетические проекты в качестве инструмента давления, привел к изменению поправки Портера в Сенате, чтобы помочь Азербайджану (наряду с Нагорным Карабахом)³⁶.

Введение поправки 907 отрицательно отразилось на взаимоотношениях США с Азербайджаном. Американская администрация, желая уравновесить позиции Ирана и Китая в регионе, а также ослабления исламского фундаментализма, стала все более склоняться к исключению поправки 907³⁷. В сентябре 1998 г. Секретарь государственной безопасности Мадлен Олбрайт в письме Бобу Ливингстону, председателю Комитета по вознаграждениям Палаты представителей, обращала внимание на вредность дальнейшего действия поправки 907, которая, по ее мнению, нарушает национальные интересы Соединенных Штатов. Она убеждала, что Соединенные Штаты должны сохранить нейтральность и поддерживать правовые и экономические реформы в Азербайджане, а также усилия по организации коридора транспорта энергии из этого региона на Запад³⁸. Год спустя поправка 907 была с трудом сохранена Сенатом США³⁹. Ситуация кардинально изменилась после террористических актов 11 сентября 2001 г. Соединенные Штаты были вынуждены провести корректировку своей внешней политики. Азербайджан признан важным союзником США в борьбе с терроризмом.

В октябре 2011 г. обе палаты Конгресса единогласно ввели обновление, которое дало президенту право на временный мораторий на поправку 907, если этого будет требовать безопасность Соединенных Штатов. В конце января 2012 г. президент Джордж В. Буш впервые воспользовался этой возможностью⁴⁰. С тех пор президенты каждый раз пользовались этим правом, вследствие чего поправка 907 носит лишь символический характер.

Обе сильнейших армянских лоббистских организации старательно работали на сохранение поправки 907. Представитель ANCA Арам Сараян 28 марта 2001 г., находясь перед Подкомиссией по делам иностранных операций Сената сказал, что каждая попытка изменения поправки 907, особенно во время проведения переговоров, целью которых является

and Inclusion, Yerevan 2013, s. 26.

³⁶ М.А., Сучков *op. cit.*, с. 19.

³⁷ H. S. Gregg, *Divided They Conquer...* s. 22.

³⁸ S.E. Cornell, *Small Nations and Great Powers. A study of ethnopolitical conflict in the Caucasus*, London-New York 2001, s. 368.

³⁹ H. S. Gregg, *Divided They Conquer...*, s. 22.

⁴⁰ Ibidem.

решение карабахской проблемы, станет для правительства Азербайджана сигналом начать боевые действия⁴¹.

Соединенные Штаты не признали независимости Нагорного Карабаха, и им будет сложно решиться на этот шаг в связи с возрастающей стратегической ролью Азербайджана в регионе и интерес к его сырью (нефть, газ). Созданная Азербайджанско-Американская торговая палата, имеющая связи с американскими нефтяными компаниями, эффективно работает над торпедированием усилий, предпринимаемых армянскими лоббистами, что подтверждается решениями последующих президентов США о приостановлении положения 907. В этой связи лоббинговые усилия обеих армянских организаций сосредоточены на формировании сознания американского общества в области законности прав армян, обращения внимания на уничтожающую политику Азербайджана по отношению к армянам и их культуре, Нагорному Карабаху и Армении. Они облегчают контакты представителей политической жизни Карабаха с американскими политиками. Свои действия они проводят как на локальном уровне, так и на уровне штата. Постоянство и упорство, с которым они это делают, дают положительные результаты. Некоторые законодательные органы штатов приняли постановление, поддерживающее либо призывающее президента Соединенных Штатов признать государственный статус Нагорного Карабаха – в 2012 году это сделали Род-Айленд, Массачусетс (это штаты, где находятся значительные скопления американцев армянского происхождения), в 2013 году Луизиана и Мейн, в 2014 – Калифорния, а в 2016 – Джорджия и Гавайи⁴². Текст постановления, принятого сенатом штата Джорджия, отражает эффективность лоббинговых действий американских армян. В нем появляются формулировки, говорящие о том, что Республика Нагорного Карабаха «занимает ценное место в истории и культуре армянского населения»; что ее настойчивая борьба за независимость, начавшаяся в 1991 г., «которая в некотором отношении имеет место и сейчас», вдохновила многие национальности в этом регионе и способствовала

⁴¹ Ibidem, s. 22-23.

⁴² Official Journal of the Senate of the State of Louisiana, <http://senate.la.gov/sessioninfo/2013/RS/Journals/05-30-2013.pdf> (22 V 2017); State of Maine, <http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP0987&item=1&snum=126> (22 V 2017); Massachusetts State Legislature Calls For Recognition Of Nagorno-Karabakh, Radio Free Europe 7 VIII 2012, <https://www.rferl.org/a/massachusetts-state-legislature-calls-for-nagorno-karabakh-recognition/24669893.html> (22 V 2017); Rhode Island Legislature Calls For Nagorno-Karabakh Recognition, Radio Free Europe 18 V 2012, <https://www.rferl.org/a/nagorno-karabakh-rhode-island-recognition/24585027.html> (22 V 2017); M. Mason, Melanie (5 May 2014). Calif. lawmakers to weigh in on dispute between Armenia, Azerbaijan, Los Angeles Times 5 V 2014, <http://www.latimes.com/local/political/la-me-pc-nagorno-karabakh-resolution-20140505-story.html> (22 V 2017); State of Hawaii Recognizes Independence of Nagorno Karabakh Republic, Massis Post 29 III 2016, <http://massispost.com/2016/03/breaking-news-state-of-hawaii-recognizes-independence-of-nagorno-karabakh-republic/> (22 V 2017).

распаду СССР; более 20 лет она упорно работает над развитием демократии, «организуя свободные и честные выборы и референдумы», являющиеся общепризнанным образцом. В нем обратили внимание на участие Нагорного Карабаха в действиях, направленных на стабильность региона⁴³. Через месяц после его принятия начались военные действия Карабаха (т. наз. четырехдневная война). Хотя эти постановления не обладают силой в международном праве, они показывают, что в США армянская версия решения карабахского вопроса пользуется значительной популярностью. К сожалению, все меньше понимания армянские интересы находят у членов Конгресса. 24 октября 2012 г. конгрессмен Жен Грин в своем выступлении назвал поправку 907 реликтом предыдущей эпохи. Он обратил внимание на пользу от сотрудничества между Азербайджаном и Соединенными Штатами, которое в настоящее время включают военные, разведывательные, экономические, деловые и культурные связи. Он подчеркнул вклад Азербайджана, который, совместно с союзниками – Израилем и Ираном обеспечивает безопасность в регионе и выступает против международного терроризма. Поскольку в течение довольно продолжительного времени многие политики и представители американского делового мира поддерживают исключение поправки 907, Грин требовал ее окончательной отмены, называя ее «плевком в лицо ближайшему союзнику Америки в регионе Каспийского моря»⁴⁴.

ANCA ведет переговоры об оказании помощи Армении и Карабаху с должностными лицами Государственного Департамента и Агентства США по Международному Развитию (United States Agency for International Development – USAID) и наиболее влиятельными сенаторами. Армянское лобби в 1997 году попыталось продлить закон о реформе внешней политики США, так называемой Поправкой Шермана, которая должна была обеспечить прямое финансирование для Нагорного Карабаха. Благодаря усилиям активистов АНЦА, удалось через год привести к утверждению проекта закона об иностранной помощи, в результате чего в 1998 году Карабах получил 12 миллионов долларов США. Каждый год армянское лобби борется в Конгрессом, чтобы получить в рамках Закона об иностранной помощи самое крупное софинансирование проектов, осуществляемых в Нагорном Карабахе. В рамках помощи, оказанной USAID, уже в первые годы программы большое число семей в Нагорном Карабахе получили медицинскую и социальную помощь. Степанакертская водная

⁴³ Georgia House Recognizes Independence of Nagorno-Karabakh Republic, Asbarez 3 III 2016, <http://asbarez.com/146962/state-of-georgia-recognizes-independence-of-nagorno-karabakh-republic/> (22 V 2017).

⁴⁴ G. Green, On Waiving Section 907 of the Freedom Support Act, Projekt Vote Smart 26 X 2012, <https://votesmart.org/public-statement/754717#.WSrRm9SLTwe> (22 V 2017).

система (чистая питьевая вода) была перестроена, и были реализованы многочисленные проекты в области инфраструктуры водоснабжения в Карабахе. С самого начала были осуществлены проекты медицинской поддержки и обеспечения реабилитации и достойной жизни пожилых людей и инвалидов. ANCA постоянно стремится увеличить американскую помощь для функционирующего в Степанакерте реабилитационного центра имени баронессы Каролины Кокс. Эти усилия были усилены после военных операций в Нагорном Карабахе в июне 2016 года. На протяжении многих лет, до сегодняшнего дня, активисты ANCA изо всех сил пытаются получить максимально возможное финансирование от правительства США для HALO TRUST (международной гуманитарной организации, занимающейся удалением мин). Этай организации удалось очистить 85% территория Нагорного Карабаха из мин, кассетных бомб и других взрывных видов оружия. В начале 2018 года ANCA призвала правительство США ассигновывать 10 000 000 долларов США для Нагорного Карабаха, из которых 6 000 000 предназначены для разминирования и рекультивации земель. Эта действия армянского лобби для оказания гуманитарной помощи для Нагорного Карабаха чрезвычайно важна, потому что Нагорный Карабах непризнан на международной арене, и он не покрывается гуманитарной помощью Организации Объединенных Наций и ее учреждений: WHO, UNICEF, WFP, или программ, созданных ООН, - например UNPD⁴⁵.

Интересы, все теснее связывающие Азербайджан с Соединенными Штатами, усложняют эффективную деятельность армянского лобби. Однако, с другой стороны, американцы армянского происхождения передают на нужды избирательных кампаний (как посредством PAC, так и в индивидуальном порядке), больше всего средств из всех этнических групп⁴⁶. В том числе в этой связи их интересы не могут оставаться без внимания. Вопрос независимости Нагорного Карабаха является одним из самых важных элементов самосознания армян, проживающих по всему миру. Даже если армянское лобби в США ничего больше не сможет добиться, то оно будет бороться любой ценой за сохранение *status quo* по вопросу Нагорного Карабаха.

⁴⁵ R. Hamparian, Why the ANCA Works Relentlessly For U.S. Aid to Artsakh, Armenian National Committee of America, <https://anca.org/why-the-anca-works-relentlessly-for-u-s-aid-to-artsakh> (28 VI 2018); ANCA Defends U.S. Aid to Artsakh Against Azerbaijani Attack, *Asbarez* 26 IV 2018, <https://asbarez.com/171936/anca-defends-u-s-aid-to-artsakh-against-azerbaijani-attack> (28 VI 2018).

⁴⁶ K. Oświęcimski, *Lobby etniczne...*, s. 136.

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ARMENIAN POLITICAL EXILES WITHIN ANTI-SOVIET PROGRAMS OF POLAND

SUMMARY

The article represents programs of struggle against the USSR in Poland ("Prometheus" movement) and the attempts to involve the Armenian political exiles in this struggle. Although Armenian political exiles were seeking to restore Armenia's independence, they approached the Polish initiative with reservations, because Turkey appeared to be allocated a serious participation in this process. Besides, the possible Caucasian allies of Armenia refused to accept the territorial demands of Armenian political exiles.

Key words: Poland, "Prometheus", Armenian political exiles, Dashnaktsutyun, Anti-Soviet struggle.

Հայ քաղաքական վտարանդիությունը Լեհաստանի հակախորհրդային պայքարի ծրագրերում

Բանալի բառեր: Լեհաստան, «Պրոմեթևս» հայ քաղաքական վտարանդիություն, Դաշնակցություն, Հակախորհրդային պայքար:

Ամփոփում

Չողվածում ներկայացվում է ԽՍՀՄ-ի դեմ պայքարելու Լեհաստանի ծրագրերը («Պրոմեթևս» շարժում) և այդ պայքարում հայ քաղաքական վտարանդիությանը ներքաշելու փոժերը: Թեև հայ քաղաքական վտարանդիությունը ձգտում էր հասնել Հայաստանի անկախության վերականգնմանը, նա վերապահումով մոտեցավ Լեհական նախաձեռնությանը, որովհետև դրանում մասնակցության մեծ դեր էր հատկացված Թուրքիային: Բացի այդ Հայաստանի կոմկուսյան հավանական դաշնակիցները հրաժարվում էին ընդունել հայ քաղաքական վտարանդիության կողմից ներկայացվող տարածքային պահանջները:

ARMENIAN POLITICAL EXILES WITHIN ANTI-SOVIET PROGRAMS OF POLAND

After the establishment of Bolsheviks' power in Russia and after the formation of the USSR the relations between the latter and the Western countries became strained. An organized struggle was programmed against the USSR. Among the European countries which struggled against the Soviet Union it was the seriously predetermined Poland - the long-time rival of Russia, which in this process had been given the leading role. The Europeans even expected the involvement of Finnish, Latvian, Estonian, and even Czech people in this struggle.

Poland was greatly interested in the anti-Soviet struggle. According to the Polish marshal Josef Pilsudski, segregated Russia was the main guarantee for the independence of Poland. J. Pilsudski hoped that the national states separated from Russia would appear under the influence of Poland and the latter would substitute Russia as a great power in the Eastern Europe.

The anti-Soviet struggle of Poland was famous with its "Prometheus" name. Still in the summer of 1921 in Paris the leaders of the Trans-Caucasian republics and the heads of the exile of the North Caucasus signed a memorandum of joint struggle against the Soviet power. Over time, the idea of cooperation had become more relevant and an attempt was made to transfer it to the practical field. The Caucasian liberation committee was created in 1924 in Constantinople. In June 15, 1926 in Istanbul the Caucasian independence committee was created on the basis of it, and starting from September 1926 the committee began publishing "Prometheus" periodical in Paris. The mountaineer exiles from Georgia, Azerbaijan, North Caucasus, who were united under "Prometheus" were soon joined by exiles from Ukrain and Turkmenistan.

"Prometheus" was published in French language. By its first exhortation "Prometheus" announced that the time of the fall of the Bolsheviks was approaching, that the level of cultural and urban development of the peoples of the USSR didn't raise doubts, that the further existence of the USSR was hazardous for the world security and the European civilization, and that it was necessary to create a confederation of Caucasian republics and struggle against the Russian dictatorship.

Especially for the elaboration of "Prometheus" ideology the Eastern institution was founded. The movement was being financed by the 2-nd department of General Headquarters of Poland, as well as by the Ministries of interior and foreign affairs. The "East" ("Wschod") quarterly magazine was being published in Poland for the discussion and dissemination of the ideology of the Movement.

In 1928 "Prometheus" club is founded in Poland. It includes exiles from Ukraine, Georgia, Azerbaijan, Caucasian mountaineers, Cossacks, Tatars.

The Polish Intelligence Service began putting great efforts into making the latter serve for the implementation of its programs.

Thus, Poland attached great importance to Caucasian, particularly Armenian political exiles in its anti-soviet struggle. With the help of the latter they supposed to weaken the positions of Soviet Russia and to segregate it.

However, Armenian political exiles hardly had any participation in the eastern programs of Poland and the reasons were the following.

We've already mentioned that Turkey was one of the most important centers of the activity of Caucasian exiles. Although Poland undertook the initiative of uniting the Caucasians, however, it not only accepted the offer of Turkey, but it also highlighted the role of Turks in the anti-Soviet struggle in the southern front. Later on, the latter were making attempts to promote the movement in their own way. After the Lausanne Conference, when the Western powers recognized the territorial integrity of Turkey, the Armenian political exiles for the sake of independence found the fight against the USSR not less important than the fight against Turkey for the Western Armenia. Poland, as well as the Caucasian exiles was not willing to take into consideration the recent wish of the Armenians.

The revolutionary Dashnaksutyun was the most influential among the Armenian exiles. The exile organizations and activists of "Prometheus" were chosen to communicate only with Dashnaksutyun among other Armenian organizations.

The periodicals published abroad, as well as the activists commented on the initiative of unification of the Caucasian exiles, on the Turks' interest and came forward with interesting comments.

The official periodical of Armenian Dashnaksutyun (AD) - "Droshak", commenting on the appeal of the Caucasian exiles to create a confederation, critically remarked that the people, "seeking" Caucasian unification had already collapsed such like federation. According to "Droshak" the creation of a real alliance needs serious analysis of the previous mistakes. One of the main reasons of the collapse of Caucasian unity in 1918 was mutual mistrust, hostility and unhealthy competition, as well as distinct difference in the foreign policy of various peoples. Only after the reassessment of all this and after the back-drop of the "backbone policy" it's possible to speak about the common interests of Caucasus. However, "Droshak" notices that the articles of "Prometheus" even lack common logics.

Whereas, Caucasian unity needs ideological basis. If Turkey threatens Armenia, then the latter has to seek the support of Russia, if the Soviet Russia views Azerbaijan as a province of Baku, then the latter will direct itself towards Turkey, if the Georgians must enter into double or triple games it is difficult to put forward any well-grounded theses and principles.

"Prometheus" didn't concretize the outer borders with Turkey and Russia, as well as the inner borders of Caucasian republics, which seemed very obscure

to "Droshak". According to "Droshak" it was impossible to create a union by artificially seating the Caucasian exiles next to each other.

Thus, just after the establishment of "Prometheus" in 1918 the political activists who initiated the disintegration of Trans-Caucasus, come forward with the appeal of its recreation in order to fight against bolshevism with joint efforts. This dramatic turnaround gave the Dashnaks an opportunity to treat the sincerity of the exiled political figures of the Caucasian peoples with strict reservations. "Droshak" was especially worried about the intention to appeal for the aid of Turkey in the struggle against the Soviet Russia.

Shahn Natali - Dashnaks' activist considered it natural for Armenia not to be against the independence of Ukraine, Georgia, Azerbaijan and Kazakhstan. However, his position contains a subtext. His concern is that this independence leads to independence from Russia and dependence on Turkey. According to him the real essence of this Caucasian unity is a Turkey-oriented disposition, thus, Georgia, Kazakhstan, moreover Azerbaijan can and even are obliged to be Turkey-oriented, whereas Armenians cannot. Shahan Natali represents the difference between the Russian and the Turkish by means of the following impressive formula. "The Russian are against the independence of the Caucasian peoples and liberal development, whereas the Turkish are against the very existence of the Caucasian peoples".

Among Dashnak activists in exile it was Ruben Ter-Minasyan who wrote that the Azerbaijanis from "Prometheus" want to lead the Caucasian federalism towards Turanism. The same distress is expressed by "Husaber" daily periodical in Cairo, which mentions that the Caucasian will fall into the trap of Turks in their struggle for independence.

As we see, the Armenian political exiles treated the enthusiasm of those from "Prometheus" with serious reservations. It was obvious to the Armenians that the struggle of the Caucasian for independence to a larger extent served to satisfy the interests of Turkey. Summing up the concerns of the Armenian political exiles it's possible to conclude that the Polish didn't take into account the hazards of including Turkey into "Prometheus" movement. In their turn, the Turks wished to control the leaders of the Caucasian exiles. And only the avoidance of stressing relations with the USSR was keeping them from acting more aggressively. The Caucasian exiles noticed the cautious approach of the Turks towards the USSR. Perhaps this was conditioned by the fact that the Georgian exiles demanded the headquarters of the Caucasus Independence Committee to be moved from Constantinople to Paris.

The Caucasian activists in exile later on tried to work out new forms of cooperation. In July 14, 1934 in Brussels the Caucasian Covenant was signed, in which the Armenians received their place. Both, those who signed the covenant and the Polish gave great importance to this agreement. No Armenian

organization or activists in exile joined this agreement. Together with the previous one it records no essential results.

Thus, Poland wished to involve Armenian political exiles into its anti-Soviet struggle, but the latter weren't drawn into this process because of the involvement of Turkey and disagreements with the neighboring countries on Western-Armenian issues. As a result, the "Prometheus" movement failed, and the neglect of Armenian interests can be considered to be essential among its reasons. And in general, any Caucasian (now South-Caucasian) initiative sooner or later is doomed to failure if Armenia is excluded from it or if the interests of the latter are being neglected.

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ПРАВОВЫЕ ДОКУМЕНТЫ АРМЯНСКОЙ КОЛОНИИ ПОЛЬШИ

РЕЗЮМЕ

На основании сохранившихся памятников польской юриспруденции (на латинском и на польском языках) и источников армянского происхождения (на среднеармянском и на кыпчакском) стало возможным объективное исследование социальных и общественных процессов развития армянских колоний в Польше. В статье изложен краткий очерк юридической деятельности армянских переселенцев.

Ամփոփում

Միայն լեհական իրավունքի (լատիներեն և լեհերեն) հուշարձանների ու հայկական ծագման սկզբնաղբյուրների (միջին հայերեն և ղփչաղերեն) հաշվառմամբ, կարելի է անկանխակալ հետազոտություն իրականացնել Լեհաստանի հայկական գաղութների տնտեսական և հասարակական զարգացման վերաբերյալ: Հոդվածում հրամատուտակի ներկայացված է Լեհաստան գաղթած հայերի իրավական գործունեությունը:

Ключевые слова: Польское право, источниковедение, судопроизводство армянских колоний Польши, Речь Посполитая, Армянский статус, Галиция.

ПРАВОВЫЕ ДОКУМЕНТЫ АРМЯНСКОЙ КОЛОНИИ ПОЛЬШИ

История армянских переселенцев в Западной Украине и Польше давно занимает внимание историков, источниковедов и специалистов по юриспруденции¹. Исследование этой темы является важной задачей, так как не только дает возможность освещать действительные социально-правовые и экономические условия, в которых оказались переселенцы-армяне, но и существенно облегчает общий анализ политики феодальной Речи Посполитой в отношении национальных меньшинств.

Социально-правовое развитие армянских колоний ни в коем случае не являлось простым повторением или продолжением национальной и общественной жизни средневековой Армении. Развитие армянской колонии происходило под сильным воздействием социально-экономических и политических условий, существовавших в многонациональной Речи Посполитой. Только с учётом сохранившихся памятников польской юриспруденции (на латинском и на польском) и источников армянского происхождения (на среднеармянском и на кыпчакском) возможно объективное исследование процессов социального и общественного развития армянских колоний.

Имеется довольно большое количество исторических материалов по рассматриваемой теме. До последнего времени армянские специалисты усердно работали в советских архивах и книгохранилищах. Речь идет о документах и копированных в рукописях актов материалов, хранящихся в Центральном государственном архиве Украины в Киеве, в Центральном государственном историческом архиве Украины во Львове, в отделе рукописей Львовской библиотеки Министерства культуры Украины, а также в Научно-исследовательском институте по изучению древних рукописей (Матенадаран), который находится в Ереване. Довольно значительные рукописные фонды, относящиеся к истории армянских колоний Речи Посполитой в настоящее время находятся в архивах Польской Республики (Главный архив древних актов в Варшаве, Краковская библиотека Польской АН, Государственный воеводский архив в Люблине и т.д.), а также в библиотеках армянской католической конгрегации мхитаристов

¹ F. Bischoff, Das alte Recht der Armenier in Lamberg.- Sitzungsberichte der Kaiserlichen Akademie der Wissenschaften, 40 (Wien 1862), S. 255-302; см. также библиографию по этому вопросу: Bibliographie zur Rezeption des byzantinischen Rechts im alten Rußland sowie zur Geschichte des armenischen und georgischen Rechts / Unter Mitwirkung von Azat Bozoyan, Igor Cicurov, Sulchan Goginava, Kirill Maksimovic und Jaroslav Scapov zusammengestellt von Ludwig Burgmann und Hubert Kaufhold, Löwenklau-Gesellschaft e.V. Frankfurt am Main, 1992, S. 162-168.

в Венеции и Венне. Представленные в этих архивах и книгохранилищах материалы, начиная с актов книг армянских судов Львова, Каменец-Подольска, Луцка, Станислава (ныне Ивано-Франковск) и других городов и заканчивая грамотами и привилегиями польских королей и отдельных феодалов-владельцев городов, а также акты о купле-продаже армянских коммерсантов и ремесленников, свадебные договоры населения, являются ценнейшими памятниками, открывающими перед исследователем широкое окно в прошлое армянских переселенцев². На основании изучения этих документов можно с достаточной уверенностью судить о характере армянского самоуправления, социальном составе и методах деятельности его органов, о той общественно-административной роли, которую они играли в жизни армянской колонии. В этих памятниках нашли отражение и такие явления, как процессы расслоения армянского населения, социальная борьба между богатой торгово-ремесленной верхушкой и десятками тысяч рядовых, малоимущих и неимущих армян-колонистов. Над некоторыми этими источниками работали и опубликовали труды австрийский специалист Ф. Бишофф³, польский специалист с армянскими корнями О. Балцер⁴, венецианский мхитарист - архим. Г. Алишан⁵, венский мхитарист - архим. Н. Акинян⁶, советские ученые из Украины Т. Грунин⁷ и Я. Дашкевич⁸, советские ученые из Армении В. Григорян⁹ и М. Оганисян¹⁰.

² Наглядный источниковедческий материал с фотографиями некоторых оригиналов опубликовал Клод Мутафян: см. Cl. Mutaftian, La Saga des Arméniens de l'Ararat aux Carpates, Paris, Les Belles Lettres, 2018, p. 77-136.

³ F. Bischoff, Das alte Recht der Armenier in Polen. Aus Urkunden des Lemberger Stadtarchivs. - Österreichische Blätter für Literatur und Kunst. Beilage zur Österreichisch-Kaiserlichen Wiener Zeitung, Wien 1857, Nr. 8, 33, 37, 39.

⁴ Sądownictwo ormiańskie w średniowiecznym Lwowie / napisał O. Balzer, Lwowie 1909 [Studia nad Historią prawa Polskiego, wydawane pod redakcją Oswalda Balzera, tom IV, Zeszyt 1]; O. Balzer, Skartabelat w ustroju szlachectwa Polskiego, Kraków 1911 etc.

⁵ Л. Алишан, Каменец. Летопись армян Польши и Руминии, приложениями заслуживающей доверия, Венеция, Св. Лазарьб 1896 (на арм. яз.).

⁶ Des Armeniers Simeon aus Polen Reisebeschreibung, Annalen und Kolophone, Zusammenfassung in Deutscher Sprache / Untersucht und Herausgegeben von P. Nerses Akinian, Wien 1936, [Nationalbibliothek, Bd. CXLI].

⁷ Т. Грунин, Документы на половецком языке, XVI в. (судебные акты Каменец-Подольской армянской общины), М., Наука, 1967.

⁸ Я.Р. Дашкевич, Армянские колонии на Украине в источниках и литературе XV – XIX веков (историографический очерк), Ер. 1962; Его же, Украинско-Армянские связи в XVII веке. Сборник документов, Киев 1969; См. Его же: Y. Dashkevych, Armenia and Ukraine, Lviv-New York, 2001 (книга была недоступна).

⁹ Акты армянского суда города Каменец-Подольского (XVI в.). Подготовка текста и предисловие В.Г. Григоряна, Ереван 1963 (на арм. яз.); В.Р. Григорян, История армянских колоний Украины и Польши (армяне в Подолии), Ереван 1980.

¹⁰ М.Л. Ованнисян, Очерки истории армянских колоний в Польше и Западной Украине, Ереван 1977 (на арм. яз.).

Заметную историческую ценность представляли составленные местными армянами дипломатии, т.е. сборники королевских и княжеских привилегий, пожалованных армянам¹¹. Подобные сборники возникали в первую очередь из практических соображений. Длительная борьба армян против притеснений и преследований польским и местными княжескими администрациями требовала знания юридических документов, на оснований которых строилось армянское самоуправление, судопроизводство, торговые отношения и т.д. Имеются сведения о нескольких подобных дипломатиях, составленных в конце XVI и на протяжении XVII в. Большой кодекс королевских грамот (начиная с привилегий ламберских армян от 1356 г.)¹² был составлен во Львове сенъорами армянской общины в 1595 г. Эти документы сохранились также в нескольких более поздних копиях. Польский историк, по происхождению армянин - С. Боронч упоминает в своих работах о двух других дипломатиях, изготовленных во Львове в XVII в. Один из них был составлен в 1640 г. сенъором Ивашком Бернатовичем (в нем были копии грамот начиная с 1574 г.), другой - в 1695 г. письмоводителем львовского городского управления армянином Николаем Гадзевичем¹³.

Обзор ряда армянских дипломатий различных типов и разного содержания был сделан в свое время польским историком Бальцером¹⁴. Обзор этот имеет значительную ценность в связи с тем, что некоторые из описанных Бальцером рукописей безвозвратно погибли во время второй мировой войны.

Рукописи и акты, хранящиеся в вышеупомянутых книгохранилищах и архивах, составлены на латинском, польском, армянском языках и так называемом армяно-кипчакском (половецкий) языке, которым пользовались галицкие и польские армяне, и характеризуют отдельные стороны экономической, общественной и правовой жизни переселенцев. Довольно большое значение приобрело сохранившаяся на армяно-кипчакском языке актовая книга брачных контрактов, которая находится в книгохранилище венских мхитаристов¹⁵.

¹¹ См.: Cl. Mutařian, *La Saga...*, 1936p. 88,90,91, 94, 105, 113-114, 122, 134 etc. О копиях этих документов см.: Я.Р. Дашкевич, *Армянские колонии...*, с. 74-75; см. также: его же, *Украинско-армянские...*, Киев 1969, с. 30-32.

¹² Кл. Мутаřян издал фотографию декрета изданного в оригинале Казимиром Великим в 1367 г., см.: Cl. Mutařian, *La saga...*, p. 88.

¹³ См.: *Pamiętnik dziłw polskich. Z aktów urzędowych Lwowskich i z rękopismów* / X. Sadok Barącz, Dominikan, Lwowe 1855 (книга было недоступной). S. Barącz, *O rękopismach kapituły ormiańskiej Lwowskiej. «Dziennik Literacki», Lwowie 1853, № 34, s. 266; X.S. Barącz, *Żywoty sławnych ormian w Polsce, Lwowie 1856, c. 75.**

¹⁴ *Corpus juris Polonicio, Sectione Primae: Privilegia statute constitutiones edicta mandata regnum Poloniae spectantia comprehendentes, vol. tertium: annos 1506-1522 / typis mandavit adnotationibus intruxit Osvoldus Balzer, Cracoviae 1906, ы. 401 etc.*

¹⁵ Cf. *Catalog der armenischen Handschriften in der Mechitaristen-Bibliothek zu Wien* / von P. Jacobus Dr. Dashian, Wien 1895, S. 908-909. (на арм. яз.).

Наряду с архивными материалами большую научную ценность представляют такие источники как: летописи, хроники, памятные записи современников, значительная часть которых опубликована на армянском языке как в нашей стране, так и за рубежом. Среди материалов этого рода заслуживающие серьезного внимания сочинения армянского историка XVII в. Аракела Даврижеци¹⁶, Путешествие Симеона Лехацы (1584-ок. 1635)¹⁷, исторические труды католических церковных деятелей Климента Галания (1610-1666)¹⁸ и Алоиза Пиду (1638-1717)¹⁹, Неизвестного автора XVII в.²⁰ и армянского путешественника, член братства виенских мхитаристов - Минаса Бжишкянца (первая половина XIX в.)²¹, который совокупил наши знания об армянских колониях Восточной Европы²².

Изучение структурных форм органов армянского самоуправления показывает их большую схожесть с польскими городскими учреждениями²³. Однако в их структуре часто встречаются такие элементы, которые прямо указывают на связь с городскими учреждениями средневековой Армении²⁴. Особенно характерны такие термины, использование в этих документах, как «аваг», «манкти», «ереспохан», «хуц» и т.д. Из источников видно, что термином «авагнер» («старшины») назывались члены армянского суда во Львове²⁵. В других городах (Станислав, Замостье) применялся термин «ереспоханнер» (члены выборного органа). Эти термины отнюдь не являются простым переводом польского названия «лавники»²⁶. Дело в том, что в XI - XIII вв. в Армении уже существовала довольно зрелая форма городской организации. Город, находившийся в феодальной зависимости от сенъора, имел самоуправление во главе с так называемым советом старшин, состо-

¹⁶ Аракел Даврижеци, *Книга истории* / Сводный критический текст, предисловие, комментарий Л. А. Ханларян, Ер. 1990 (на арм. яз); Аракел Даврижеци, *Книга историй* / Перевод с армянского, предисловие и комментарий Л. А. Ханларян, М. 1973 [Памятники письменности Востока, XXXVII].

¹⁷ Об единственной рукописи этого сочинения см.: Cl. Mutařian, *La Saga...*, p. 15-17. В Чехии предпринят перевод и изучение этого труда на чешский язык, см.: Šimon Polský, *Putování 1608-1618, cestopis a kroniky arménské poutníka* / Petra Kořálková (ed.), Argo 2016.

¹⁸ Этот теотинский монах долгое время работал среди армян Ламберга (сегодня - Львов), предпочитавших католическое вероисповедание.

¹⁹ Театинский монах, который сделал невозможное, чтобы армяне Польши приняли католическое вероисповедание, став оружием прозелитизма в армянском обществе.

²⁰ Написанный этим автором исторический труд, Г. Алишаном издателем этого труда был назван «Каменецкой хроникой» (Венеция 1896).

²¹ Minas Pjchigians, *Voyage en Pologne et dans les autres régions habitées par les Arméniens descendants de la ville d'Ani, Venise 1830* (на арм. яз.).

²² См.: Cl. Moutařian, *La Saga...*, p. 19.

²³ М. Ованнисян, *Очерки...*, с. 203.

²⁴ В. Григорян, *История...*, с. 185-202.

²⁵ Там же, с. 203-221, ср.: М. Иоаннисян, *Очерки...*, с. 94-101, 204-205.

²⁶ В. Григорян, *История...*, с. 210-213.

ящим из «старейшин города». Этот совет осуществлял судебную власть в городе и занимался другими вопросами городской жизни. В более поздний период в армянских общинах Константинополя и других населённых пунктах, где существовало армянское самоуправление, ежегодно избирались «ереспоханы», в компетенцию которых входило решение судебных и других вопросов армянского населения²⁷.

Далее, характерно, что место, где заседал армянский духовный суд во Львове, называлось «хуц» («келья»). В феодальной Армении в «хуцах» жили священники, в том числе и епископы, которые, согласно средневековому армянскому судебнику Мхитара Гоша, осуществляли светскую и духовную власть, т.е. являлись судьями. Для армянского духовного суда было сохранено традиционное национальное наименование. О преемственности армянских национальных традиций в этой области говорит также тот факт, что судебник польских и западноукраинских армян - Армянский статут - был составлен на основании Судебника Мхитара Гоша²⁸.

В других отношениях структура органов армянского самоуправления полностью совпадала со структурой польских городских органов. Так, во главе армянского самоуправления стояли войт (или бургомистр) и члены магистрата (или судьи). Войт руководил всей деятельностью магистрата и являлся главным судьёй армянской общины. Члены магистрата были обязаны хорошо знать армянский статут, соблюдать все обычаи и традиции, которые по истечении времени приобретали силу закона²⁹.

Органы самоуправления образовывались путем ежегодных выборов, в армянских общинах. В некоторых государственных актах Речь Посполитых, а также в грамотах и привилегиях польских феодалов - владельцев городов, мы находим сведения о том, как происходили эти выборы. В постановлении петровского сейма от 1563 г. указывается, например, что польский магистрат г. Львова обязан выполнить королевские распоряжения и оказать содействие в проведении выборов армянского самоуправления. Согласно постановлению сейма, армяне должны были выбрать 12 судей, которые считались избранными лишь после принесения присяги на верность польскому королю³⁰. Верхушка армянской купеческой знати сыграла довольно большую роль в кругах польской аристократии³¹.

²⁷ Б. Аракелян, Города и ремесла в средневековой Армении, т. I, Ереван 1958 (на арм. яз.).

²⁸ Мхитар Гош, Судебник / Сводный критический текст, предисловие и комментарии Хосрова Торосяня, Ереван 1975, с. LXXVII-LXXXIX (на арм. яз.).

²⁹ М. Ованнисян, Очерки..., с. 78-95.

³⁰ Там же, с. 203-204.

³¹ A. Osipian, The construction of historical identity among Polish and Armenian patricians in Lviv, 1570s-1670s. - Social and political elites in Eastern and central Europe (15th - 18th centuries) / Edited by Christian Luca, Laurențiu Rădvan and Alexandru Simon, with a Foreword by Martyn Rady, UCL 2015, p. 65-83 [Studies in Russia and Eastern Europe, № 12].

В литературе часто на основе буквального толкования королевских привилегий и грамот высказывалось ошибочное утверждение, что органы армянского самоуправления осуществляли только одну функцию - судебную. Армянские как и польские органы самоуправления далеко не ограничивались осуществлением лишь судебных функций. В этом отношении весьма характерным является пример города Львова. По известному привилею короля Казимира III в 1356 г. город получил право создать орган судебной власти, который должен был руководствоваться законами магдебургского права. Армяне же по этому привилею получили право образовать свой национальный судебный орган, разбиравший дела в соответствии с армянскими судебными законами. Однако, как показывают архивные материалы, львовский городской совет и армянский суд в действительности занимались не только осуществлением судебной власти, но и выполняли ряд других функций, не указанных в упомянутом привилее. Иначе говоря, органы армянского самоуправления осуществляли судебную власть в армянской общине на основе судебника польских и западноукраинских армян - Армянского статута; представляли общину и ее отдельных членов перед польскими городскими и государственными властями; посредничали в торгово-финансовых и гражданских сделках; руководили делами армянской церкви.

Более чем пятисотлетнее существование армянских колоний в Галиции и на польской земле было весьма любопытным явлением в истории армянского, польского и украинского народов. Еще много веков тому назад оно заложило основу культурных и других связей нашего народа с Польшей и Галицией и существенно способствовало развитию дружественных отношений между двумя народами.

Названия

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THE FEEDBACK OF POLISH UPRISING OF 1863-1864 IN WESTERN-ARMENIAN (RUSSIAN-ARMENIAN) PRESS

ABSTRACT

This article presents the feedback of Polish uprising in the Armenian press published in The Russian Empire. The Conservative press strongly condemned the Polish uprising. The Liberal press though adopted a critical approach toward Polish uprising but in their assessments they were mild. This position of Eastern Armenian press was connected to the fact that Eastern Armenia was under the control of the Russian Empire. Western Armenian press welcomed the Polish uprising.

Key words: Alexander The Second, the Polish Uprising, the East Armenian press, the Conservatives, the Liberals

1863-1864թթ. Լեհական ապստամբության արձագանքները արևելահայ մամուլում

Բանալի բառեր: Ալեքսանդր 2-րդ, լեհական ապստամբություն, արևելահայ մամուլ, պահպանողականներ, ազատականներ:

Ամփոփում

Հոդվածում ներկայացված է 1863թ. Լեհաստանում սկսված ապստամբության արձագանքները Ռուսաստանում տպագրվող հայկական մամուլում: Պահպանողական մամուլը խիստ քննադատության ենթարկեց ապստամբությունը: Ազատական մամուլը թերևս ուներ քննադատական մոտեցում ապստամբության վերաբերյալ, սակայն իրենց գնահատականներում ավելի մեղմ էին: Արևելահայ մամուլի նման մոտեցումը թերևս պայմանավորված էր Արևելյան Հայաստանի Ռուսական կայսրությունում գտնվելու փաստով: Արևմտահայ մամուլը ողջունեց լեհերի բարձրացրած ապստամբությունը:

THE FEEDBACK OF POLISH UPRISING OF 1863-1864 IN WESTERN-ARMENIAN (RUSSIAN-ARMENIAN) PRESS

The roots of the Polish issue in the Russian Empire spread up to the times of *Rech Pospolita* separation. By the uprising of 1830-31 the Polish wanted to overthrow Russian domination. After the throw-down of this uprising, Polish political outcasts hid in the West and initiated active anti-Russian activities. Polish outcasts created various organizations.

The Polish issue in the Russian Empire escalated even more during the reign of Alexander the Second. Russian new tsar headed to Warsaw in May of 1856, spoke at the local City Hall, promising to grant remission to the participants of 1830-1831 uprising. He, at the same time, warned them of strict punishment in case of necessity. Alexander the Second met certain concessions in respect of the Polish policy, allowing those who returned from the exile to enter state service. A number of Constitutional articles adopted in 1815 came into action in Poland in 1858. These amendments arose certain activity inside Polish social-political life but, nevertheless, Polish people were guided by national liberation ideas.

The situation in Poland escalated even more in 1860-62. On the night of 10 to 11 January 1863, the Polish people turned to armed uprising the purpose of which was to obtain absolute independence of Poland.

In 1861 fierce discussions started over the resumption of the Polish liberation movement inside the Russian society. The Polish issue became so worrisome for the Russian Empire that, according to A. Shiryov, it equaled the peasants issue in its poignancy.

The Polish uprising of 1863 arose various opinions inside the Russian society. Even the politicians with progressive views found Poland to be an inseparable part of the Russian Empire, with no rights for independence. That was the reason of the negative attitude towards Polish uprising inside the Russian society. Of course, there were certain figures who expressed their sympathy towards the just uprising of the Polish people and criticized the punitive measures of the Russian government.

Making use of the relatively mild policy of the authorities and being guided by the national liberation ideas, the Polish tended to reinstate their rights and independence. The situation escalated especially in 1860-62, and starting from January 1863 the Polish people turned to an armed uprising.

The Polish uprising found its feedback in the Western-Armenian (Russian-Armenian) reality. Particularly active were the conservative figures who "denied revolutions and social-political disturbances". Western-Armenian political activists weren't indifferent towards the events, taking place at the borders of the Empire. They gave their immediate response to both - the inner and the outer political issues. They acted mainly as the supporters of the political line of the Russian Empire.

Western-Armenian conservative press, represented by "Hambavaber Rusio", "Maseac aghavni", "Meghu Hayastani", "Hyusis" periodicals, published a number of articles concerning the Polish uprising.

It's just necessary to admit that Western-Armenian political activists were not less rigid in their statements than their Russian colleagues.

Soviet historian Ashot Hovhannisyan commented on the feedback of the uprising in the Armenian press mentioning that at that period it was Petros Simeonyan, who obtained the position of the editor of "Meghu Hayastani" periodical, publishing extensive newsletters about the Polish uprising and the heroic self-defense of Zeytun. According to A. Hovhannisyan, "Meghu Hayastani" periodical, despite certain restraints, was showing sympathy towards the Polish. Probably, A. Hovhannisyan meant the news which were re-printed from the foreign press without being analyzed. Upon the Polish issue, in 1864, the first release of "Meghu Hayastani" mentions the following, "this issue is the hardest", that's why "it became of great importance throughout the whole previous year". It's worth mentioning that the same policy was adopted by almost all the periodicals with the only exception of Stepanos Nazaryanci's "Hyusisapayl" liberal periodical, which throughout 1863 had no issues due to a slump of its subscribers. But even after being re-published the next year, it didn't respond in any way to the Polish issue.

The Western-Armenian press started reacting to the Polish issue starting from 1862, when the situation in Poland was gradually deteriorating. The Grand Duke Constantine Nikolaevich Romanov was appointed as the crown prince of Poland. The release of "Meghu Hayastani" of January 27, 1862 touched upon the Polish issue (at that time the periodical was edited by pastor Stepanos Mandinyan, who was pursuing conservative views). A writer, a publicist and a subscriber to the periodical - Michael Patkanyanc, in his article, entitled "A clergy and a riot movement in Poland", responded to an article in French "LeMonde" periodical, dated December 13, 1861, entitled as "The Russian government and the Polish clergy". In his opinion, the information according to which the reason for the discontentment of the Polish people consisted in disrespectful attitude of the Russian authorities towards the Polish clergy, was fake. M. Patkanyanc thought that these were specially created organizations that aggravated the situation, and under the guise of the church were organizing various measures "carrying flags with Polish national colors" and singing "Boże coś Polskę" (God, save Poland).

A year later, during the uprising, the same idea was expressed by the Armenian "Hambavaber Rusio" periodical, printed in Russia. Touching upon the reasons for the Polish uprising it expressed a supposition according to which it was not the religious difference, but "the freedom the Polish got recently from the King Kaiser". If they didn't get the freedom, if they were left in the same state which existed ten-twenty years ago, they wouldn't rebel and wouldn't dare "to raise arms, just like the Polish who were under the Austro-Hungarian power

with no freedom in their possession". Mseryan, the editor of "Hambavaber Rusio", brings an example of the Armenian church, which has its rights "to realize its own regulations". According to him, the Polish people and the catholic church possessed the same freedom.

M. Patkanyan was also of the opinion that "Russia, especially the modern days' Russia, was not an enemy to the Catholicism".

"Maseac Aghavni" journal, headed by the conservative editor - master Gabriel Ayyazovski, also expresses perplexity in the "The French messenger" section of "LeMonde" periodical, according to which the latter considers the Polish issue purely religious, because "a foreigner has a habit of representing any type of war using the name of his prophet and taking the believers under his flag. But when the Christians will arise against each other, both will tear each others' hearts in the name of faith".

The interesting thing is - why the Western-Armenian social activists reacted to the history of Poland only in the frameworks of the Polish uprising, after the Armenians began settling in that country and more than 40.000 Armenian families adopted Catholicism. And this was when still, in 1860, in "Krunk hayoc ashxarhin" journal, Western-Armenian activist Matevos Mamuryan, in an article entitled as "The general theory of the corrupt position of migrated Armenians", speaking about the Armenian emigrants in Poland criticized the local Armenians of being "spoiled and forever lost". Going on with his idea, he concluded that it was a bad Armenian habit "to earn money at any stake".

In 1863 "Hyusis" periodical, edited by the conservative representative Rapayel Patkanyan, printed "A letter to the publisher" article, where the author expresses his concerns about the events, taking place inside the Polish kingdom. He speaks about the status of the Armenians in both countries and makes comparisons. "The state of Armenians inside Russia has been incomparably better, than the state of the latter in Poland, and, sometimes, even better than the state of other immigrants in Iran, India and Austria. Thus it would be a great crime to neglect this good attitude". Gabriel Patkanyan in his work named "Mijnavepk Lehasani Hayoc ankeru. Nikol. 1627-1652", touching upon the Polish-Russian relations, firstly accuses the Polish monarchy of the confession changing policy realized in the Western provinces of Russia in the 16th century. Behind all that Patkanyan saw The Pope, who wished "any nation settled in Poland to be turned into a unite congregation and the Roman Pontiff to be the one and only pastor". Continuing his idea he said that a number of "skeptical and weak-minded" bishops from the Western provinces of Russia agreed to change their confession. Then, the author speaks about the history of the Armenian immigrant community in Poland, mentioning that Poland was reconstructed thanks to the activity of the Armenian migrants. "The Armenians were the reason and the means of Poland's well-being", and, what they got in return, were persecutions, especially on the part of the church.

"Meghu Hayastani" periodical touched upon the Armenian migration settlement in Podolsk town. It represented the state of the Armenians, how they settled down in Podolsk, had their church and how they adopted Catholicism in 1666. And now "Services to God are conducted in Armenian language only in one church, whereas in other churches all the sermons are conducted in Latin". The article also mentions that Kamenec-Podolsk must be grateful to the Armenians for the flourishing of trade and crafts. "Only the Jews were good at these things starting from the end of the previous century. Now, the Armenians from Kamenec have mixed up with the Polish to such an extent that it's sometimes even hard to distinguish them from one other".

Msreyans' "Hambavaber Rusio" periodical also reminds the Polish that they themselves conducted a policy of racial discrimination in respect of various nations, including the Armenians, forced them to adopt Catholicism. "The Polish cannot justify themselves on this point. Our nationality, our religion, our church are lost inside Poland through the fault of the Polish pastors who passed it over to the Polish nation - a nation, which now so shamefully dares to desecrate Russian domination". Concluding the article, the author says that he can no more trust the Polish, because "they extinguished 40.000 Armenian houses, they robbed us of our churches, stepped over our glory and honor... and after all that, can we speak positively about them, praise them?... No, alas, we cannot".

Here, we find it necessary to concentrate on a very important circumstance. Naturally, Armenian conservatives were rightly accusing the Polish of converting the Armenians into Catholicism, because in this way they lost their national identity in their exile. However, one thing is curious - why was this issue touched upon in the days of the uprising? We think it was connected with the fierce propaganda which the metropolitan press launched against the Polish. In this period, almost all the Russian periodicals are flooded with accusations against the Polish, against the fact that they adopted Catholicism and distanced themselves from their Slavonic roots.

In the same period almost all the Western-Armenian activists gave positive estimations to the heroic self-defense of Zeytun in Ottoman Turkey in 1862. The conservatives not only approved of Zeytun self-defense, but also criticized the Ottoman empire for pursuing such policy.

In their "Hambavaber Rusia" Mseryans, speaking about the events in Zeytun, welcomed Zeitun people's actions and accused the Turkish government. "This event shows what kind of a responsibility must be undertaken by pasha, and what kind of a severe trial he must be brought to".

In this case a question arises - why did Armenians so willingly favor the punitive actions of the Russian authorities directed towards "eradicating the evil, establishing peace and tranquility". It's clear that the Armenian activists, who became the subjects of the Russian empire, couldn't express their ideas differently, as the press

was in absolute control of governmental structures. Whereas, the Western-Armenian activists were more free and unbending in their question directed to Poland and its liberation movement.

It was only "Maseac aghavni" inside the Western-Armenian reality, that tried to defend the Polish. One section of "Parisian messenger" periodical touched upon the controversy between L. Miroslovski and Vladislav Chartoriski. Miroslovski arrives in Paris to unite the local split Polish population. He wished Poland to have democratic order, whereas Chartoriski was favoring monarchic ones. Miroslovski writes a letter to Chartoriski accusing him of their failures. "But the Polish are wrong. Their diversity will do a lot of harm to the national issue and any honest person will think that if a nation cannot live unified in emigration, what might happen to it if it's given freedom of control?". After that, in the period between 1863-64, "Maseac aghavni" referred in its articles to the Polish issue only with criticism, defending the policy of the Russian government.

Criticizing the Polish uprising and defending the self-defense of Zeytun, the conservatives probably didn't want to see the collapse of the empire where the Armenians, unlike The Ottoman empire, could develop their culture and education. Because the collapsed Russian empire would be destructive for the Armenians.

As we have mentioned above, "Hyusisapayl" periodical didn't react in any way to the events taking place in Poland. Though, Michael Nalbandyan, who was of fundamental views, expressed his own opinion concerning the events in Poland. He wished to destroy the political order of Russian and European countries and to create new all-European order by means of public rebellions, realized with the help of Russian fundamentalists.

In his work "Agriculture as a direct way" A. Nalbandyan touches upon the Polish issue. He was the only one among the Western-Armenian activists who criticized the policy of the Russian powers. His views radically varied from those of the conservatives. Nalbandyan spoke of the separation of Poland, of the 30-year-old struggle of the Polish people. "Russian prisons are filled with the Polish. I think that soon there will be more Polish people in Siberia than in Poland itself". Continuing to criticize the policy of Russia in respect of the Polish issue, he represents the current situation in Poland, the pressure the Polish government undertakes in order to stifle the national movement. "The German-Tatar government of Russia is sucking on the blood of Poland like a vampire, closes its churches and schools".

Of course, A. Nalbandyan was greatly influenced by the views and viewpoints of those Russians who were in exile in London, and who wished to see Poland independent and a part of the All-Slavic Federation as an autonomous state.

Thus, at the beginning of the 60s of the XIX century, the Polish issue became a subject of discussions in vast layers of society in the Russian empire, as well as on the part of Western-Armenian activists. It can definitely be said in the 60s of the XIX century the Western-Armenian conservative stream was directly

supporting the government policy in respect of the Russian national policy issue, in comparison to the Western-Armenian social activists. This, probably, should be explained by certain religious and political liberties obtained by one part of the Armenian nation on the territory of Christian Russia, and, why not, in order to stay aside from the censorship punishment. Only Nalbandyan, who possessed fundamental views, had a courage to criticize, inside the Armenian reality, the policy of the Russian authorities and to support the Polish uprising.

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THE CONCEPT OF A TAXPAYER IN POLISH AND ARMENIAN VALUE ADDED TAX

ABSTRACT

The aim of this article is to present the distinctions between Polish and Armenian concepts of VAT payer. The new Tax Code that entered into the legal force in Armenia significantly modified the hitherto prevailing understanding of VAT payer, which was close to the Polish one before. Polish VAT rules are greatly determined by the European Union law which by means of VAT Directive harmonizes the legislations of all EU member states. Polish (and EU) VAT rules base the concept of VAT payer on the premise of carrying out an economic activity, making an obligation to register as a VAT payer mandatory but meaningless from the point of view a taxpayer status. On the other hand, new Armenian VAT rules make the taxpayer status dependent on the formal registration of a taxpayer, assuming that the entity is an organization, individual entrepreneur or a notary. However, performing taxable activities, even not being record-registered as a VAT payer, results in being subject to tax anyway, although without the right to deduct the input VAT as well as without other taxpayer's privileges.

Due to the existence of a special tax regime in Armenia – turnover tax which aim is to simplify the tax law for small entrepreneurs and which does not appear in Polish law – the significant number of entities that would have been VAT payers in Armenia are taxed with a turnover tax. For this reason as well as because of the differences in the size of both economies and the fact that the threshold of sales turnover below which the VAT payer may be exempted from VAT in Armenia is more than twice as high as in Poland, the number of VAT payers in Armenia is much smaller than in Poland.

Key words: tax, VAT, taxpayer, VAT payer, turnover tax, Armenian Tax Code, VAT exemption

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1. Introduction

Value Added Tax (hereinafter referred to as "VAT") as an indirect tax is one of the most important public burdens that is charged from entrepreneurs performing their business. In some countries VAT is replaced by some other kinds of indirect taxes like sales tax or numbers of excise duties. However, even the richest countries of a Persian Gulf which had not imposed VAT until now, simultaneously introduced VAT starting from the 1st of January 2018 due to shortage of public incomes, although the rate of the tax remains on a very low level (merely 5%)¹. However, in many countries VAT generates the largest share out of all tax revenues and therefore becomes a subject of specific interest of both taxpayers and tax authorities.

The question of a taxpayer on the grounds of VAT is one of the most important, not only due to the fact that a taxpayer's issue in general constitutes one of four indispensable structural elements of any tax construction (apart from the subject of tax, tax base and tax rate) but also by cause of the nature of VAT itself. The same legal entity may be considered as a VAT payer or not, depending on the situation and a role of this entity in transaction falling within the scope of VAT. The general rule is that the supply of goods and services is taxable only if performed by a taxpayer acting as such. Hence each time recognition of a particular activity as taxable on grounds of VAT requires to check whether the person who performed the said activity acted as a taxpayer. Consequently – the scope of taxation is limited by two factors – objective (the supply of goods and services for consideration) and subjective (all supplies must be performed by a taxpayer acting as such)².

The second important legal issue is the distinction between the taxpayer in formal and material aspects. It needs to be underlined that the fulfilment of the abovementioned criteria constitutes a taxpayer from a legal point of view – a legal entity that must be registered for VAT purposes and must comply with the relevant tax law. However, the economic burden of a tax will be borne by a final consumer of a particular good or service or even a professional entity that use a good or service for its own purposes or to perform non-taxable activities. Therefore VAT is considered as an indirect tax, due to the fact that two different entities are considered to be a taxpayer – one from a formal point of view,

¹ <https://www.vatlive.com/vat-news/ready-for-vat-in-the-gulf-2018/>, access date: 14.08.2018.

² J. Fornalik (in:) *VI Dyrektywa VAT*, (ed.) K. Sachs, p. 63-64, Warsaw 2003.

whereas the latter – from an economic point of view. What is more, the principle of neutrality even requires for VAT to be neutral for a taxpayer (legal) and to shift the economic burden towards consumers. That is the reason why many subjects prefer to have a VAT taxpayer's status which is hardly possible to imagine on grounds of other tax constructions.

Taking into consideration the abovementioned issues it is worth to underline the crucial role of a taxpayer in contemporary value added tax construction. The aim of this article is to compare the institution of a VAT payer in Polish and Armenian tax law, and the role it plays in the national tax legislation.

2. VAT payer in Polish and EU tax law

In Polish legislation all issues related to the VAT are regulated in Goods and Services Tax Act (hereinafter referred to as the "Polish VAT Act")³ and several regulations issued by the minister competent for public finance which main aim is to precise some minor details. However, as Poland is a member of the European Union since the 1st of May 2004, Polish law must comply with EU law, hence Polish VAT Act must reflect the provisions of VAT Directive⁴ as well as the legal output of the Court of Justice of the European Union and other EU's bodies (the so-called *acquis communautaire*). In case of any ambiguities between Polish VAT Act and VAT Directive to the taxpayer's disadvantage, the taxpayer may plead on the VAT Directive directly and apply the EU law. Having regard to the above, both Polish VAT Act and EU VAT Directive shall be analyzed in parallel in order to determine the content of a particular legal norm.

It must be underlined that the VAT rules have established their own specific concept of taxpayer, which is independent from other tax constructions. One cannot assume that a CIT or PIT taxpayer becomes also a taxable person on the grounds of VAT and *vice versa*. What is more, in many national tax legislation there are some general tax rules applicable to all taxes, levies and other kinds of public burdens which include the definition of a taxpayer. In case of Poland, it is the Tax Ordinance⁵ which defines the taxpayer as a natural person, a legal entity or an organizational entity without legal personality subject to tax liability by virtue of the tax acts⁶. However, Polish VAT Act contains its own definition

³ Act on Goods and Services Tax, of the 11th of March 2004 (consolidated text: Journal of Laws 2017, No. 1221 as amended).

⁴ Council Directive 2006/112/EC of 28th of November 2006 on the common system of value added tax (Official Journal of the European Union L, dated 11.12.2006, No. 347 p. 1).

⁵ Tax Ordinance Act, of the 29th of August 1997 (consolidated text: Journal of Laws 2018, No. 800 as amended).

⁶ Art. 6 of the Tax Ordinance Act.

of a taxpayer – art. 15 s. 1 states that taxpayers shall be legal persons, organizational units without legal personality and natural persons, who individually carry on the economic activity referred to in s. 2 of art. 15 of Polish VAT Act, regardless of the purpose or results of such activity. The very first observation of these two different norms is that the crucial aspect of a taxpayer's status on the grounds of a Tax Ordinance is the question of being subject to tax liability, whereas in case of VAT the center of gravity is moved towards performing economic activity. Needless to mention that the Polish VAT Act contains also a specific definition of an economic activity that differs from definitions prevailing in other acts, including Tax Ordinance. As a rule, it is true that in most cases any person who performs its business activity will be subject to tax liability anyway, however there may be some situations that the range of a definition of a taxpayer on grounds of Polish VAT Act and Tax Ordinance will not overlap each other. This shall be in accordance with art. 9 of the VAT Directive that considers a taxable person as any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity. However, the comparison of art. 15 of Polish VAT Act and art. 9 of VAT Directive shows one unwitting but important difference – namely Polish VAT Act mentions that the economic activity shall be carried on individually, whereas VAT Directive – independently. The conceptual scope of both terms differs slightly, as the term 'individually' refers more to practical aspect, whereas the term 'independently' to the legal one⁷, hence there might be some discrepancies in recognizing one entity as a taxpayer on grounds of both legal acts.

Further deliberation on the aspects of individuality in carrying on the economic activity will be presented below. The crucial aspect to consider first is the definition of the economic activity. According to art. 15 s. 2 of the Polish VAT Act, economic activity shall include any activity of manufacturers, traders or service providers, including the subjects acquiring natural resources and farmers, as well as the activity of persons practicing liberal professions. Economic activity shall particularly include activities consisting in using goods or intangible fixed assets in a continuous manner for profit-gaining purposes. Art. 9 of VAT Directive considers economic activity as any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions. The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.

It needs to be underlined, that a particular entity will be considered as a taxpayer, if it individually carries on the economic activity, regardless of the purpose or results of such activity. It means, that neither the aim nor the result

⁷ T. Michalik, VAT. Komentarz, Legis/el 2018.

of an economic activity may determine the status of a VAT payer⁸. Even if a particular activity is not profit-minded but fulfills the criteria of an economic activity, it may be used as a premise to constitute a taxpayer in VAT. Obviously, an activity focused on profit-making, as a rule will be considered as an economic activity within the meaning of the Polish VAT Act.

According to art. 12 of the VAT Directive, the Member States may regard as a taxable person anyone who carries out, on an occasional basis, a transaction relating to the activities referred to above, especially the supply, before first occupation, of a building or parts of a building and of the land on which the building stands or the supply of building land. This rule was implemented to the Polish VAT Act on much broader scope⁹, which led to many tax disputes and situations in which many entities were unreasonably considered as VAT payers, like person who was selling his building land which was inherited and then divided into smaller pieces to facilitate sale – such action shall be considered as a management of a private property, not a supply of goods. Such a person does not act as a taxpayer, even if the division of the land was made to obtain the highest possible income, because the aim of purchasing (act of inheritance) was private, not connected with the performed business, and the subsequent sale of the particular parts lies beyond the scope of business activity. However, should the entity acquire the building plot with a business purpose to resell it – that will constitute the supply of goods and such entity shall be considered as a taxpayer of VAT from the sole beginning (sale of the first part of a divided plot). Hence the distinction between the same entity running a business activity and managing his own private property seems to be very difficult, ambiguous and requires an individual approach.

Economic activity must be performed independently (individually as stipulated in the Polish VAT Act) by the entity in order to be recognized as a VAT payer. The condition that the economic activity must be conducted 'independently' shall exclude employed and other persons from VAT in so far as they are bound to an employer by a contract of employment or by any other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employer's liability¹⁰. This rule is also reflected in Polish VAT Act, which excludes from the individually carried on economic activity all activities from which revenues are considered as derived from employment relationship or activity carried on personally (like contract of mandate or a specific work contract, contract of management of enterprises, directors' service contract or other

⁸ This was confirmed also by Court of Justice of European Union e.g. in judgment C-110/94 *Intercommunale voor zeeewaterontzilting (INZO) v. Belgische Staat*.

⁹ Polish VAT Act in the wording before 1st April 2013 stated that the business activity appeared also where a particular action was performed once, however in circumstances indicating an intention to perform it regularly.

¹⁰ Art. 10 of the VAT Directive.

contracts of a similar nature), as well as services of authors and artistic performers, within the meaning of provisions on copyright and related rights, remunerated in the form of royalties for transferring or granting licenses to copyright or right to an artistic performance or for exercise thereof, including those remunerated through an organization for collective administration of copyright or related rights. The issue of management contract is not clearly settled though. In case an entity that within the scope of its business is bound by the contract to manage the other entity, performs his services independently, is fully responsible for his actions and omissions and bears a full risk for them, may be considered as a VAT payer. However, if the risk is reduced and such an entity is significantly subject to supervision and is not independent in decision-making process, it shall be treated equally as the employee and cannot be considered as a VAT payer. Again, the distinction is difficult and discretionary.

Another important issue is the public authority as a taxpayer of VAT. According to the VAT Directive, states, regional and local government authorities and other bodies governed by public law shall not be regarded as taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions or payments in connection with those activities or transactions. However, when they engage in such activities or transactions, they shall be regarded as taxable persons in respect of those activities or transactions where their treatment as non-taxable persons would lead to significant distortions of competition. In any event, bodies governed by public law shall be regarded as taxable persons in respect of the activities listed below, provided that those activities are not carried out on such a small scale as to be negligible:

- telecommunications services;
- supply of water, gas, electricity and thermal energy;
- transport of goods;
- port and airport services;
- passenger transport;
- supply of new goods manufactured for sale;
- transactions in respect of agricultural products, carried out by agricultural intervention agencies pursuant to regulations on the common organisation of the market in those products;
- organisation of trade fairs and exhibitions;
- warehousing;
- activities of commercial publicity bodies;
- activities of travel agents;
- running of staff shops, cooperatives and industrial canteens and similar institutions;
- activities carried out by radio and television bodies.

Polish VAT Act also implements this rule and states that public authorities and offices servicing such authorities shall not be considered taxpayers within the scope of implemented tasks imposed by separate provisions of law for the implementation of which they have been appointed, save for the activities performed pursuant to civil law contracts concluded. Although the wording of the Polish VAT Act may lead to ambiguities, the sole idea lying behind this solution is understandable. This rule is also confirmed in the jurisdiction of the Court of Justice of the European Union. *It is only by way of derogation from that general rule that certain activities of an economic nature are not to be subjected to VAT. Such derogation is laid down by the first subparagraph of Article 4(5) of the Sixth Directive [art. 13 of the current VAT Directive-J.Ch.], under which activities engaged in by a body governed by public law acting as a public authority are not to be subject to VAT. That derogation covers principally activities engaged in by bodies governed by public law acting as public authorities, which, while fully economic in nature, are closely linked to the exercise of rights and powers of public authority. In those circumstances, the fact that such bodies are not subject to VAT on those activities does not potentially have an anticompetitive effect, inasmuch as they are generally engaged in exclusively, or almost exclusively, by the public sector¹¹.* Such an exclusion seems to be necessary, otherwise all activities of public bodies, including performing public functions and tasks would be taxed. On the other hand, in case a public body carries out an activity that may be performed by any other entity, which is not restricted to exclusive competence of this public body, non-taxation would lead to a violation of the rules of competition on the market. To illustrate this rule on the example – let's assume that a public body wishes to rent its property. Being not taxed in this situation, its market position would be better in comparison with a private professional entity, who will be obliged to tax with VAT its rent if this private entity wishes to rent identical property. However, charging local taxes or other public burdens arising from the rental of this property is the exclusive competition and obligation of a public body and therefore it does not need to be subject to VAT. Both situations – taxing public bodies performing their exclusive competences connected with their legal power (*imperium sphere*) as well as not-taxing them whilst performing business activity (*dominium sphere*) – are undesirable from the point of view of the legislator. Hence the abovementioned rules were enacted, although problematic in many cases. Nowadays in Poland tax disputes have arisen in terms of recognition of the courts bailiffs as VAT payers. Although they exercise their profession as their own business, being under the supervision of courts, until 2015 they were not considered as taxpayers. However since October 2015, although the regulations of the VAT Directive and the Polish VAT Act remained unchanged, the new interpretation occurred and bailiffs became

¹¹ Judgment C-288/07 of the Court of Justice of the EU, dated 16th September 2008.

treated as ordinary VAT payers¹². This situation enlightens that despite the regulations remaining unchanged, the new interpretation, viewpoint on them, may lead to a completely opposite results.

Unlike in the EU law, Polish VAT Act does not allow to create a tax capital group as a single VAT payer. Each entity, despite being a part of a holding or a member of related entities, constitutes a separate taxpayer.

Another significant difference between EU and Polish law lies in the fact, that the VAT Directive distinguishes between a taxable person and a person liable for payment of VAT, whereas the Polish VAT Act uses just one term – taxpayer¹³. The distinction provided in the VAT Directive is not meaningless, as in certain situations it is not the taxpayer who is responsible to pay VAT. These situations are covered by a so-called reverse charge mechanism, which main aim is to shift the liability to pay and settle the tax to the purchaser of a certain goods and services. In such a situation it is the purchaser who becomes a taxpayer just for this particular transaction, as the exception to the general rule of settling VAT by the vendor (person providing services or supplying goods). The Polish VAT Act defines such a person with a term “taxpayer referred to in article 17” which cannot be considered as the best solution. The reverse charge mechanism was initially used for international transactions like import or intra-Community acquisition of goods¹⁴ (“import” from another EU Member State), import of services and some other minor matters. However, since several years, a reverse charge mechanism is also being applied to some domestic transactions. Regarding Polish VAT Act, a particular goods and services that are covered by a reverse charge mechanism are specified in the Annexes 11 and 14 to the Polish VAT Act. Such a solution is substantiated with a very high rate of VAT frauds and according to some experts, shifting a liability to pay the tax on the purchaser will reduce this rate. However on the other hand, the purchaser, whilst being a VAT payer, *de facto* will not pay any tax, as he will reduce the whole amount of output tax (arising from the acquisition of goods and services covered by the reverse charge mechanism) by the amount of input tax (the same tax, as he will use the previously purchased goods and services to carrying out taxable activities). Neither the vendor will pay any VAT as the reverse charge mechanism shifts the tax liability solely onto the purchaser and the VAT arising from such a supply is not due from the vendor. The question of applying a reverse charge mechanism in relation to the domestic

¹² General interpretation of the tax law of the Ministry of Finance of Republic of Poland, dated 9th June 2015, No. PT1.050.1.2015.LJU.19, as the implication of the judgement C-499/13 of the Court of Justice of the EU, dated 26th March 2015.

¹³ A. Bartosiewicz, *VAT. Komentarz*, p. 257, Warsaw 2017.

¹⁴ According to art. 20 of the VAT Directive, intra-Community acquisition of goods shall mean the acquisition of the right to dispose as owner of movable tangible property dispatched or transported to the person acquiring the goods, by or on behalf of the vendor or the person acquiring the goods, in a Member State other than that in which dispatch or transport of the goods began.

transactions arouses a lot of controversy and is an issue that requires a separate studies. From the point of view of this study, on the grounds of the Polish VAT Act, taxpayers shall also be legal persons, organizational units without legal personality and natural persons (e.g.):

- 1) who bear the duty to pay customs duties,
- 2) effecting intra-Community acquisition of goods,
- 3) being recipients of the services provided by a taxpayer with its seat outside the country (subject to the conditions that the recipient is also a VAT payer),
- 4) acquiring goods listed in Annex 11 to the Polish VAT Act¹⁵,
- 5) acquiring the services listed in Annex 14 to the Polish VAT Act¹⁶.

Article 17 of the Polish VAT Act contains many technical details regarding application of a reverse charge mechanism, however due to the limitation of this study, they will not be further analyzed.

Last but not least, another aspect of the Polish VAT payer is the limit below which an entity may be exempted from the tax. This limit and rules of its application is regulated in art. 113 of the Polish VAT Act. The sale carried out by taxpayers for which the total sales value did not exceed in the preceding tax year the amount of 200,000 PLN¹⁷ shall be exempted from tax. The value of the sales shall not include the tax amount. The value of the sales shall not include: intra-Community supply of goods, distant sale from the territory of the country¹⁸, distant sale into the territory of the country¹⁹, supply of goods for consideration and provision of services for consideration, said goods and services being exempt from tax²⁰, the supply for consideration of goods considered by the taxpayer to be depreciable tangible assets and intangible fixed assets under the provisions on income tax. If the value of the sales exempted from the tax exceeds the amount referred

¹⁵ The Annex No. 11 contains 58 positions, including e.g. metals and metal products, jewellery, integrated circuits, electronic equipment (like notebooks, smartphones, game consoles), some kinds of waste and recyclable materials.

¹⁶ The Annex No. 14 contains 48 positions which are services for the transfer of greenhouse gas emission allowances and various types of construction works performed by subcontractors.

¹⁷ About 55,000 USD.

¹⁸ The supply of goods dispatched or transported by the VAT payer or on his behalf from Poland into the territory of the other EU Member State which is the state of destination for said dispatched or transported goods, provided that the supply is effected for an entity which is not a VAT payer in the state of destination.

¹⁹ The supply of goods dispatched or transported by the VAT payer or on his behalf from the territory of the other EU Member State into Poland, (which is the state of designation for the dispatched or transported goods), provided that the supply is effected for an entity which is not a VAT payer in Poland.

²⁰ Exemptions from art. 43 of the Polish VAT Act, save for transactions connected with immovable properties, financial and insurance services unless such activities are of ancillary nature.

to above, the exemption is no more valid as of performing the activity by which the amount has been exceeded and the taxpayer is obliged to settle and is liable to pay VAT on the general basis. The sale carried out by a taxpayer who commences to carry out the taxable activities during the tax year shall be exempted from tax if the value of the sales anticipated by the taxpayer does not exceed, in proportion to the period of the economic activity carried out during the tax year, the amount of 200,000 PLN. Where the actual value of the sales exempted from the tax, in proportion to the period during which the economic activity is carried out, exceeds, during the tax year, the amount of 200,000 PLN, the exemption is no more valid as of performing the activity by which the amount has been exceeded.

It must be underlined that the taxpayer may relinquish the abovementioned exemption. Being exempted from VAT, the taxpayer is not performing taxable activities and does not enjoy the right to reduce the amount of output tax by the amount of input tax, which is a crucial advantage of VAT system. Hence for those taxpayers who generate relatively low value added, such exemption, paradoxically, is not profitable as they cannot deduct the input VAT which they have paid in the price of goods and services acquired to perform their own businesses, especially if the recipients of their goods and services are other entrepreneurs being VAT payers. In case a taxpayer generates relatively high value added (e.g. performs services which does not require purchasing many goods and services from other entities), this exemption might be an advantage. The taxpayer who has forfeited the right to have his sale exempted from tax or relinquished that exemption may re-enjoy the exemption no sooner than upon the lapse of one year from the end of the year when such a relinquishment or forfeiture took place. The exemption shall not apply to taxpayer supplying: goods mentioned in Annex 12 to the Polish VAT Act²¹, goods subject to excise duty, buildings, constructions and parts thereof, construction areas or areas designed for being built upon, new means of transport, as well as providing the following services: legal services, services in the field of consulting, jeweler services or taxpayers not having their seat of economic activity in Poland.

The abovementioned provides an overview of the most important aspects regarding the construction of a VAT payer on the grounds of the Polish and EU tax law. Taxpayers shall also be legal persons, organizational units having no legal personality and natural persons not being the taxpayers referred to above if they effect an intra-Community supply of new means of transport incidentally. Apart from these question, a court bailiffs and administrative execution authorities performing execution activities shall be remitters of tax on the supply effected according to the procedure of execution, of goods owned by the debtor or possessed thereby

²¹ The Annex No. 12 contains 10 positions, including e.g. products (scrap) from precious metals, silver, gold, platinum, knives and scissors, spoons and other kitchen and tableware, coins, waste containing metal.

in infringement of the provisions in force. However, a tax remitter is a separate entity from the taxpayer and this lies beyond the scope of this study.

3. VAT payer in Armenian tax law

In Armenian tax law the crucial role plays the Tax Code, effective from the 1st of January 2018 (hereinafter referred to as the "Tax Code")²². Before the Tax Code came into legal force, the law on value added tax was prevailing (hereinafter referred to as the "Old Armenian VAT Act")²³.

According to art. 9 of the Tax Code, all taxes and fees must consist of six indispensable structural elements like: scope of taxpayers, taxable object, tax base, tax rate, method of calculation of the tax and procedure and time limits for paying the tax, which is more stringent compared to Polish tax law. However, the element of a taxpayer is also crucial for both legal systems. Likewise in Polish tax law, Armenian Tax Code provides for a separate definition of a VAT payer from the general one.

The taxpayer in Armenian tax law is generally defined as an organization or a natural person (including an individual entrepreneur and notary), who has or may have an obligation to pay a tax or make a payment in the cases prescribed by the Tax Code or laws of the Republic of Armenia on fees²⁴. The organization shall be considered as the Republic of Armenia represented by state administration institutions, communities of the Republic of Armenia represented by the community administration institutions, the Central Bank of the Republic of Armenia, legal persons having obtained state registration in the Republic of Armenia, institutions record-registered in the Republic of Armenia, as well as organizations registered in a foreign states, international organizations, permanent establishments and investment funds²⁵. For a natural person, the Tax Code considers any natural person (citizens of Armenia, foreign citizens as well as stateless person), including individual entrepreneurs and notaries²⁶.

Although this general definition of a taxpayer is slightly different from the one contained in Polish Tax Ordinance, as there is no straight reference to the tax liability, the Armenian definition shall have a similar effect. Basing on the definition of a tax liability in art. 4 of the Polish Tax Ordinance, the tax liability shall be an unspecified duty, resulting from tax law, to make a compulsory

²² Law of the Republic of Armenia, Tax Code of the Republic of Armenia, adopted on the 4th of October 2016.

²³ Law of the Republic of Armenia on the Value Added Tax, adopted on the 14th of May 1997.

²⁴ Art. 4 p. 11 of the Tax Code.

²⁵ Art. 21 of the Tax Code.

²⁶ Art. 24 of the Tax Code.

pecuniary performance in relation to the occurrence of an event specified by such acts. The Armenian definition, based on the obligation or a potential obligation to pay is *de facto* resembling the Polish one. The legal difference results from the fact that Polish tax law discern tax liability and tax obligation²⁷, whereas in Armenian tax law a tax obligation constitutes an element of a tax liability. The subjective range and the principle of determining taxable events by an act remain equipollent.

Regarding the definition of a VAT payer in a Tax Code, according to art. 59, the organizations, individual entrepreneurs and notaries record-registered as VAT payers with the relevant tax authority in conformity with the provisions of a Tax Code, shall be considered as VAT payers in the provided cases and time limits, which will be analyzed below.

However, before these cases and time limits are analyzed, it must be underlined that the definition of a VAT payer significantly differs from the Polish and EU ones. The crucial element to be considered as a VAT payer is the fact of registration as a VAT payer by the competent authority, as well as having a status of an individual entrepreneur or a notary, not the objective premise of performing a business activity. This may lead to the detachment between the status of a VAT payer and a person that actually performed the taxed activity, unless this person is formally registered as a VAT payer and has a status of an individual entrepreneur or a notary. According to Armenian law²⁸, an individual entrepreneur is an individual who performs certain economic activities (provision of services, performance of work, production activities), acting independently and on his own behalf. Such an individual must be formally registered. A notary is an official who, on behalf of the Republic of Armenia, in accordance with the Constitution and laws of the Republic of Armenia, carries out actions and other activities provided for by the notary law²⁹.

Following this, in order to become a VAT payer in Armenia, an entity not only must have a status of an organization, individual entrepreneur or notary but also must be record-registered as a VAT payer. Hence, failure to prove at least one of these two features will result in not granting a VAT payer status for a particular entity. However, this does not mean that as a consequence this entity will not bear a tax liability and will not be obliged to fulfill the compulsory pecuniary performance. According to art. 59 s. 5 of the Tax Code, organizations, individual entrepreneurs and notaries not record-registered with the relevant tax authority

²⁷ According to art. 5 of a Tax Ordinance, a tax obligation shall be an obligation of the taxpayer, resulting from a tax liability, to pay a tax in favour of the State Treasury or a local government unit in the amount, time limits and place determined in the provisions of tax law.

²⁸ Art. 2 of the law of the Republic of Armenia on individual entrepreneur dated 27th December 1993.

²⁹ The law of the Republic of Armenia on notary dated 4th December 2001.

as VAT payers will not be considered VAT payers but in case of carrying out taxable transactions and/or operations, as well as in the situation when a reverse charge mechanism applies³⁰ and imposes a tax liability on them, they shall, in the manner, in the amount and within the time limits prescribed by the Tax Code, be obliged to calculate and pay to the state budget the VAT due arising from these transactions and/or operations. As a result, although a non-registered entity will not be considered a VAT payer on the basis of the Armenian Tax Code, this entity will anyway be liable to pay the VAT due arising from the performed taxable transactions or operations. On the other hand, being a VAT payer also determines certain privileges, especially the right to deduct the input VAT, to apply a preferential tax rate, etc. Hence, failure to register as a VAT payer with accordance to the Tax Code, deprives such an entity these rights, even despite performing taxable transactions and operations and fulfilling the obligations to pay the VAT due.

To sum up the abovementioned observations, it must be stated that the provisions of Armenian Tax Code are more severe and risky for a taxpayer than the Polish and European ones, but on the other hand – they are much more secure from the point of view of the country and state budget as the possibilities of frauds are reduced and it is the public tax authorities who may control the VAT deduction and taxpayers' privileges. First of all it is the tax authority who registers the entity as a VAT payer³¹ and has a chance to check and verify this entity from the point of view of performed business. Secondly, even if the process of registration is not concluded and the entity is not considered as a taxpayer of VAT in the light of the Tax Code, the state budget will not suffer diminution of incomes, as the VAT arising from a performed transactions or operations is still due. The situation seems to be more precarious from the taxpayer side – until the relevant tax authority will not register the entity as a VAT payer, this entity does not enjoy the privileges, bearing all duties and burdens at the same time and it is the tax authority who decides when the taxpayer will be able and entitled to deduct the input VAT.

It is worth to underline, that the present Armenian regulations regarding a VAT payer issue are completely different and not in line with the previous ones, that arose from the Old Armenian VAT Act. Namely, art. 2 of the Old Armenian VAT Act considered as VAT payers all individuals and organizations carrying out independent economic (business) activity in accordance with the procedure defined by the law and implementing taxable transactions (operations). This old definition was sharing the Polish and European definition of a VAT payer, as it combined the status of a VAT payer with carrying out independent business activity, which was defined broadly as any economic activity implemented regularly

³⁰ Article 70 of the Tax Code provides for a reverse charge mechanism rule.

³¹ The rules concerning the record-registration of a VAT payer are contained in art. 292 and 293 of the Tax Code.

for the purpose of deriving income (profit) or any activity performed for compensation in any form. This indicates, that once the Tax Code has entered into the legal force, the meaning and even the concept of a VAT payer in Armenian law have changed significantly. That cannot be acknowledged as an ordinary amendment or alteration of a tax law, but rather as the remodeling of an idea of a VAT payer.

Apart from the organizations, individual entrepreneurs and notaries, who shall be record-registered as VAT payers with the relevant tax authorities, the Republic of Armenia (represented by state administration institutions), the communities of the Republic of Armenia (represented by community administration institutions) and the Central Bank of Armenia may voluntarily submit a statement for registration to become VAT payers.

Coming back to the definition of a VAT payer in a currently binding Tax Code, it must be stated, that regardless of the requirement of being record-registered and being an organization, individual entrepreneur or a notary, some additional conditions and time limits must be met to obtain the status of a VAT payer:

- 1) starting from the 1st of January of the given tax year until the end of the given year, where the taxpayer – as of the 1st of January of the given year – may not be considered a turnover taxpayer³² or failed to submit (within the time prescribed) to the relevant tax authority a statement on being considered a turnover taxpayer as approved by the tax authority and being considered an entity of family entrepreneurship as approved by the tax authority;
- 2) the organization having been granted state registration during the tax year or the natural person record-registered as individual entrepreneur or appointed as a notary, starting from the day of state registration or the day of record-registration as an individual entrepreneur or appointment as a notary until the end of the year respectively, where the taxpayer may not, as of the day of state registration or the day of record-registration as an individual entrepreneur or appointment as a notary respectively, be considered as a turnover taxpayer or failed to submit (within the time prescribed) to the relevant tax authority a statement on being considered a turnover taxpayer as approved by the tax authority and being considered an entity of family entrepreneurship as approved by the tax authority;
- 3) the organization or individual entrepreneur ceasing to be considered an entity of family entrepreneurship during the tax year, starting from the day of ceasing to be considered to be an entity of family entrepreneurship until the end of the tax year, where the taxpayer, as of the day of ceasing to be considered an entity of family entrepreneurship, may not be considered a turnover taxpayer or failed to submit (within the time prescribed) to the rel-

evant tax authority a statement on being considered a turnover taxpayer as approved by the tax authority and being considered an entity of family entrepreneurship as approved by the tax authority;

- 4) starting from the day indicated in the statement (but not earlier than the 20th day preceding the day of submitting the statement) until the end of the tax year indicated in the statement, if the taxpayer has submitted a statement to the tax authority making an indication of the fact of being considered a VAT payer and being record-registered as a VAT payer;
- 5) starting from the point in the tax year until the end of the given tax year from which the taxpayer shall cease to be considered a turnover taxpayer in the given tax year. Moreover, in case of being considered a VAT payer on the ground of exceeding the threshold of the amount of 58.35 million AMD³³ of sales turnover with respect to all types of activities in the tax year, the VAT shall be calculated and paid in the amount exceeding the VAT threshold.

Some other conditions are stipulated for a non-commercial organizations, as well as the organizations and individual entrepreneurs producing agricultural products only which are record-registered with the relevant tax authority:

- 1) starting from the 1st of January of the given tax year until the end of the given tax year, in case the sales turnover of the organization or individual entrepreneur with respect to all types of activities in the previous tax year has exceeded 58.35 million AMD;
- 2) starting from the point in the tax year until the end of the given tax year from which the sales turnover of the organization or individual entrepreneur with respect to all types of activities in the previous tax year has exceeded 58.35 million AMD. Moreover, in case of being considered a VAT payer on the ground of exceeding the threshold of the amount of 58.35 million AMD of sales turnover with respect to all types of activities in the tax year, the VAT shall be calculated and paid in the amount exceeding the VAT threshold;
- 3) starting from the day indicated in the statement (but not earlier than the 20th day preceding the day of submitting the statement) until the end of the tax year indicated in the statement, if the taxpayer has submitted a statement to the tax authority making an indication of the fact of being considered a VAT payer and being record-registered as a VAT payer.

³² Within the meaning of Section 13 of the Tax Code.

³³ About 120,000 USD.

However, the abovementioned rules do not apply if an organization or individual entrepreneur carries out other activities along with the production of agricultural products.

Analyzing these two groups of additional conditions of obtaining a VAT payer status, one must observe, that this status is verified annually and depends on being subject to a turnover tax system, provided for in Section 13 of the Tax Code³⁴ as well as exceeding an annual threshold of 58.35 million AMD, which is more than twice as large as the Polish one. Taking into account the size of economics and economic parameters of both states like a consumption level, price level, purchasing power of a local currency, the percentage share of VAT payers in Armenia in relation to the general public must be lower than in Poland, which have both benefits and drawbacks. It must be underlined that the Polish threshold was recently raised by 25%, hence the difference in favour of Armenia used to be larger.

As far as the turnover tax system is concerned, according to section 13 of the Tax Code, a turnover tax forms one of the special tax regimes, being a state tax, paid to the state budget that shall substitute VAT, especially for individual entrepreneurs and notaries. For resident commercial organizations the turnover tax shall substitute VAT and/or the profit tax, and the estimated value of profit tax in the turnover tax shall be considered to be 40%, while the estimated value of VAT – 60%. Although the question of a turnover taxpayer lies beyond the scope of this studies, the summary of the most important aspects and conditions to become a turnover taxpayer are presented below.

- 1) In order to become a turnover taxpayer from the 1st of January of the given tax year until the end of thereof, the taxpayer shall submit to the relevant tax authority the proper statement, no later than until the 20th of February of the given tax year;
- 2) an organization which has been granted a state registration during the tax year or a natural person record-registered as an individual entrepreneur or appointed as a notary – from the day of the registration until the end of the given tax year – the taxpayer shall submit to the to the relevant tax authority the proper statement, no later than until the 20th day inclusive, following the day of this registration;
- 3) a commercial organization or an individual entrepreneur which ceased to be considered a family entrepreneurship entity – from the day of ceasing to be considered as a family entrepreneurship entity until the end of the given tax year – the taxpayer shall submit to the to the relevant tax authority the proper statement, no later than until the 20th day inclusive, following the day of this ceasing;

³⁴ Art. 253-265 of the Tax Code.

- 4) a commercial organization or an individual entrepreneur or a notary who did not carry out activity (terminated their activity) before the 20th of February (inclusive) of the given tax year – from the day of resuming their activity until the end of the given tax year – the taxpayer shall submit to the to the relevant tax authority the proper statement, no later than until the 20th day inclusive, following the day of this resuming;
- 5) the resident commercial organization, individual entrepreneur and notary, whose sales turnover in respect of all types of activities did not exceed 58.35 million AMD during the preceding tax year, may be considered a turnover taxpayer;
- 6) some types of entities like e.g.: banks, credit organizations, insurance companies, professional participants in the financial markets, pawnshops, brokers, audit companies are not entitled to be taxed by a turnover tax at all.

Last but not least, natural persons not acting as individual entrepreneurs and notaries shall not be considered as VAT payers, but in case where they import goods into the territory of Armenia (including from Eurasian Economic Union member states), which is considered as import for purposes of entrepreneurial activities or where non-resident natural persons having no permanent establishment carry out transactions and/or operations considered VAT taxable object, they shall be obliged to calculate and pay to the state budget VAT due arising from these transactions and/or operations in the manner, in the amount and within the limits prescribed by the Tax Code. These rules also differs from the Polish and European ones. The first dissimilarity is that in order for the import to be taxable under the provisions of Armenian Tax Code, it must be performed by the VAT payer or a natural person not deemed to be VAT payer but for purposes of entrepreneurial activities, whereas in Polish tax law the tax liability is imposed on a person who bears the duty to pay customs duties. The purpose of import does not have any significance and it is the custom law that regulates and determines the tax obligation in VAT arising from import (VAT adopts a secondary character in this situation). Secondly, once a non-resident natural person or organization is performing taxable activities or operations on the territory of Poland, such an entity is also subject to tax, however, Polish Vat Act (and VAT Directive) often imposes a duty onto the acquirer or transferee using a reverse charge mechanism, in order to facilitate the tax collection and control. Once a VAT payer does not have his seat of economic activity or permanent place of carrying on economic activity in the territory of a EU Member State and is subject to the duty to register as an active VAT payer, he shall be obliged to appoint a tax representative. The taxpayer having his seat of economic activity or permanent place of carrying on economic activity in the territory of a EU Member State other than Poland, he may appoint a tax representative (it is not mandatory in such a case). Therefore, in case the VAT payer

has no real connections with the country, nor with the other EU member state country, he is obliged to appoint a tax representative who will be dealing with all issues regarding VAT liability with a Polish tax authorities. Such a representative is liable, jointly and severally with the taxpayer, for tax obligation that the tax representative settles in the name and on behalf of the taxpayer. This solution facilitates the tax authorities to collect tax in case the VAT payer has no domicile or establishment in the country or another EU member state that might possibly assist to enforce tax arrears. It is worth to underline that according to the Old Armenian VAT Act, individuals who were not individual entrepreneurs should have been taxed VAT according to the provisions of the Old Armenian VAT Act and a customs legislation when importing goods into the territory of Armenia, provided the quantity or the value of the imported goods exceeded the rates established by a prevailing law.

4. Conclusion

Summarizing both Polish and Armenian tax systems within the area of a concept of a VAT payer, it comes out that although at the first glance they are similar, the detailed reading of the Polish VAT Act and Armenian Tax Code reveals numerous discrepancies. Polish VAT Act must be interpreted in accordance with the VAT Directive and the European legislation shall prevail in case of any ambiguities or disaccords. On the other hand, the rules arising from the Armenian Tax Code are not determined or somehow adjusted or revised by any other higher-order legal act. The new rules that came into legal force in Armenia, owing to a Tax Code (effective as of the 1st of January 2018) significantly modified the concept of a VAT payer in comparison to the Old Armenian VAT Act provisions, which were much closer both in wording and meaning to the ones prevailing in Poland and EU now. The alterations that were carried out by Armenian authorities within the concept of a VAT payer will result in extending the rights of the Armenian tax authorities at the taxpayers' cost, however shall not remarkably impede economic activity or refrain new potential entrepreneurs from starting-up their business.

The definition of a VAT payer in Polish and European tax law, as well as in the Old Armenian VAT Act was based solely on the premise of carrying out an economic activity, whereas the current Armenian Tax Code requires formal registration as a VAT payer, assuming that the entity is an organization, individual entrepreneur or a notary. However, performing taxable activities, even not being record-registered as a VAT payer, results in being subject to tax anyway, although without the right to deduct the input VAT as well as without other taxpayer's privileges. In Polish and European VAT system the registration as an active

VAT payer is mandatory³⁵, however does not have any influence on the status of a VAT payer – in case an entity performs a taxable activity according to art. 15 of the Polish VAT Act, it becomes a taxpayer regardless of the fact whether the prior registration as an active VAT payer took place.

Armenian VAT is highly connected to a turnover tax which does not exist in Polish tax law. This special tax regime may be considered as a simplification of a tax system for small enterprises and as a consequence – reduces the quantity of a VAT payers. In Poland not only such a special turnover tax does not appear but also the threshold below which a taxpayer may be exempted from VAT is more than twice lower as in Armenia. However, both tax systems allows a taxpayer to choose to be subject to VAT despite not exceeding the abovementioned threshold – by submitting a proper statement and registering in a relevant tax authority.

Polish VAT rules takes more advantage from a reverse charge mechanism than the Armenian ones. It needs to be underlined though, that applying such a mechanism with reference to the domestic supplies shall not be considered as a proper solution – in Polish situation this constitutes rather a desperate attempt to reduce the amount of VAT frauds and other illegal activities of taxpayers. In Armenian situation, where there is no need to separate the intra-Community supply of goods within the borders of Eurasian Economic Community from an ordinary export, the risk of frauds is much lower and domestic supplies do not need to be subject to reverse charge mechanism. However, applying this mechanism to an international transactions when Republic of Armenia is a place of performance and the supplier is not record-registered as a VAT payer in Armenia, shall be common. The question of import is also regulated differently – in case of Polish and EU tax law it is the customs law that comes to the fore and whoever is bearing the duty to pay customs duties is also liable for VAT. In Armenian tax code VAT arising from import is due only in situation when import is performed by a VAT payer or by other entity but only in case where it imports goods into the territory of Armenia for purposes of entrepreneurial activities.

Last but not least, Armenian Tax Code enables the state, communities and central bank to register as VAT payers, but this is voluntary. In Polish tax law the state, local government units and all public institutions and authorities must be VAT payers in case they perform taxable activities in *dominium sphere*, in order not to violate the competition rules.

To sum up, both Polish and Armenian tax rules have their own regulations and concept of a VAT payer. Although at first glance both systems are very similar, a detail reading discovers the differences between both laws. One may try to determine which system is more adequate, effective and adapted to reality of a country in which this system is binding, however each of them have their

³⁵ The rules for registration of VAT payer are specified in art. 96-98 of the Polish VAT Act.

benefits and drawbacks. It needs to be underlined though, that the new provisions of Armenian Tax Code remain in force for less than one year, hence it is definitely too early to draw the right and reliable conclusions as we do not have a proper data on the effects of the Tax Code.

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THE POLISH UPRISING OF 1863-1864 ACCORDING TO THE RUSSIAN HISTORIANS OF 1860s.

ABSTRACT

In the second half of the 19th century the ideology of chauvinism and nationalistic Pan-Slavism was rooted within Russian Empire. In 1867, the Society of Natural science lovers of Russia organized all-Russian ethnographical exhibition and also the meeting of Slavic peoples that was held under the aegis of the government. The Polish people refused to participate in St. Petersburg meeting as they kept in mind the cruel pressure of the uprising of 1863-1864. In the beginning of 1860's the national problem in Russia became a discussion issue for wide public due to Polish uprising. Even intellectuals and public figures with advanced views could imagine Poland only within the frames of the Empire. The salvation of Polish problem was also seen in the russification of Poland and assimilation of Polish people. At the same time, there were sober-minded figures, who lived out of the Empire borders and defended the right of the Polish people to have an independent state.

Key words: Polish question, Pan-Slavism, the Society of Natural science lovers of Russia, russification of Poland, Slavophilia.

1863-1864թթ. լեհական ապստամբությունը 1860-ական
թվականների ռուս պատմաբանների գնահատմամբ

19-րդ դարի 2-րդ կեսին շովինիզմի գաղափարախոսությունը և ազգայնական պան-սլավոնականությունը արմատացած էր Ռուսական կայսրությունում: 1867թ.-ին Ռուսաստանի Բնագիտության սիրահարների ընկերությունը կազմակերպեց համառուսական ազգագրական ցուցահանդես, ինչպես նաև սլավոնական ժողովուրդների հանդիպում, որը տեղի ունեցավ կառավարության հովանու ներքո: Լեհ ժողովուրդը հրաժարվեց մասնակցել Սանկտ Պետերբուրգյան հանդիպմանը՝ հիշելով 1863-

1864թթ. ապստամբության դաժան ճնշումը: 1860-ականների սկզբին ազգային խնդիրը Ռուսաստանում դարձավ լայն հասարակության համար քննարկման հարց՝ լեհական ապստամբության շնորհիվ: Անգամ առաջադեմ տեսակետներով մտավորականները և հասարակական գործիչները Լեհաստանը կարող էին պատկերացնել միայն կայսրության կազմում: Լեհական խնդրի լուծումը ևս դիտարկվում էր Լեհաստանի ռուսականացման և լեհ ժողովրդի ձուլման ձևով: Միևնույն ժամանակ, կային սթավի մտածող գործիչներ, ովքեր ապրում էին կայսրության սահմաններից դուրս և պաշտպանում էին անկախ պետություն ունենալու լեհ ժողովրդի իրավունքը:

Բանալի բառեր - Լեհական հարց, պան-սլավոնականություն, Ռուսաստանի Բնագիտության սիրահարների ընկերություն, սլավոնաֆիլներ, Լեհաստանի ռուսականացում:

THE POLISH UPRISING OF 1863-1864 ACCORDING TO THE RUSSIAN HISTORIANS OF 1860s.

The Polish uprising of 1863-1864 according to the Russian historians of 1860s

The roots of the Polish issue spread up to the times of Rzeczpospolita division. By the uprising of 1830-1831 the Polish wished to suppress the Russian domination. As a result of the defeat of this uprising the Polish political outcasts were pushed to the west, where they deployed tempestuous activity against tsarist government. According of Russian point of view The Polish outcasts created various organizations sponsored by the British and French governments¹.

The rise of the Polish liberation movement of 1861 resulted in vigorous disputes inside the Russian society. The Polish issue was so worrisome for the Russian Empire that, according to the literary critic S. Sheviryov, it equated the rural issue in its poignancy².

The Polish uprising of 1863 resulted in different opinions inside the Russian society. Even numerous political activists of progressive views considered Poland to be an inseparable part of the Russian Empire with no right for independence. This was the reason that the attitude towards the Polish uprising inside the Russian society was mostly negative. Of course, there were activists who supported the rightful struggle of the Polish nation and criticized the punitive activities of the Russian government.

Prior to the uprising slavophiles used to be more tolerant in their estimates regarding the Polish issue. They viewed the Russian-Polish conflict as an opposition of Russia and Europe. However, at the same time, they considered the issue to be of inter-slavic nature. In 1861 Russian publicist and social activist I.S. Aksakov was the supporter of Polish independence. He offered to withdraw Russian troops from Poland. However, Polish independence shouldn't have been achieved at the expense of Belarus and Ukraine lands. In the period of the uprising I. Aksakov's views underwent certain changes. He demanded the uprising to be stifled as soon as possible, otherwise it would penetrate Russia. Thus, I. Aksakov's periodical «Day» became a speaking tube for the propaganda of Russian governmental ideology. In his a letter to Prince Dolgorukiy, who was the Head of the Third department, Golovinin - The Minister of Education, said that the slavophil periodical «Day» was a reliable support of the government in connection with the Polish issue³.

¹ State Archive of the Russian Federation, (GARF) f.109, s/a. list.1, case. 145, p. 12.

² GARF, f. 109 s/a, 4a, case. 405, p. 1.

³ N.I. Tsimbayev, I.S. Aksakov in the social life of reformed Russia, M. 1978, p. 109.

Russian historical ideology didn't remain indifferent either and works on the Polish issue were being published. In the days of the uprising the work of Russian historian S. Solovyov "The History of Downfall of Poland. The Eastern Issue" was published. The views of the author on the solution of the Polish issue didn't differ from the official ones. According to him, Poland was a mainstay of Catholic civilization in the Western Europe and it pursued a goal to spread the "latinizm". The Polish clergy directed its activities against the Russian orthodox church. The Polish national liberation movement was constantly supported in the West. According to Solovyov, this all had a single purpose - to weaken Russia and to separate the Slavic world. Solovyov is even surprised at the ungratefulness of the Polish, who were saved from germanization after being partially included in the Empire. He searched for those who sowed hatred towards the "elder brother" among the Polish clergy and szlachta⁴.

Of the same opinion was co-Slav N. Danilevskiy. He considered Poland to be a harmful member of Slavonic family, a country which had a useless history. "Poland was the only one among Slavonic countries which adopted and assimilated the western spiritual values without any fight"⁵. According to Danilevskiy, in case of necessity Russia should turn to military intervention, not allowing Poland to fall under German influence. And the danger of becoming a German influence zone was its independence. "If Poland acquires independence, it will definitely become a centre of revolutionary intrigues, which will be directed towards the western provinces of Russia"⁶.

At the very beginning of the Polish uprising the attitude of Russian historian M. Pogodin becomes more rigid. In March 2, 1863 he published a voluminous article "The Polish Issue". He considered the Polish uprising to be unacceptable. "What do they seek? - wrote Pogodin. - Independence, autonomy. May the Lord be with them". Pogodin tried to convince the Polish that Poland without Russia would collapse, moreover, the separation of Poland from Russia would not mean a division of Poland but that of Russia, because there were ten millions of Russian people and only one million of the Polish in the western provinces. "We will demand a part of Lubin and Augustin provinces which are inhabited with Russian tribes. Up till now we haven't demanded those as we lived underneath one single state together with Poland, and after the separation we will speak differently"⁷.

Pogodin referred to the main issue which troubled the Russian public mind of that period, that is - the western provinces. "The main subject of the dispute

between the Russian and the Polish, or, to be more exact, the dream of the Polish (because this issue didn't even exist for the Russian) were the western provinces: Mogilev, Vitebsk, Minsk (Belarus), Vilensk, Kovensk, Grodnesk (Lithuania), Volin, Podolia, Kiev (Malorusia). The Polish call them conquered lands, keeping in mind that they belonged to them only for some period of time, but they forgot that these lands initially belonged to Russia and not only belonged but constituted a significant part of it, were inhabited by the Russians who spoke Russian, had their faith and had no history other than Russian"⁸. To prove this, Pogodin brings forward the fact that the majority of the population on this territory is Russian⁹.

Pogodin considers the demand of the Polish for independence and autonomy to be unreasonable, because the Polish cannot exist without the support of one of the powers. Russia can be the only and the best ally, and the historical circumstances have themselves solved this issue by uniting Poland and Russia¹⁰. Russia could provide Poland with self-government, however, in the present mood of the Polish, when they use every war situation to go against Russia, the only possible solution is for Poland and Russia to be united under one power¹¹.

After the suppression of the uprising M. Pogodin confesses that he sometimes made stern expressions in respect of the Polish whom, in spite of everything, he loved with all his heart¹². Realizing the political and ideological pressure of the government in the years of the uprising, Pogodin's tone in the articles, written in 1865, becomes softer and more tolerant. He invokes to forget the previous accusations and to build the relations on the basis of mutual trust and peace¹³.

A military activist, a historian and a co-slav R. Fadeyev wrote that the Polish issue was connected with the Slavic one. According to Fadeyev, the hostile countries used the Polish issue as a sword by which they could affect Russia in case of necessity. He viewed the Polish issue as a bridge between Russia and Slavic nations, thus, the tense atmosphere inside Poland was the main weapon of the West¹⁴.

Boris Chicherin, a lawyer and a historian of the liberal camp, wrote in his memoirs, that he had never been an enemy to the Polish nation. However, in the days of the uprising he was sure that the state should not make any concessions in respect of the Polish issue, even if the whole Europe stands up against Russia¹⁵.

⁸ M.P. Pogodin-Podolskiy, Collection of reasoning, notes and remarks, 1831-1867, M.1867, The Polish issue 1863, p. 79.

⁹ The same place, p. 80.

¹⁰ The same place, p. 211.

¹¹ The same place, p. 94-95.

¹² The same place, p. 95.

¹³ M.P. Pogodin - The Polish issue. Collection of reasonings, notes and remarks 1831-1867, M. 1867, Podolsk case 1865, p. 191.

¹⁴ R.A. Fadeyev, Collected works, in two volumes, S. Petersburg, 1889, vol. 2, part 2, Our military issue. The Eastern Issue, Opinion on the Eastern issue, p. 281.

¹⁵ V.A. Kitayev, Russian liberals and the Polish uprising of 1863, Slavic Studies N1, 1998, Moscow, p. 55.

⁴ Соловьёв С.М., The History of the Downfall of Poland. The Eastern Issue, Moscow, 2003, p. 185.

⁵ N.Ya. Danilevskiy, Russia and Europe. A glance at the cultural and political relations of the Slavic world towards the Romano-Germanic., Moscow, 2008, p. 304.

⁶ The same place, p. 378.

⁷ N.P. Barsukov, Life and works of M.P. Pogodin, vol.20, p. 73.

Only years later B. Chicherin, speaking on the Polish issue, will sympathize with the Polish nation. Viewing the Polish as a friendly nation B. Chicherin expresses his uncertainty towards the Russian government, which, on the one hand supports the Slavic nations in their struggle against foreign powers, and on the other hand keeps Poland in chains. According to Chicherin, the only guilt of the Polish is their strive for liberty¹⁶.

There were activists inside Russian inner political life, whose radically opposed opinion made them a centre of attention on the part of certain state figures. These were A.I. Gertsen, N.P. Ogaryov and M.A. Bakunin.

A. Gertsen and M. Bakunin were rather excited by the events taking place in Poland. At the beginning of 1863, together with N. Ogaryov and J. Madzini, they founded the Central committee in London, which was to publish "The Word" periodical. As to Bakunin, he was given 60 thousand franks to buy weapons and send them to the Polish rebels¹⁷.

The Russian powers were extremely worried by the activities of those in exile and most attentively followed them. In the spring of 1863 a Russian-Polish committee was founded in London under the leadership of count Zamoyski and prince Charotizhski. The members of this committee were Gertsen, Ogaryov and a number of Russian aristocrats in exile, who cooperated with the governments of England and France. The purpose was to support the Polish uprising¹⁸.

They viewed the solution to the Polish issue as well as to the national issue in general in the creation of Pan-Slavonic union. Everyone inside this union was to have equal rights and to defend Slavonic interests. However, there are certain differences in the views of A. Gertsen and M. Bakunin. If, as a result of all this, Gertsen saw the social essence of the rebellion and gave great importance to economic factors¹⁹, then Bakunin was more inclined towards seeing the realization of the Polish national desires²⁰ and was categorically against All-Slavic union, including the Russification of Poland²¹.

A. Gertsen considered the Polish struggle to be useful for Russia as well. Addressing the Russian people, he urged them, "Unite with the Polish and for their overall freedom Russia will atone for her sins and one day we will proudly and amiably report to the world that Poland wouldn't have decayed without us, however,

we eased its grievous struggle"²². According to Gertsen, Russian powers used the same methods in their fight against both - the Polish and the Russian rebels²³.

Thus, in the early 60s of the 19th century the national issue became the subject of vast layers of society inside the Russian Empire, thanks to the Polish rebellion. On the one hand, the Pan-Slavonic major ideology was promoted in the Russian society, the aim of which was to assimilate the Slavon peoples living in the Empire territory and beyond its borders under the auspices of the Russian nation, on the other hand, it was their struggle to preserve their national identity. The first major ideological clash around these issues took place in the context of the Polish issue. The Russian historiographical thought of that period was also unable to remain indifferent and expressed its opinion on the subject, without missing even the most extreme estimations. Even the intellectuals of progressive views and social activists imagined Poland solely on the territory of the borders of the Empire and the solution to the Polish issue was viewed in the Russification of Poland and in the assimilation of the Polish people. At the same time there were more sober activists, who resided outside the Empire, defending the rights of the Polish people to free self-determination and an independent statehood.

¹⁶ B.N. Chicherin, *The Polish and the Jewish issues. An answer to N.K. Rennenkampf's letters*, Berlin, 1901, p. 29.

¹⁷ GARF, f.109. s/a., list.1. case. 138., p. 1.

¹⁸ GARF, f.109. s/a., list.1. case. 145., p. 11-12.

¹⁹ A.I. Gertsen, *Collection of works*, in 30 volumes, Moscow, 1954-1966, vol. 16 (Articles from "The Bells" and other works, 1862-1863), 1959, p. 250.

²⁰ M.A. Bakunin, *Selected works*, in 5 volumes, Petersburg-Moscow, 1919-1922, *The Voice of Labour*, vol.3, Federalism, socialism and anti-teologism, with the introduction of J. Guillaume, Petrograd, 1920, p. 62.

²¹ The same place, p. 41.

²² A.I. Gertsen, *Collection of works*, Moscow, 1959, vol. 12., p. 93.

²³ A.I. Gertsen, *Collection of works*, Moscow, 1959, vol. 17., p. 26.

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ПОЛЬСКИЕ АРМЯНЕ В ДИПЛОМАТИЧЕСКОЙ СЛУЖБЕ РЕЧИ ПОСПОЛИТОЙ (XIV - XVIII ВВ.)

КРАТКОЕ СОДЕРЖАНИЕ

Целью данной статьи является анализ вклада, вложенного армянами, в развитие взаимоотношений дипломатического характера между польским и мусульманским политическим миром, а также описание их исторического контекста.

Автор рассматривает первые контакты польских дипломатов с персидскими, турецкими и татарскими посланниками, самых ярких армянских представителей в этой сфере и их дипломатические миссии. Данная статья служит для того, чтобы читатель мог получить представление о значении польских армян на дипломатическом поле деятельности. В работе представлены имена выдающихся персон истории дипломатии Речи Посполитой, интересные факты их деятельности, а также превосходные примеры дипломатического искусства, которые они оставили после себя.

Ключевые слова: Польские армяне – Речь Посполитая – XVII век – история дипломатии – история международных взаимоотношений – Персия – Османская империя – Крымское ханство

ПОЛЬСКИЕ АРМЯНЕ В ДИПЛОМАТИЧЕСКОЙ СЛУЖБЕ РЕЧИ ПОСПОЛИТОЙ (XIV - XVIII ВВ.)

Польские армяне как одна из самых малочисленных, но очень ярко представленных национальностей из многоэтнического состава населения Речи Посполитой, внесла значительный вклад в её развитие. Здесь подразумеваются такие составляющие, как например: искусство, торговля, архитектура, литература, политика. Вышеперечисленные сферы деятельности довольно широко представлены в литературе предмета. Зато армянский вклад в развитие дипломатического аппарата является вопросом, которому историография бывших территорий Речи Посполитой обоих Народов не придает заслуженного значения.

Армяне прибыли на юго-восток Речи Посполитой в XIV веке с крымского полуострова, но ещё ранее, многими исследователями, отмечались следы их миграции, которые, однако, не были явлением широкого масштаба и не имеют фактического подтверждения в каких-либо документах¹.

Между армянскими общинами Крыма и Речи Посполитой были довольно тесные отношения, о чем свидетельствует, среди прочих, финансовая поддержка со стороны зажиточных армянских горожан Каффы строительства храмов во Львове и в Каменце Подольском. Именно эта этническая связь оказывала постоянное влияние, способствующее развитию торговых, и впоследствии, дипломатических отношений.

Однако, эта связь иногда представлялась польско- и русино- язычным соседям армян подозрительной, появлялись мнения, касающиеся мнимого содействия чужим, татаро-тюркским интересам. Нужно подчеркнуть тот факт, что большинство из этого рода домыслов являлось лишь проявлением зависти, связанной с высоким материальным статусом армянской общины - немногочисленной, но очень богатой, образованной и влиятельной².

Бытовое и общественное положение армян в Речи Посполитой вызывало зависть со стороны других наций. Причиной тому было покровительство армянской общины польскими королями и магнатами, которые пользовались их услугами. При этом армяне очень хорошо умели позаботиться о своих личных интересах и интересах армянской общины. Сравнивая положение армян в Польском Королевстве и в Османской империи, не удивляет быстрая ассимиляция и возрастающий патриотизм польских армян, которые являлись одной из самых влиятельных групп на территориях их

проживания. Они достаточно быстро ассимилировались в польском обществе, а в XVII веке довольно большая их часть приобрела статус шляхтича.

Указывая на патриотизм и лояльность польских армян, нельзя не упомянуть тот факт, что представители армянской общины на территории Османской империи, в свою очередь, служили султану. Но, в подавляющем большинстве случаев, нельзя говорить об их армянской идентичности, которую стирало явление „девширме” - инструмент искоренения немусульманских наций Османской империи³. В то время как в Речи Посполитой они пользовались привилегиями (данными им уже в XIV веке королем Казимиром Великим), имели свои, хорошо организованные общины, являлись отличными купцами, ремесленниками и лояльными гражданами.

Первые, взаимоотношения дипломатического характера между польским и мусульманским политическим миром датируются второй половиной XIV века. Миссия Яна из Стружыска (1352-1354) расширила границы дипломатического мира за пределы католицизма и православия. Стимулом к этому смелому шагу было намерение присоединить Червонную Русь - на что не соглашалась значительная часть местных бояр. Целью миссии Яна из Стружыска было предотвратить попытки сотрудничества русин и татар. Помимо политических целей, упомянутая миссия расширила зону влияний для польской торговли и открыла польский рынок для товаров из Византии и широко понимаемого востока⁴. В этом историческом моменте постепенно начинает формироваться характер деятельности армян - посредников в контактах Королевства польского с востоком.

Первым, зафиксированным в документах дипломатом, выполнявшим свою официальную миссию у Султана, в Стамбуле, является Григорий Армянин (пол. Гжегож Ормянин). Он был толмачом посла Якуба Скарбка из Гуры. Свою миссию он выполнил на высшем уровне. Как первый зафиксированный в исторических источниках армянин, он был, можно сказать, основоположником тенденции восточной направленности в польской дипломатии⁵.

³ Например, армянские корни были у Дамат Хелил-Паши (великий везир в гг.: 1626-1628) - известного полководца и великого везира, заслугой которого было, напр., возобновление союза с Австрией и Речью Посполитой. См.: H. Mamikonyan, *Armenia i Ormianie pod panowaniem Imperium Osmańskiego w XVII wieku*, [w:] *Ormianie polscy: kultura i dziedzictwo. Studia i materiały źródłowe zebrane dla uczczenia jubileuszu dziesięciolecia Fundacji Kultury i Dziedzictwa Ormian Polskich pod redakcją A.A. Zięby*, Warszawa - Kraków 2016, c. 51.

⁴ S. Zakrzewski, *Wpływ sprawy ruskiej na państwo polskie w XIV w. Odczyt wygłoszony na pierwszym publicznym posiedzeniu Towarzystwa Naukowego we Lwowie 21 maja 1921 roku*, Zamość, 1922 [w:] <https://sbc.org.pl/dlibra/docmetaddata?showContent=true&id=10360> (dostęp: 06.05.2018), s. 40-42.

⁵ A. Chodubski, *O kontaktach polsko-ormiańskich do początku XX wieku*, [w:] *Przemiany społeczne, kwestie narodowościowe i polonijne*, pod red. A. Chodubskiego, Toruń 1994, s. 158.

¹ См.: K. Stopka, *Ormianie polscy - początki*, [w:] *Ormianie*, pod red. B. Machul-Telus, Warszawa 2014, s. 13-44.

² См.: A.A. Zięba, *Patriotyzm polskich Ormian*, [w:] *Ormianie*, op. cit., s. 54-55.

развала его торгового дела, (вызванного со смертью одного из совладельцев), он переехал в Варшаву, где начал торговать тканями и коврами для королевского двора. После выполнения своей миссии король Сигизмунд присвоил ему титул *servitor ac negotiator*. А в 1602 году он получил исключительное право поставлять на двор Сигизмунда ориентальные товары¹³. С позиции маленького человека, обыкновенного купца в Исфахане он ведет беседу с персидским шахом, не теряя при этом чувства гордости и ответственности за доверенное ему дело, а также за формирование представления о стране у Аббаса Первого¹⁴. Шах принял армянина очень дружески. Муратович сохранил в памяти свою дипломатическую миссию и прием шаха, память о его дворе и этикете, а также о дружеском отношении к нему со стороны шаха и его администрации¹⁵. Это очередная, очень важная страница в истории взаимоотношений Речи Посполитой и мусульманского государства. Посредником в установлении контакта очередной раз является армянин, лицо отнюдь не занимающее высокой позиции в государстве, не принадлежащее к „рыцарскому роду”.

В истории взаимных отношений появляется также дворянин армянского происхождения, посол шаха Сафи. У армянина Мусы Бека была задача сопровождать польского посла Теофила Шемберга, в обратный путь. Дальше он был обязан отправиться с миссией по другим европейским дворам. Хотя Муса Бек был конвертитом, но все-таки решил поддержать армянское дело. Ему также было поручено доставить письмо от католика армянской общине. В письме католика Филиппа I-го армянам из Львова он называет Мусу Бека христианским сыном и его доверенным лицом¹⁶.

На обратном пути, на территории Дагестана, Шемберг был убит местными. Зато Муса Бек был пойман, но ему удалось сбежать в Исфахан. Письмо, написанное католиком Филиппом было возвращено ему и выслано заново¹⁷. Как утверждает Д. Колодзейчик, в рукописях British Library встречается его имя как посланника, который привез письма московскому царю и британскому королю. Оно записано там как: Муса Бек Аглиси/ Агулиси, протопласт рода Мусабекенк из города Агулис¹⁸.

¹³ A. Walaszek, *Wstęp* [в:] *Trzy relacje z polskich podróży na wschód muzułmański w pierwszej połowie XVII wieku*, opr. i red. A. Walaszek, Kraków 1980, c. 27.

¹⁴ Там же, с. 28-29.

¹⁵ Реляция посланника С. Муратовича на польском языке: *Relacja Sefera Muratowicza Ormianina, posłanego króla JMci do Persyi, z którą wróciwszy się stamtąd, podał na piśmie w te słowa. Anno circiter 1588* [w:] *Trzy relacje z polskich podróży...*, c. 35-47.

¹⁶ Op. cit. S. Jaśkowski, D. Kołodziejczyk, P. Mnatsakanyan, *Stosunki dawnej Rzeczypospolitej...*, c. 84-85.

¹⁷ Там же.

¹⁸ Там же.

Среди дипломатических миссий по приказу польского короля в документах встречается ряд армянских фамилий. Польские армяне настолько идентифицировались с персидскими делами, что в Речи Посполитой их стали называть „персами”, образ дополнял также внешний вид самих армян, который ассоциировали непосредственно с „людьми востока”. Среди фамилий, зафиксированных документами стоит перечислить такие лица, как: Якуб Нуркевич (посланник в 1699 г.), Саломон Сыри Згурски (четыре дипломатические миссии в 1680-1690 гг.)¹⁹, Теодор Миранович (умер в Исфахане во время своей второй дипломатической миссии, его могила сохранилась там до наших времен²⁰).

В начале XVI века, польские документы называют имя Ивашки Армяниния из Каменца Подольского. В работе харьковских исследователей, Авербуха и Рашбы дается краткая характеристика драгомана (толмача), дипкурьера и посланника – Ивашки армяниния:

„В 1507 г. Ивашко был отправлен к султану Баязиду II за разрешением на приезд великого посла, который должен был вести переговоры о продлении турецко-польского перемирия. Миссия была успешной, в ответном письме султан посылал королю пожелания долгих лет правления и заверял в том, что великому послу обеспечен безопасный приезд. В 1514 г. король Сигизмунд I, отправляя в Стамбул посла Крупского, писал Султану, что по его желанию направляет с ним переводчика Ивашко и рекомендовал относиться с доверием к его переводам”²¹.

Проанализировав польские *Acta Tomiciana*²², исследователи пришли к выводу, что Ивашко „лично от великого везира Ибрагим-паши получал сведения о турецком походе в Венгрию, о итальянских делах и другие...”²³.

Закат европейской империи Ягеллонов сопровождали события дипломатического характера. Король польско-литовского государства, Сигизмунд I из Ягеллонов подвергся попытке со стороны османской стороны нейтрализовать его позицию во время предстоящего конфликта с Венгрией. Роковой для венгерской стороны спор закончился битвой при Мохаче в 1526 г.

¹⁹ Там же, с. 93-95.

²⁰ За: Op. cit. S. Jaśkowski, D. Kołodziejczyk, P. Mnatsakanyan, *Stosunki dawnej Rzeczypospolitej...*, c. 95. См., C. Chowaniec, *Z dziejów polityki Jana III na Bliskim Wschodzie 1683-1686*, „Kwartalnik Historyczny”, 40, 1926, c. 154-156. На гробе сохранилась также инскрипция в языках польском и русинском. См. A. Przewoźnik, *Polskie cmentarze wojenne w Iranie / Polish war cemeteries in Iran*, Warszawa 2002, c. 45.

²¹ Авербух С., Рашба Н., *Армяне на польской дипломатической службе в XVI – XVIII веках*, „Историко-филологический журнал”, Ереван 1974, № 2, с. 182-183.

²² Сборник документов периода власти двух последних Ягеллонов (Сигизмунда I и II) на польском престоле. В большей степени из периода пребывания в должности подканцлера Петра Томицкого (по фамилии которого получил название сборник).

²³ Там же, с. 183.

Король Венгрии и Чехии, Ягеллон Людовик II погиб, утонув во время сражения в болоте.

Но до этого события турки успели обеспечить нейтралитет Сигизмунда I. Очень ярким дипломатом той поры является армянин Василь Врона. В 1521 г. король Сигизмунд, в обращении господарю молдавскому просит о помощи для Вроны во время путешествия в Стамбул, называя его „нашим оратором” и характеризует его как доверенное лицо и посла²⁴. Характер миссии был тайным. Но уже в 1525 г. он едет официально, как толмач польского аристократа Станислава Одровонжа, который продлевает перемирие на три года. В 1530 году он снова едет в Стамбул вместе с Яном Лудвиговским как его драгоман²⁵. Целью дипломатической миссии было подтверждение мирных взаимоотношений между Сигизмундом и Сулейманом I, для чего в подарок были привезены редкие охотничьи птицы.

Участие армян в дипломатическом деле возросло вместе с конституцией Вального сейма 1590 г., постановление которого давало право заключать международные договоры и трактаты в случае необходимости, но только с турками и татарами. Это послужило основанием для дипломатических полномочий гетманов (наряду с уже существовавшим полномочием, уделенным великому королевскому гетману Яну Замойскому в 1588 г.)²⁶. Начиная с этого времени гетманы являлись „вторым дипломатическим аппаратом”, выполняющим как государственные, так и личные цели, пользуясь при этом (но нерационально) казенными или собственными финансовыми средствами. Появилась большая потребность в кадрах способных выполнять порученные задачи на восточном, мусульманском направлении. Из-за отсутствия собственных кадров, знающих восточные языки, дипломатическая служба гетманов была вынуждена пользоваться услугами армян и других наций, владеющих турецким языком, как, например, польскими татарами. Таким образом, почти всегда толмачом у гетманов был армянин. Известные историографии армяне, выполнявшие эту функцию, это: Шимон Донабедович (1726-1728, при гетмане Адаме Сенявском). В Каменце-Подольском толмачом работал Захарыш Кшиштофович (1730), а после него работать начал Миколай Черкес (который выполнял свою работу, но на довольно низком уровне)²⁷.

Очень яркой персоной истории дипломатии РП является армянин Ян (Петр) Ромашкевич.²⁸ Он был постоянным гонимым РП в Ханат Крымский,

а также толмачом. В дипломатии работал с 1636 по 1667 год. Он был одним из доверенных лиц гетмана Станислава Конечпольского²⁹. Цель настоящей статьи не позволяет широко представить его деятельность. И всё же одним из интереснейших моментов его деятельности является факт освобождения пленённых крымскими татарами поляков во время исполнения дипмиссии, что вызвало большой скандал и испортило польско-татарские отношения. Несомненно, этот поступок являлся большой дерзостью и проявлением храбрости³⁰.

Очередным ярким представителем „армянской” дипломатии является Кшиштоф Серебкович. О нём упоминается прежде всего как о слуге дипломатического аппарата в 1620 г., когда он был выслан для проверки возможности диверсии на султанской земле. В 20-е годы вел дипломатическую борьбу за установление польского контроля над Молдавией, для чего был утверждён план назначить на должность господара Петра Могила³¹.

В XVIII веке роль армян в дипломатических отношениях начала постепенно терять свой исключительный характер, что не означает, что армяне стали менее активными сотрудниками дипломатической службы того времени. Необходимо учесть, что появлялись люди, которые оканчивали школы турецкого языка и были в состоянии договариваться без посредничества. Этот фактор очень хорошо виден в последней польской дипломатической миссии Петра Потоцкого в Стамбул (1788-1793 гг.), где в дипломатическом корпусе появляются абитуриенты школы ориентальных языков учрежденной последним королем РП Станиславом Аугустом Понятовским³².

Также, в результате ассимиляции затруднительным является попытка идентифицировать данного дипломатического сотрудника как армянина. Постепенно стирается знание языков в армянской общине того времени. В этом контексте можно привести пример Миколая Черкеса, в помощь которому был прислан толмач Антони Лукаш Крутта, поскольку первый не справлялся с поверенными ему делами, чем вызвал недовольство гетмана Адама Сенявского, для которого он работал³³.

²⁹ Письма и реляции Ромашкевича гетману Конечпольскому, см.: *Korespondencja Stanisława Koniecpolskiego hetmana wielkiego koronnego 1632-1646*, opr. A. Biedrzycka, Kraków 2005.

³⁰ Анализ деятельности Ромашкевича см.: M. Tomaszewski, *Działalność dyplomatyczna i agenturalna Jana bądź Piotra Romaszkiewicza w latach 1648-1655*, [w:] „Przegląd Orientalistyczny”, nr 3-4 2014, s. 149-156.

³¹ См.: <http://www.ipsb.nina.gov.pl/a/biografia/krzysztof-serebkowicz-serobjan-chaczatur>, [доступ: 26.05.2018]. А также: D. Milewski, *Polskie oczekiwania i polityka wobec obsady tronu moldawskiego w okresie pochocimskim 1621-1624*, „Saeculum Christianum”, t. 22, Kraków 2013, s. 99-108.

³² H. Topaktas, *Osmańsko-polskie stosunki dyplomatyczne. Poselstwo Feanciszka Piotra Potockiego do Stambułu (1788-1793)*, s. 88.

³³ W. Zarzycki, *Dyplomacja hetmanów...*, op. cit., s. 86.

²⁴ Там же.

²⁵ *Białozór, sokół i jastrzęb. Jak zyskać przychylność wojowniczego sultana*, [w:] Op. cit., *Orzel i półksiężyc*, s. 53.

²⁶ W. Zarzycki, *Dyplomacja hetmanów w dawnej Polsce*, Warszawa – Poznań 1976, s. 8.

²⁷ W. Zarzycki, *Dyplomacja hetmanów...*, Op. cit., s. 86.

²⁸ Биограм Ромашкевича: Jan (Piotr) Romaszkievicz, [w:] *Internetowy polski słownik biograficzny*, [доступ: 24.05.2018]. Имя Ромашкевича: Ян или Петр.

Чтобы понять весь вклад вложенный армянами на дипломатическом поле деятельности, надо вспомнить про условия, которые неоднократно ожидали христианских резидентов в Стамбуле. Они могли быть размещены в султанских казематах, часто встречались с унижительным обращением со стороны турецких чиновников. По-другому складывались отношения на уровне так называемых „великих послов”, которые отправлялись в Стамбул для исключительно важных дел межгосударственного уровня. Они представляли самого короля. Не без значения остается также тот факт, что подарки, которые привозил с собой дипломатический корпус, служили коррумпированию султанского аппарата, а также являлись неотъемлемой частью восточного церемониала.

Армяне оставили не только такие превосходные примеры дипломатического искусства, как лица, деятельность которых была рассмотрена нами выше. Кроме выдающихся личностей вроде Муратовича, Серебковича или Ромашкевича и армян, работающих на благо страны в качестве драгоманов, толмачей, курьеров и иного рода посредников, происходили (редко, но всё же) случаи измены государственных интересов РП со стороны армян. Но такого рода поступки не являются основной тенденцией, если учесть большое количество армян в этой сфере, которые не фиксируются историческими источниками. Интересной с точки зрения значения армян и их знания как польской так и турецкой „специфики”, является следующая история:

„В период предшествующий хотимской кампании в 1621 г., гетман Кароль Ходкевич отправил в Турцию 12 разведчиков, чтобы благодаря их посредничеству собрать информацию о силе султанской армии. Ни одному из них гетман даже не намекнул, что кроме него на территории неприятеля действуют и другие разведчики с той же задачей для выполнения. Каждый из разведчиков, согласно приказу, должен был нести с собой мешок пшеницы как знак того, что турецкая мощь значительна. Если бы, однако, разведчик пришёл к выводу, что силы мусульман не так велики, мешок должен был быть наполнен овсом. Несколько разведчиков попало, во время исполнения задачи, в руки к туркам, а мешки с пшеницей, которые были у них найдены, произвели такое большое впечатление и удивление общества, что гетману вскоре донесли армянские купцы о странных шпионах, которые с мешками пшеницы путешествовали через султанские земли”³⁴.

В польской историографии господствует тенденция либо не упоминать о национальной принадлежности армянских дипломатов периода Речи Посполитой, либо не придавать особого значения национальному фактору

этого явления. Но именно благодаря польским армянам взаимоотношения между Османской империей, Крымским ханством и Персией развивались быстрыми темпами. Несмотря на все военные действия и борьбу с турками и татарами, происходил широкий культурный обмен, возникла культура сарматизма, а вклад в культурное развитие, в установление контактов и торговых отношений польских армян является вопросом, который заслуживает серьезного исследовательского анализа. Настоящая статья является лишь попыткой краткой характеристики явления, поэтому некоторые фамилии и исторические факты автором не упоминаются.

³⁴ Фрагмент текста известного польского мемуариста А.Нарушевича приведен в: W. Więkowska-Mitzner, *Karol Chodkiewicz*, Warszawa, с. 260. Перевод мой: К. Бłaszак.

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ARMENIAN-POLISH COOPERATION IN THE FIELDS OF CULTURE, EDUCATION, SCIENCES AND YOUTH AFTER 1991

SUMMARY

The article is dedicated to the cooperation between Armenia and Poland in the fields of culture, education and youth after 1991. The existence of Polish community in Armenia and Armenian community in Poland plays very important role in the development of bilateral cultural and youth cooperation on a public level. The cooperation on a governmental level started only in 1998, when was signed the intergovernmental agreement between the Government of the Republic of Armenia and the Government of the Republic of Poland in the field of culture and education. The cooperation in the field of education became more active since 2005 when Armenian students received a chance to do their Master degree in Poland and also Armenia started to participate in several Polish educational programmes. Poland became member of European Union in 2004 and the cooperation on a public level became more active via using financial resources of EU. Poland received a Presidency of European Council in 2011 and being one of initiators of Eastern Partnership supported a lot the development of Political relations between Armenia and European Union. Poland is a mediator in the relationship between Armenia and European Union and an important role plays this country to avoid political crisis in 2013 due to bilateral strong connections in above mentioned fields.

Key words: Polish-Armenian, Cultural Relations, Cultural Agreements, Educational cooperation, Youth cooperation

Հայ-լեհական համագործակցությունը մշակույթի, կրթության, գիտության և երիտասարդության հարցերի բնագավառում 1991 թվականից ի վեր

Ամփոփում

Բանալի բառեր: Հայ-լեհական, Մշակութային հարաբերություններ, Մշակութային համաձայնագրեր, Կրթական համագործակցություն, Երիտասարդական համագործակցություն

Հոդվածը նվիրված է Հայաստանի և Լեհաստանի միջև մշակույթի, կրթության և երիտասարդության բնագավառներում համագործակցությանը 1991 թվականից ի վեր: Հայաստանում լեհական համայնքի գոյությունը և Լեհաստանում հայ համայնքի առկայությունը կարելու է դերակատարություն ունեն երկկողմ մշակութային և երիտասարդական համագործակցության զարգացման գործում հանրային մակարդակով: Կառավարության մակարդակով համագործակցությունը սկսվել է միայն 1998 թվականից, երբ ստորագրվել է Հայաստանի Հանրապետության կառավարության և Լեհաստանի Հանրապետության կառավարության միջև մշակույթի և կրթության ոլորտում միջկառավարական համաձայնագիրը: Կրթության բնագավառում համագործակցությունը ակտիվացել է 2005 թվականից, երբ հայ ուսանողները հնարավորություն ստացան սովորելու լեհական բուհերի մագիստրատուրայում, և Հայաստանը սկսեց մասնակցել մի շարք լեհական կրթական ծրագրերին: Լեհաստանը 2004 թ.-ին դարձել է Եվրամիության անդամ և հանրային մակարդակով համագործակցությունը ավելի ակտիվ է դարձել ԵՄ ֆինանսական ռեսուրսների օգտագործմամբ: 2011 թ. Լեհաստանը ստացել է Եվրախորհրդի նախագահությունը և հանդիսանալով Արևելյան գործընկերության նախաձեռնողներից մեկը՝ մեծապես աջակցել է Հայաստանի և Եվրոպական Միության միջև քաղաքական հարաբերությունների զարգացմանը: Լեհաստանը միջևորդ է Հայաստանի և Եվրամիության միջև հարաբերություններում և կարելու է դարձնել 2013 թ. քաղաքական ճգնաժամից խուսափելու համար վերոհիշյալ ոլորտներում երկկողմ ուժեղ կապերի շնորհիվ:

ARMENIAN-POLISH COOPERATION IN THE FIELDS OF CULTURE, EDUCATION, SCIENCES AND YOUTH AFTER 1991

Introduction

Relationship between Poles and Armenians has historical roots as Armenians have been living in Poland since 14th century and Polish kings allow them to have religious and cultural autonomy and in 1367 in L'viv started construction of Armenian Apostolic Church. Armenians implemented active trade between Poland and East countries. From 1991 to 1996 many Armenians has immigrated to Poland and Now in Poland Armenians are divided into two parts Old Armenians /Catholic/ and New Armenians /Apostolic/.

Poles in Armenia started to live since 17th century and in 1699 in Armenia has been opened Polish Mission House. Poles were active in Armenia and they actively have participated in Armenian-Turkish war from 1918 to 1920. During the Soviet time Poles in Armenia have also been very active and Polish scientist Edmund Leonowicz in Armenia founded a unique botanical garden "Dendrial Garden".

Nowdays both in Poland and Armenia exists Polish and Armenian communities which play very important role in the development of bilateral relations.

Diplomatic relations between Armenia and Poland created in 1992, but the cooperation in the field of culture, education and youth has been activated only since 1998. Bilateral relations have been more activated in 2011 when Poland received a Presidency in European council.

After 2013 political relations were not so active but bilateral relations in the fields of culture, education and youth continue to be active and are supporting for activation of political relations.

The Relationship between Armenia and Poland after 1991 has not been researched yet. The research of this topic is very important as the cooperation in the field of culture, education, youth and sport always support strengthen of political relations and it was succeeded to avoid from political crisis only via active cooperation in this fields.

Discussion

Polish-Armenian relations have very long history, as there exists Armenian community in Poland since 14 century. First Armenian community was in L'viv and King Kazimierz the Great in 1356 allocated Armenians to have a religious autonomy. In 1367 King Kazimierz Allows Armenians to have an episcopal

jurisdiction and to start construction of Armenian church in Lwow. Armenians had privilege from Kazimierz the Great and from other Polish kings and in the end of 14th century Armenian communities existed in different Polish cities, such as Kamieniec Podolski, Bar, Brzeżany, Tyśmienica, Kutry, Kazimierz nad Wisłą. From 16th century Armenian communities existed in Zamość, Jazłowiec, Stanisławów, Horodenka, Mohylów Podolski, etc.

Armenians had their own rules within the community called Armenian Statute, the basis of which was Criminal Code "Datastanagirq" of Mkhitar Gosh written in 1184. In 1519 Polish King Zygmunt the Old approved the Armenian Statute, which was allowed to use within Armenian communities until 1680, when Polish King Jan the Third allowed Armenians to have Separate Armenian Courts in Poland.

Most of Armenians living in Poland were engaged in the trade connection with Eastern countries and as they were speaking Persian and Turkish languages, they also were translators of Polish kings during their visits to East.

Nowdays these part of Armenians is accepted to call Old Armenians who are well integrated into Polish society and they mainly are speaking Polish and they belong to Catholic church. In 1990s many Armenians from Armenia moved to Poland due to the Military conflict between Armenia and Azerbaijan and also due to the bad economic situation in Armenia. These part is accepted to call New Armenians who are living in small towns created small communities and they belong to Armenian apostolic church.¹ These two Armenian communities in Poland are not united and there exists several Armenian organizations. All parts of the community play important role in development of cultural relations between Armenia and Poland.

Polish community exists in Armenia very long time. In 1699 Polish diplomat Bohdan Grudzicki founded in Yerevan Polish Mission house, which was active not only in religious affairs but also in Political, Economic and Cultural affairs in relations with Armenian people and with Persia.

During the Russian-French 1832-1834 war nine thousand Poles have been sent to Caucasus especially to Armenian, where they were included in Russian military basis. Polish officers were impressed of the nature of Armenia.

People in Caucasus, including Armenians, Georgians, etc. will never forget Polish engineer Boleslaw Statkowski /1825-1890/, who was head of group for constructing rail way in Caucasus.

In 1897 4628 Poles moved to Armenia for finding jobs in industry as in this period industry started to be developed in Caucasus.

Polish community in Armenia actively participated in Turkish -Armenian military conflict 1918-1920 and during the Soviet period were active part of the society.

Polish scientist Edmund Leonowicz founded unique Botanical Garden "Dendrial Garden" in 1935 in the north of Armenia, which has important value in Armenia.²

The existence of Armenians in Poland and Poles in Armenia was an important factor for cooperation in the field of culture, education and youth on a public level both during the soviet times and also after the independence.

The cooperation between two countries was not so active during the Soviet times on a governmental level, but on a public level relations were being developed by Polish and Armenian communities in Armenia and in Poland. Armenia became and independent country in 1991. Until 1994 the cooperation was not so active as Armenia was involved in Nagorno-Karabakh military conflict.

Diplomatic relations between Armenia and Poland were established in 1992 and it was first step for activation bilateral cooperation in the fields of culture, education and science, sport, youth, etc.

Bilateral cooperation between two historically connected nations was politically very important but on a governmental level there were not enough recourses and cooperation exists only in the framework of International Organization. But on a public level the cooperation was a little bit activated. Poles living in Armenia in 1995 founded Association of Poles in Armenia /Polonia/ and actively organized different Polish cultural events for promotion of Polish culture in Armenia. Nowadays Union has its own newspaper, organizes classes of Polish language in Armenia. The Association also has "Gwiazdeczka" choir.³

The cooperation between two countries has being developed sustainable on a public level, but the relations on a governmental level were very passive due to several reasons. First reason, as was mentioned above was the military conflict in Nagorno Karabakh and the second reason was the problematic presidential elections in Armenia in 1996, which Poland and other European countries recognized as not legitimate. In 1998 in Armenia took place a presidential elections and this fact had good influence on development of bilateral relations between two countries. In 1998 in Poland was accepted strategy on Cultural Policy, where main priorities were promotion of Polish culture abroad and international cultural cooperation. Only after acceptance of Cultural Policy Strategy in Poland in 1998 there has been signed Intergovernmental Agreement between the Government of the Republic of Armenia and the Government of the Republic of Poland on cooperation in the fields of culture and sciences, which is actual also in our days.⁴

The signature of this agreement was very important because this is the main juridical basis on bilateral cultural, educational and youth cooperation. This agreement promotes bilateral cooperation on a governmental level. The Ministry of Culture of the Republic of Armenia started to support participation of individual

¹ Krystyna Iglicka, Active Civic Participation of Third Country Immigrants – Poland, Centrum Stosunków Międzynarodowych Center for International Relations, Reports&Analyses, 4/05, Warszawa, 2004, p. 23.

² Edward Walewandra, Polacy w Armenii, Katoliki Uniwersytet w Lublinie, Lublin, 2000, p. 36.
³ http://erywan.msz.gov.pl/en/bilateral_cooperation/poles_in_armenia/
⁴ <http://www.traktaty.msz.gov.pl/SearchTreaties.aspx?t=DW>

artists and groups in cultural events in Poland and also supported Polish cultural events in Armenia.

In 2004 Poland became a member of European Union, and this fact plays an important role in activation of bilateral relations on a public level. Polish organizations and Armenian organizations in Poland were allowed to use financial resources of European Union for implementing cultural, educational and youth activities.

Very important is the role of Armenian organizations in Poland which supported the activation of Polish-Armenian cultural relations. The active Armenian organizations are:

Polish Armenian Foundation, which has translated about 1200 books from Armenian into Polish and from Polish into Armenian.⁵ In 2012 the Foundation has founded Art Gallery in Warsaw and actively organizes different exhibitions, part of them are dedicated to Polish and Armenian artists.⁶

Association of Polish Armenians in Wrocław, which organizes different exhibitions, Cultural days of Armenia in Wrocław, concerts, etc.⁷

Armenian-Polish Social Committee in Zabrze, which has founded Polish Armenian library and every year translates 50 books.

"KZKO" Armenian Foundation, which every year organizes cultural activities dedicated to Armenia /folk and jazz concerts, cultural evenings, etc/.⁸

Armenian cultural organization in Krakow, which supports cultural and education exchange between Armenian and Polish individuals, organizes different cultural activities dedicated to Armenia in Krakow.⁹

Armenian Cultural Centre "Musa Ler", which every year organizes different folk concerts, theatrical performances, etc.

All organizations together organize some global Armenian activities in Poland, such as activities connect to memory of Armenian Genocide in Ottoman Empire in 1915.

Taking into consideration the Agreement, signed in 1998 and taking into consideration the importance of promotion of Armenian culture abroad, the Ministry of Culture of Armenia supported and Armenian Dramatic Theatre has participated in theatrical festival in Gdansk in 2005. Polish films and film directors have participated in "Golden Apricot" international film festival, and their participation was supported by the Ministry of Culture and National Heritage of Poland. From 2005 to 2013 fifteen Polish films participated in "Golden Apricot" Film Festival.

Cooperation in the field of education became more active in 2005. The Ministry of Higher Education of Poland allocated places for Armenian students to study at the Centre of Eastern European Studies of the University of Warsaw.

Besides Armenia had chance to participate in the programme for Young Scientists "Młody Naukowiec" which allows young scientists in different fields to develop their skills in the higher educational institutions of Poland.¹⁰

In 2005 Armenia had chance to participate in Lane Kirkland Scholarship Programme which gave a chance to Armenian young scientists and leaders to get the education in the Universities in Poland. This was very good start of cooperation between 2 countries in the field of education. From 2005 to 2015 forty seven person received education in Poland according to this programme.¹¹

In 2007 there was started Youth in Action Programme of European Union and in Poland there was created SALTO Youth Resource Centre which coordinated youth cooperation between European Union and Armenia, Georgia Azerbaijan, Ukraine, Belarus, Moldova and Russia. Many youth activists had chance to participate in different youth events in Poland and in other European countries.¹² Each year about fifty young activists have participated in youth activities financed by SALTO.

In 2010 all world celebrated 200 anniversary of worldwide known Polish composer Fredric Chopin. The Ministry of Culture of Armenia and the Embassy of Poland in Yerevan organized Chopin Festival in Yerevan, where participated also musician from Poland Slawomir Wilk. The final activity, concerning to the anniversary of Chopin took place in Warsaw in November, 2010, where were participating the ministers of cultures of all European and Eastern Partnership countries.

In 2011 Poland got Presidency in European Council and this fact was politically important in several reasons:

1. Poland took the initiative for activation of relations between European Union and Eastern Partnership countries.

2. Poland became a mediator between EaP countries and European Union and there started negotiations for signing Association Agreements on free trade and also negotiations on visa facilitated regime.

2011 was politically very effective year for bilateral cooperation on a governmental level between Armenia and Poland. There took place official visit of the President of the President of Poland Bronislaw Komorowski to Armenia. This visit was important as it supported the activation of bilateral cooperation. Different ministries were ordered to prepare bilateral agreements and action programmes for activation of cooperation in different fields.

The Polish Presidency in 2011 was very important fact which assisted the activation of bilateral cooperation on Culture, Education and Youth on a Governmental level. Armenia and other Eastern Partnership countries took part in "I Culture" orchestra, which was initiated by the Ministry of Culture and National Heritage of Poland.

⁵ <http://fpo.com.pl/galeria-bardzo-biala/>

⁶ <http://www.bardzobiala.eu/>

⁷ <http://www.top.ormianie.pl/>

⁸ <http://fundacjaormianska.pl/aktualno-ci/>

⁹ <http://www.otk.armenia.pl/new/info.php>

¹⁰ <http://www.nauka.gov.pl/stypendia-dla-mlodych-naukowcow/>

¹¹ www.kirkland.edu.pl

¹² www.salto-youth.net

From 5 to 7 of July there took place huge conference in Warsaw, titled "Eastern Dimension of Mobility". Conference was opened by European Commissioner of Education, Culture, Youth and Sport Mrs. Andruola Vassiliou and Minister of Foreign Affairs of Poland Mr. Radolsaw Sikorski. The conference had different sections and one of the biggest sections was culture. During this conference took place also bilateral meeting of the Minister of Culture of Armenia and the Minister of Culture and National Heritage of Poland. In the end of June there took place session of Intergovernmental committee between Poland and Armenia and there was signed Cooperation Programme between the Government of the Republic of Armenia and the Government of the Republic of Poland.¹³

In November, 2011 there took place Eastern Partnership Culture Congress, which was organized by the Ministry of Foreign Affairs of Poland and by Municipality of Lublin. During this congress there took place Exhibition of 2 Armenia architects Ashot Mirzoyan and Artur Ghukasyan.

Armenian films directors were actively participating in "Zoom Zblizenia" film festival in 2012, which took place in Warsaw.

From 2007 to 2012 there took place forty six youth activities in cooperation of youth organization based in Armenia and in Poland

In August, 2012 there took place exhibition of Polish painter Richard Striec. The exhibition was organized by the Ministry of Culture of Armenia and the Ministry of Culture and National Heritage of Poland.¹⁴ There also planned to carry out Exhibition of Polish painter with Armenian roots Teodor Akcentowicz's exhibition in Yerevan.

In 2012 Yerevan was announced as «World Book Capital» by UNESCO. There took place many literary activities, where were participants from Poland. The Embassy of Poland in Armenia and the Ministry of Culture of Armenia supported the translation of books of famous Polish writers Czeslaw Milosz, Wislawa Szymborska, Tadeusz Rozewicz, Zbigniew Herbert.

2012 was also very successful year in cooperation between two countries in the field of Education. After signature of Bilateral programme first 4 Armenians started their studies in the Universities of Poland. From 2012 to 2015 18 Armenians became students of Polish universities.

Cultural relations between Armenia and Poland were more activated also in 2013. There was created new Polish organization in Armenia, titles "Armenian-Polish Cooperation", which organizes different cultural activities. There took place and exhibition "Celebration of Easter Day" with Polish traditions.

In April, 2013 there took place Polish days in Armenia, which was initiated by the Ministry of Culture and National Heritage of Poland and the Embassy

of Poland in Armenia. Eight Polish theatrical performances took place within the framework of "ArmMono" theatrical festival. There took place also concerts of Polish groups "Krakow Dwor" and "Czupaga".

In May, 2013 took place show of Polish films "Vinci", "The Collector", "Sweet Rush", "Testosterone", etc. Polish film "Black Thursday" got price during the Golden Apricot film festival.¹⁵

In 2013 there took place visit of the President of the Republic of Armenia to Poland, and during the visit were signed different bilateral agreements. Presidents of Armenia and Poland participated in Armenian concert, which was organized by Armenian community in Poland. The municipality of Warsaw named one park "Armenian square" and there was put Armenian "Khachkar" cross stone. President of Armenia has participated in the opening ceremony of "Armenian square".

In September, 2013 there took place visit of the Minister of Culture and National Heritage of Poland to Armenia, where was presigned bilateral cooperation programme between the Ministry of Culture of Armenia and the Ministry of Culture and National Heritage of Poland.¹⁶

There took place visit of the delegation of city Sopot to Yerevan, where the delegation had meetings with the representatives of the Ministry of Culture of Armenia. In 2014 there took place exhibition of Armenian painter Ivan Ayzavovski in Sopot and later took place exhibition of Polish painters Teodor Akcentowicz in Yerevan.

The representatives of the Ministry of Culture of Poland have participated in European Heritage Conference, which took place in Armenia via support of European Commission and the Council of Europe.

In September 2013 Armenia announced about its readiness to become a member of Eurasian Economic Union and stopped the process of signature of Association Agreement with EU. Armenia wanted to sign the political part of the Association agreement but European side has not accepted this suggestion. Meanwhile this political crisis bilateral cooperation between Armenia and Poland has not been interapted.

In November, 2013 there took place celebration of 80 anniversary of World Famous Polish composer Krzysztof Penderecki. The Minister of Culture of Armenia participated in the ceremony and also had meeting with the Minister of Culture and National Heritage of Poland. During that visit there was signed bilateral cooperation programme 2014-2016.¹⁷

The Ministry of Higher Education of Poland allocated scholarships for students from Eastern Partnership countries, including Armenia to continue the education in Masters and in PhD in different universities of Poland. In 2015 the Scholarship programme was renamed after Stefan Banach.¹⁸

¹⁵ erywan.msz.gov.pl

¹⁶ www.mkidn.gov.pl

¹⁷ www.mul.culture.gov.am

¹⁸ www.buwiwm.edu.pl

¹³ <http://www.traktaty.msz.gov.pl/SearchTreaties.aspx?t=DW>

¹⁴ www.mincult.am

In 2015 there was signed new Intergovernmental Programme which allows two countries to continue the development of bilateral cooperation. This document will enter into force in 2016.

In 2015 there took place Presidential and Parliamentary elections in Poland. During the Presidential elections Andrzej Duda was elected as a President of Poland. Later in 2015 there took place Parliamentary elections and majority in the parliament received Political Party Prawo i Sprawiedliwość.

The now government of Poland has adopted new Foreign Policy and Armenia has been excluded from the list of priority countries. This exclusion we can see in all fields: culture, education, science and youth. Poland has limited places for Armenian students according to the Intergovernmental agreement between 2 countries. From Armenia no one has received the scholarship after S. Banacha in 2016. Armenia has been excluded also from the Youth Projects financed by Polish National Agency.

The reasons of exclusion are several:

1. Armenia has rejected the signature of Association agreement with European Union and became member of Eurasian Economic Union. For sure this decision was made by the pressure from Russian side. And this pressure was concerning to Economical sanctions and raise of the Gas price, Nagorno-Karabakh Conflict and Relationship with Turkey. President of Armenia announced that for Armenia is important "Both ... And" format in Foreign Policy, but this format was not succeeded.
2. Armenia always protected Russia during the votes in different International organizations and this stimulates Poland and other European countries to exclude Armenia from their priority in Foreign Affairs and to see Armenia as a Russian enclave.

The situation was changed in the end of 2016, when was presigned the Agreement between Armenia and European Union. Armenia was reincluded in Banacha Programme.

Conclusions

The existence of Poles in Armenia and Armenians in Poland is one of important factors that bilateral cooperation between 2 countries has been very active both during the soviet times and also nowadays. Both communities have actively been promoting Armenian culture in Poland and Polish culture in Armenia without assistance from the Government. Culture plays and important role in strengthen of bilateral political relations.

The promotion of culture abroad is one of main principles of each country which has rich cultural heritage. Both Armenia and Poland, having rich cultural

heritage, sure include this principles in the strategy in foreign Policy and nowadays Promotion of Culture abroad is one of main directions of Foreign policy both of the Republic of Armenia and of the Republic of Poland.

Polish presidency in 2011 was the most important factor both for the bilateral relations between Armenia and Poland and also for the relations between Eastern Partnership countries and European Union. Poland has been a mediator between these two blocks and actively assisted the development of relations. Armenia selected to deep relations with Eurasian Union and Association Agreement has not been signed.

Armenian membership in the Eurasian Economic Union and stop of signature of Association Agreement with EU plays negative political role but bilateral cooperation in the field of culture, education and youth has not been interrupted. In 2015 European Commission received a mandate for starting negotiation with Armenia and sign new Agreement. This fact is very important and there plays very big role the President of European Council, former Prime Minister of Poland Donald Tusk.

The results of Elections in Poland changed its Foreign Policy and Armenia has been excluded from the list of priority countries of Poland.

The new agreement between Armenia and European Union, which was drafted in March 2017, has chance to change the situation concerning to Armenia.

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ECONOMIC AGREEMENTS BETWEEN THE REPUBLIC OF POLAND AND THE REPUBLIC OF ARMENIA – LEGAL ANALYSIS

ABSTACT

The recent entry into force of the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, which did not take too much coverage in Poland, could be a good contribution to the analysis of international agreements connecting Poland with Armenia. It would be beyond the scope of this work to develop them to the full extent. That is why, I would like to focus on their legal and economic aspects. Therefore, these economic agreements will be presented, the party of which Poland and Armenia were or have been simultaneously in the last quarter of a century.

Key words: trade agreement, Poland, Armenia

ECONOMIC AGREEMENTS BETWEEN THE REPUBLIC OF POLAND AND THE REPUBLIC OF ARMENIA – LEGAL ANALYSIS

1. Introduction

According to the concise doctrinal definition of an international agreement, it is “a joint declaration of entities of international law that will create law, and thus rights and obligations.”¹ At present, it is not possible to imagine international economic and trade relations without economic agreements between states or international organizations that shape them. While there are no political or economic analyses of such agreements, there are not too many legal arrangements for agreements with specific countries (especially those smaller or more distant from Poland). Armenia belongs to such countries from the Polish perspective.

The recent entry into force the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part,² which did not take too much coverage in Poland,³ could be a good contribution to the analysis of international agreements connecting Poland with Armenia. It would be beyond the scope of this work to develop them to the full extent. That is why, I would like to focus on their legal and economic aspects. Therefore, these economic agreements will be presented, the party of which Poland and Armenia were or have been simultaneously in the last quarter of a century.

2. Discussion and analysis of the Polish-Armenian agreements

The Republic of Poland established diplomatic relations with the Republic of Armenia on February 26, 1992.⁴ From that time, until the end of 2018, there were two interstate agreements, eight intergovernmental agreements⁵ and sev-

eral acts in the form of memorandums/joint declarations/executive programs concerning cooperation of both countries.⁶ The vast majority of them entered into force after 2000 and they are still in force. At that time, the Polish side also stated the loss of the binding force of one agreement in connection with Armenia's rejection of the succession of international agreements concluded by the Union of Soviet Socialist Republics.⁷

The agreements in the field of economic affairs can directly include:

- the Agreement between the Government of the Republic of Poland and the Government of the Republic of Armenia on cooperation in the field of trade and economy concluded in Warsaw on February 24, 1991 [Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Armenii o współpracy w dziedzinie handlu i gospodarki, sporządzoną w Warszawie w dniu 24 lutego 1991 r.];⁸
- the Convention between the Government of the Republic of Poland and the Government of the Republic of Armenia on the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income and on property [Konwencja między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Armenii w sprawie unikania podwójnego opodatkowania i zapobiegania uchylaniu się od opodatkowania w zakresie podatków od dochodu i majątku];
- the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other part [Umowa o partnerstwie i współpracy między Wspólnotami Europejskimi i ich Państwami Członkowskimi, z jednej strony, a Republiką Armenii];
- the Agreement between the Government of the Republic of Poland and the Government of the Republic of Armenia on economic cooperation concluded in Yerevan on March 12, 2010 [Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Armenii o współpracy gospodarczej, sporządzona w Erewaniu dnia 12 marca 2010 r.];

¹ W. Góralczyk, S. Sawicki, *Prawo międzynarodowe publiczne w zarysie*, Warszawa 2017, p. 75. A similar definition is proposed by W. Czapliński, A. Wyrozumski, *Prawo międzynarodowe publiczne*, Warszawa 2014, p. 33.

² The law ratifying the agreement entered into force on August 7, 2018.

³ The signing and entry into force of this agreement has been noted and commented mainly by entities dealing in this area, e.g. Ośrodek Studiów Wschodnich (W. Górecki, *Umowa Armenii z UE – pozory wielowektorowej polityki Erywania*, analysis of November 29, 2017).

⁴ *Stosunki polsko-armeńskie. Wybór dokumentów z wprowadzeniem*, Lublin 2017, p. 24.

⁵ This article will further focus on a slightly narrower understanding of the international agreement than the one proposed in the introduction. In accordance with the Vienna Convention on the Law of Treaties of 1969 ‘treaty [= agreement] means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation’ (art. 2 sec. 1 let. a).

⁶ See the list: *Stosunki polsko-armeńskie...*, p. 169-171.

⁷ Oświadczenie Rządowe z dnia 7 lutego 2001 r. o utracie mocy obowiązującej w stosunkach między Rzeczpospolitą Polską a Republiką Armenii Umowy między Rządem Polskiej Rzeczypospolitej Ludowej a Rządem Związku Socjalistycznych Republik Radzieckich o wzajemnych podróżach bezwizowych obywateli obu państw, podpisanej w Warszawie dnia 13 grudnia 1979 r. [Government Declaration of February 7, 2001 on the loss of binding force in relations between the Republic of Poland and the Republic of Armenia of the Agreement between the Government of the Polish People's Republic and the Government of the Union of Soviet Socialist Republics on reciprocal visa-free travel of citizens of both countries, signed in Warsaw on December 13, 1979] (Dz.U. 2001 nr 15 poz. 156).

⁸ It lost its power along with Poland's accession to the European Union on May 1, 2004.

- the Agreement between the Government of the Republic of Poland and the Government of the Republic of Armenia on international road transport concluded in Warsaw on June 25, 2013 [Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Armenii o międzynarodowych przewozach drogowych, sporządzona w Warszawie dnia 25 czerwca 2013 r.]
- the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part [Kompleksowa i wzmocniona umowa o partnerstwie między Unią Europejską i Europejską Wspólnotą Energii Atomowej oraz ich państwami członkowskimi, z jednej strony, a Republiką Armenii, z drugiej strony].

Indirectly, this area was not included in the agreements such as the Agreement between the Government of the Republic of Poland and the Government of the Republic of Armenia on cooperation in combating crime, signed in Warsaw on September 6, 2004⁹. In addition to affecting economic matters, the Agreement between the Government of the Republic of Poland and the Government of the Republic of Armenia on cultural and scientific cooperation concluded in Warsaw on January 27, 1998¹⁰ and the Agreement between the Government of the Republic of Poland and the Government of the Republic of Armenia on cooperation in the field of defense signed in Warsaw on September 6, 2004.¹¹ It should be added that the two agreements were not published: in the field of civil aviation¹² and tourism.¹³ In addition, there are works on the Agreement between the Government of the Republic of Poland and the Government of the Republic of Armenia on the promotion and mutual protection of investments.¹⁴

Thus, from among the total of six Polish-Armenian strictly economic agreements as part of Poland's membership in the European Union, 2 agreements were concluded. One must stress that both the European Communities' agreement of 1996 (from its application by Poland) and the current European Union agreement of 2017 largely determine the mutual possibilities of concluding other

agreements. This does not prevent from noting that before the accession of Poland to the European Union (2004), the number of such agreements were not high.

It should also be noted that no international agreement has yet been concluded between the European Union and the Eurasian Economic Union established in 2015, the Member State of which is Armenia (since January 2, 2015).

In the further part of the article, the currently binding Polish-Armenian economic agreements will be discussed in chronological order as regards their acceptance and ratification by Poland. Rejection of the division into agreements concluded directly by the Republic of Poland and those concluded by Poland as part of the European Union is justified by the fact that Poland joined the Union based on the agreements, which the Union had previously concluded without Poland. Furthermore, a closer look at the analysed agreements can lead to the conclusion that each of the successively accepted contracts has a real and growing significance in terms of economic relations between Poland and Armenia. This will be demonstrated later in the article.

2.1. Convention between the Government of the Republic of Poland and the Government of the Republic of Armenia on the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income and properties

The Convention between the Government of the Republic of Poland and the Government of the Republic of Armenia on the avoidance of double taxation and prevention of tax evasion with respect to taxes on income and property, signed in Warsaw on July 14¹⁵ entered into force on February 27, 2005.¹⁶

The agreement consists of a preamble and 31 articles. Chapter I defines the 'Scope of the Convention'. According to article 1 "the Convention applies to persons who are residents in one or both of the Agreement States". In addition, it concerns taxes on income and on property, regardless of the manner in which they are levied, which is levied on behalf of the Agreement State, its territorial units or local authorities (article 2 sec. 1).

⁹ Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Armenii o współpracy w zwalczaniu przestępczości, podpisana w Warszawie dnia 6 września 2004 r. (Dz.U. 2005 nr 125 poz. 1046).

¹⁰ Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Armenii o współpracy kulturalnej i naukowej, sporządzona w Warszawie dnia 27 stycznia 1998 r. (Dz.U. 2000 nr 2 poz. 9).

¹¹ Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Armenii o współpracy w dziedzinie obronności podpisana w Warszawie dnia 6 września 2004 r. (Dz.U. 2005 nr 221 poz. 1902).

¹² Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Armenii o cywilnej komunikacji lotniczej, sporządzona w Warszawie dnia 27 stycznia 1998 r.

¹³ Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Armenii o współpracy w dziedzinie turystyki, sporządzona w Warszawie, dnia 14 lipca 1999 r.

¹⁴ <https://informatorekonomiczny.msz.gov.pl/azja/armenia/>.

¹⁵ Konwencja między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Armenii w sprawie unikania podwójnego opodatkowania i zapobiegania uchylaniu się od opodatkowania w zakresie podatków od dochodu i majątku, podpisana w Warszawie dnia 14 lipca 1999 r. (Dz.U. 2005 nr 66 poz. 576).

¹⁶ The Act of August 27, 2004 [Ustawa z dnia 27 sierpnia 2004 r., Dz.U. 2004 nr 236 poz. 2352] ratified the Convention. Its entry into force was announced by the Government's declaration of February 17, 2005 on the binding force of the Convention between the Government of the Republic of Poland and the Government of the Republic of Armenia on the avoidance of double taxation and prevention of tax evasion with respect to taxes on income and property, signed in Warsaw on July 14, 1999 [oświadczenie Rządowe z dnia 17 lutego 2005 r. w sprawie mocy obowiązującej Konwencji między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Armenii w sprawie unikania podwójnego opodatkowania i zapobiegania uchylaniu się od opodatkowania w zakresie podatków od dochodu i majątku, podpisanej w Warszawie dnia 14 lipca 1999 r., Dz.U. 2005 nr 66 poz. 577].

Chapter II specifies definitions (articles 3-5), Chapter III refers to income taxation (listing property income, corporate profits, international transport, related companies, dividends, interest, royalties, transfer of property, free professions, wage labour, remuneration of directors, artists and athletes, pensions, public functions, students, lecturers and researchers and other income (articles 6-22). Chapter IV is devoted to property taxation (article 23). Chapter V defines "Double taxation avoidance methods" (article 24), while Chapter VI sets out "Special provisions" (i.e. equal treatment, mutual communication procedure, information exchange, assistance in execution, representatives of diplomatic missions and consular posts) in articles 25-29. Chapter VII consists of "Final provisions" (articles 30-31).

First of all, the above agreement contains a national clause, i.e. equal treatment, stating that the citizens of one State will not be subject to taxation in the other State, as well as related obligations that are different or more burdensome than taxation and related obligations, which are or can be subjected under the same circumstances to citizens of that other State. The provisions on the exchange of tax information between tax administrations of both countries are also important. They are intended to prevent tax avoidance and evasion and tax frauds. In addition, the Agreement contains special provisions regarding the use of the mutual communication procedure in order to eliminate matters in relation to the interpretation and application of the provisions of the Agreement.¹⁷ The mentioned cooperation in the collection of tax liabilities is not often the subject of bilateral tax agreements, but what is interesting, it has been applied for the first time by Poland in the agreement with Armenia.¹⁸

2.2. Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other part

Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia (Official Journal L 239, 9.9.1999, p. 3), which applies between the so-called in Poland "The Old Union" and the Republic of Armenia from July 1, 1999 was accepted into Polish law under the Protocol to the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other part, signed in Luxembourg on April 22, 1996 to take account of the accession of the Czech Republic, the Republic

of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union, prepared in Brussels on May 19, 2004¹⁹ and has been in force since March 1, 2005.²⁰

The agreement consists of a preamble, 102 articles, 4 attachments and 2 protocols.

The preamble primarily emphasizes political content (the following are stressed: "the links between the Community, its Member States and the Republic of Armenia and the common values that they share ") and the will of the Armenians " the establishment of a multi-party system with free and democratic elections and economic liberalisation aimed at setting up a market economy ". Interestingly, in the preamble of the agreement, the Agreement between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics (USSR) on exchange is the starting point for strengthening ties and establishing partnership and cooperation between the European Union (then the European Economic Community) and Armenia, commercial cooperation and trade, signed on December 18, 1989.

Although political freedoms were to form the basis of partnership, one should bear in mind that the document prepared in the 1990s paid a lot of attention to the will to support the construction of a market economy in Armenia. It was expressed that "this Agreement will create a new climate for economic relations

¹⁹ Protokół do Umowy o partnerstwie i współpracy między Wspólnotami Europejskimi i ich Państwami Członkowskimi, z jednej strony, a Republiką Armenii, z drugiej strony, podpisanej w Luksemburgu dnia 22 kwietnia 1996 r. w celu uwzględnienia przystąpienia Republiki Czeskiej, Republiki Estońskiej, Republiki Cypryjskiej, Republiki Łotewskiej, Republiki Litewskiej, Republiki Węgierskiej, Republiki Malty, Rzeczypospolitej Polskiej, Republiki Słowenii oraz Republiki Słowackiej do Unii Europejskiej, sporządzony w Brukseli dnia 19 maja 2004 r. (Dz.U. 2006 nr 39 poz. 270).

²⁰ In accordance with the governmental declaration of September 12, 2005 on the binding force of the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other part, signed in Luxembourg on April 22, 1996, and the Protocol to the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other part, signed in Luxembourg on April 22, 1996, to take account of the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, The Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union, prepared in Brussels on May 19, 2004 [oświadczeniem Rządowym z dnia 12 września 2005 r. w sprawie mocy obowiązującej Umowy o partnerstwie i współpracy między Wspólnotami Europejskimi i ich Państwami Członkowskimi, z jednej strony, a Republiką Armenii, z drugiej strony, podpisanej w Luksemburgu dnia 22 kwietnia 1996 r., oraz Protokołu do Umowy o partnerstwie i współpracy między Wspólnotami Europejskimi i ich Państwami Członkowskimi, z jednej strony, a Republiką Armenii, z drugiej strony, podpisanej w Luksemburgu dnia 22 kwietnia 1996 r., w celu uwzględnienia przystąpienia Republiki Czeskiej, Republiki Estońskiej, Republiki Cypryjskiej, Republiki Łotewskiej, Republiki Litewskiej, Republiki Węgierskiej, Republiki Malty, Rzeczypospolitej Polskiej, Republiki Słowenii oraz Republiki Słowackiej do Unii Europejskiej, sporządzonego w Brukseli dnia 19 maja 2004 r., Dz.U. 2006 nr 39 poz. 271]

¹⁷ To justify the Act on the ratification of this Convention.

¹⁸ D. Maczyński, *Międzynarodowa współpraca przy poborze należności podatkowych*, in: L. Etel, M. Tyniewicki, *Finanse publiczne i prawo finansowe: realia i perspektywy zmian: Księga Jubileuszowa dedykowana Profesorowi Eugeniuszowi Ruskowskiemu z okazji 40-lecia jego aktywności naukowej*, Białystok 2012, p. 474.

between the Parties and in particular for the development of trade and investment, which are essential to economic restructuring and technological modernisation". Therefore, the purposes of the presented agreement contained in article 1 include:

"- to provide an appropriate framework for the political dialogue between the Parties allowing the development of political relations,

- to support the Republic of Armenia's efforts to consolidate its democracy and to develop its economy and to complete the transition into a market economy,

- to promote trade and investment and harmonious economic relations between the Parties and so to foster their sustainable economic development,

- to provide a basis for legislative, economic, social, financial, civil scientific, technological and cultural cooperation."

Then, Title I refers to the "General principles" (Articles 2-4), Title II is: "Political dialogue" (Articles 5-9), Title III "Trade in goods" (Articles 9-19), Title IV "Provisions affecting business and investment" (Chapter I "Labour conditions", Articles 20-22; Chapter II "Conditions affecting the establishment and operation of companies", Articles 23 to 29, Chapter III "Cross-border supply of services between the Community and the Republic of Armenia", Articles 30 to 33, Chapter IV "General provisions", Articles 34 to 40; "Current payments and capital", Article 41, Chapter VI "Intellectual, industrial and commercial property protection", Article 42, Title V "Legislative cooperation", Article 43, Title VI "Economic cooperation", Articles 44 to 67 (cooperation in the field of goods trading and services, industrial cooperation, investment support and protection, public procurement, cooperation in the field of standards and conformity assessment, mining and raw materials, cooperation in science and technology, education and training, agriculture and agro-food sector, energy, natural environment, transport, postal services and telecommunications, financial services, regional development, social cooperation, tourism, small and medium enterprises, information and communication, consumer protection, customs, cooperation in the field of statistics, economy); Title VII "Cooperation on matters relating to democracy and human rights" (Article 68), Title VIII "Cooperation in the prevention of illegal activities and the prevention and control of illegal immigration" (Articles 69-72), Title IX "Cultural Cooperation" (Article 73), Title X "Financial cooperation in the field of technical assistance" (Articles 74-77), Title XI "Institutional, general and final provisions" (Articles 78-102).

Despite a very wide range of regulations, especially regarding economic matters, most attitudes are very general and do not result in specific and enforceable rights and obligations. They involve mostly soft measures such as training,

exchanges and consultations. Under this last purpose, in accordance with article 78, the Cooperation Council was established to supervise the implementation of the agreement.

In view of the above, the initial articles of the agreement should be specified, which constitute "hard" provisions. Article 9 setting out the most-favoured-nation treatment for certain areas, guaranteeing free transit (Article 10), abolishing, as a rule, quantitative restrictions on imports from Armenia (Article 12 sec. 1) and quantitative restrictions or measures having equivalent effect on imported goods to Armenia (Article 12 sec. 2) are worth mentioning here. Nevertheless, a number of protective measures were introduced, e.g. art. 14 sec. 1 "Where any product is being imported into the territory of one of the Parties in such increased quantities or under such conditions as to cause or threaten to cause injury to domestic producers of like or directly competitive products, the Community or the Republic of Armenia, whichever is concerned, may take appropriate measures in accordance with the following procedures and conditions" and "This Agreement shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of natural resources; the protection of national treasures of artistic, historic or archaeological value or the protection of intellectual, industrial and commercial property or rules relating to gold and silver. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties" (Article 16).

It should also be mentioned that in 2014 (i.e. after the collapse of association negotiations with the European Union), an additional Protocol was added to the presented agreement concerning the rules of participation of the Republic of Armenia in the EU programs.²¹ According to its article 1 "Armenia shall be allowed to participate in all current and future programmes of the Union opened to the participation of Armenia in accordance with the relevant provisions adopting these programmes." It was agreed that "Armenia shall contribute financially to the general budget of the European Union corresponding to the specific programmes in which Armenia participates" (Article 2).

²¹ Protocol to the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other part, on a framework Agreement between the European Union and the Republic of Armenia on the general principles for the participation of the Republic of Armenia in Union programmes, (Official Journal L 174, 13.6.2014, p. 3-6) [Protokół do Umowy o partnerstwie i współpracy między Wspólnotami Europejskimi i ich państwami członkowskimi, z jednej strony, a Republiką Armenii, z drugiej strony, w sprawie Umowy ramowej między Unią Europejską a Republiką Armenii dotyczącej zasad udziału Republiki Armenii w programach unijnych].

According to article 4 "Projects and initiatives submitted by participants from Armenia shall, as far as possible, be subject to the same conditions, rules and procedures pertaining to the programmes concerned as applied to Member States". The detailed rules and conditions for the participation of Armenia in each of the programs should be laid down in a Memorandum of Understanding concluded between the European Commission and the competent Armenian authorities on the basis of criteria established under the various programs.

2.3 Agreement between the Government of the Republic of Poland and the Government of the Republic of Armenia on economic cooperation, prepared in Yerevan on March 12, 2010.

The Agreement between the Government of the Republic of Poland and the Government of the Republic of Armenia on economic cooperation, prepared in Yerevan on March 12, 2010²² came into force on June 16, 2010.²³ This is the bilateral first Polish-Armenian agreement in the field of trade and economy.²⁴ It consists of a preamble and 9 articles.

The agreement was concluded "taking into account the need to develop economic relations between the Republic of Poland and the Republic of Armenia". Bilateral economic relations are to be intensified "in particular in terms of trade, investment, innovation and financing of economic projects" (Article 1 sec. 1). The cooperation is to be focused on "developing relations in the fields of energy, construction, transport and agriculture" (Article 1 sec. 2). Article 2 is an open catalogue of methods to implement the agreement. According to it, they include:

"1) facilitating contacts between the companies of the states of the Contracting Parties or between organizations of countries of the Contracting Parties associating economic entities;

²² Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Armenii o współpracy gospodarczej, sporządzona w Erewaniu dnia 12 marca 2010 r. (M.P. 2010 nr 56 poz. 761).

²³ In accordance with the Governmental Declaration of July 26, 2010 on the approval of the Agreement between the Government of the Republic of Poland and the Government of the Republic of Armenia on economic cooperation, prepared in Yerevan on March 12, 2010 [Oświadczenie Rządowe z dnia 26 lipca 2010 r. w sprawie zatwierdzenia Umowy między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Armenii o współpracy gospodarczej, sporządzonej w Erewaniu dnia 12 marca 2010 r. M.P. 2010 nr 56 poz. 762].

²⁴ Admittedly, on February 24, 1992, the Agreement was signed in Warsaw between the Government of the Republic of Poland and the Government of the Republic of Armenia on cooperation in the field of trade and economy [Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Armenii o współpracy w dziedzinie handlu i gospodarki] (*Stosunki polsko-armeńskie. Wybór dokumentów z wprowadzeniem*, Lublin 2017, p. 25), but it does not appear in the Polish Journal of Laws.

- 2) supporting the implementation of projects involving the construction, reconstruction and modernization of technological facilities by economic entities of one Contracting Party in the territory of the country of the other Contracting Party or common occurrence of economic entities of the Contracting Parties in their territories or territories of third countries;
- 3) supporting projects in the oil, gas and electricity sectors;
- 4) cooperation in the field of certification and standardization;
- 5) encouraging the development of small and medium-sized enterprises, in particular by strengthening the cooperation of relevant organizations;
- 6) supporting the development of consulting, legal, banking and technical services, including support for investment projects provided by economic entities of one Contracting Party in the territory of the other Contracting Party or jointly by economic entities of Contracting Parties in their territories or on territories of third countries;
- 7) initiating and supporting various forms of exchange of experience in the field of economy and trade, including the exchange of specialists and technical staff, and the organization of training;
- 8) supporting the organization and conducting of fairs, exhibitions, seminars and other undertakings, the purpose of which is to disseminate information on mutual cooperation opportunities;
- 9) creating favourable conditions for the development of tourist exchange."

Based on article 5, the Polish-Armenian Intergovernmental Commission for Economic Cooperation was established. The tasks of the Commission, which was to be gathered at least once a year,²⁵ include in particular:

- "1) periodic assessment of the status of economic cooperation;
- 2) identification of problems limiting the development of economic cooperation and proposing appropriate measures to eliminate them;

²⁵ Recently (February 2018), the Polish-Armenian Business Forum was held on the occasion of the meeting of the Commission in Poland.

- 3) preparing proposals aiming at further development of economic cooperation;
- 4) discussing disputes regarding the application or interpretation of this Agreement" (article 5 sec. 2).

According to article 6 sec. 2 in respect of matters covered by this Agreement, priority will be given to the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia.

It should be noted that although the Commission operates, it is difficult to identify larger and long-term projects born as a result of its activity. It remains a forum of a consultative nature.

2.4. Agreement between the Government of the Republic of Poland and the Government of the Republic of Armenia on international road transport prepared in Warsaw on June 25, 2013.

The Agreement between the Government of the Republic of Poland and the Government of the Republic of Armenia on international road transport prepared in Warsaw on June 25, 2013²⁶ entered into force on November 30, 2013.²⁷ It consists of 17 articles divided into 4 parts.

Pursuant to Part 1 "Scope of Application" (Articles 1-2), the Agreement "applies to international transport of people and goods between the Republic of Poland and the Republic of Armenia, in transit through their territories and between the territory of the Third State and the territory of the State of the other Contracting Party and in the reverse direction, performed with vehicles registered in the territory of the State of one of the Contracting Parties" Part 2 "Transport of people" (Article 3-4) provides that "[r]egular, shuttle and occasional transport by bus is performed under license". The exception involves occasional transport of people by buses. Pursuant to part 3 "Transportation of goods" (Articles 5-8) "transport of goods is provided on the basis of permits, with the exception of the transport category [...] which are exempt from the permits". However, part 4 (Articles 9-17) defines the "General provisions".

²⁶ Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Armenii o międzynarodowych przewozach drogowych, sporządzona w Warszawie dnia 25 czerwca 2013 r. (M.P. 2014 poz. 21).

²⁷ In accordance with the statement of the Government of December 20, 2013 regarding binding the Republic of Poland to the Agreement between the Government of the Republic of Poland and the Government of the Republic of Armenia on international road transport prepared in Warsaw on June 25, 2013 [oświadczenie Rządowe z dnia 20 grudnia 2013 r. w sprawie związania Rzeczypospolitej Polskiej Umową między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Armenii o międzynarodowych przewozach drogowych, sporządzone w Warszawie dnia 25 czerwca 2013 r., M.P. 2014 poz. 22].

2.5 Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part

The Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part of 2017, replaced the previously unaccepted Association Agreement and the establishment of the Deep and Comprehensive Free Trade Area (DCFTA). Due to the fact that it was not signed, it will not be subject to this analysis. For the sake of introduction, it should only be mentioned that the DCFTA agreement was supposed to be the obliteration of the Eastern Partnership Program (EaP), which defines the eastern dimension of the external policy of the EU with regard to Armenia. The association agreement consists of four parts, representing the most important areas of mutual relationship. The first three of them are: a) political dialogue and foreign and security policy; b) justice, freedom and security; c) economic and regional cooperation. The fourth pillar of cooperation is the signing of the Agreement on the establishment of a deep and comprehensive free trade area (DCFTA - Deep and Comprehensive). The DCFTA covers a broader scope than the ordinary free trade agreement, as it covers not only trade liberalization by removing customs barriers and quantitative restrictions, but also provides for the harmonization of the partner country's trade law with the EU standards and the *acquis communautaire*.²⁸ It is also worth to say that the project of DCFTA agreement was one of the newest generation of UE trade agreements that establish special bilateral economic relations (including reducing of duties).²⁹ The current Comprehensive and Enhanced Partnership Agreement (despite of relatively deep level of integration in various sector) is based only on Generalized System of Preferences - GSP.

The Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, was adopted by the Union on the basis of Council decisions.³⁰

²⁸ D. Butyter, *Umowy o stowarzyszeniu pomiędzy Unią Europejską a państwami Partnerstwa Wschodniego na przykładzie na Ukrainy*, "PWSZ IPIA Studia Lubuskie" Volume X Sulechów 2014, p. 13-14.

²⁹ Zob. G. Mazur, *Wspólna polityka handlowa Unii Europejskiej*, Warszawa 2017, s. 186-188, 216 i nn.

³⁰ Joint statement, COUNCIL DECISION, on the signing, on behalf of the European Union, and provisional application of the Comprehensive and strengthened partnership agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, JOIN/2017/036 final - 2017/0236 (NLE).

Since June 1, 2018, in accordance with the Note concerning the provisional application of the Comprehensive and strengthened partnership agreement³¹ under article 3 of the above Council Decision on the signing and provisional application of this Agreement, insofar as they concern matters falling within the Union's competence, including matters falling within the Union's competence to define and implement the common foreign and security policy, the following parts of the Agreement apply: title I; title II: article 3, 4, 7 and 8; title III: article 12, article 14 (1) and article 15; title V: chapter 1, with the exception of article 38 (3) (a); chapter 2, with the exception of references to nuclear safety in article 42 (2) (f) and g); chapter 3, with the exception of article 46 (1) (a), (c) and (e); and chapters 7, 10, 14 and 21; title VI, with the exception of article 205 (2) (b) and (c); article 203 is provisionally applied only to the extent that it relates to direct investment; title VII; title VIII, with the exception of article 380 (1), to the extent that the provisions of this title are limited to ensure the provisional application of the agreement; and appendix I, appendix II, with the exception of references to Euratom regarding infrastructure, implementing and nuclear energy regulations, appendixes III, VI, VIII, IX, X, XI and XII, and protocol I to title VII Financial assistance and provisions on combating fraud and control, and Protocol II on mutual administrative assistance in customs matters. Poland ratified the Agreement in June 2018.³²

The agreement consists of motives and 8 titles (Title I: Objectives and general principles (Articles 1-2); Title II: Political dialogue and reform; cooperation in the field of foreign and security policy (Articles 3-11); Title III: Justice, freedom and security (Articles 12-21); Title IV: Economic cooperation (Articles 22-35); Title V: Other cooperation policies (Articles 36-112); Title VI: Trade and trade related matters (Articles 113-342); Title VII: Financial assistance, and anti-fraud and control provisions (Articles 343-361); Title VIII: Institutional, general and final provisions (articles 362-386).

286 articles in total. The agreement was accompanied with 12 attachments and 1 protocol.

Economic cooperation is separated in Title IV of the Agreement. In addition, title V, VI and VII are also relevant in this respect. Due to the wide range and details of the Agreement itself, it is impossible to discuss it in this work. For this reason, it is worth recalling excerpts from the Polish law ratifying the Agreement, where the concise summary thereof was included.

³¹ Note on the provisional application of the Comprehensive and strengthened partnership agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, the Official Gazette L 122, 17.5.2018, p. 1-1.

³² Act of June 7, 2018 on the ratification of the Comprehensive and strengthened partnership agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, prepared in Brussels on November 24, 2017, the Journal of Laws of 2018, item 1415, which entered into force on August 7, 2018.

Title IV: Economic cooperation: The EU and the Republic of Armenia support the process of economic reforms. The Republic of Armenia is taking further steps towards creating an efficiently functioning market economy and gradually approximating its economic and financial regulations and various policy areas to European Union law and policy areas. The Parties establish a regular economic dialogue, establish cooperation in the field of public internal control and external audit, cooperate in order to strengthen good administration in the field of taxation and develop and strengthen cooperation on statistical matters.

Title V: Other cooperation policies: This title describes the principles of cooperation in the context of: transport and infrastructure policy, energy, environment and climate, industry and enterprises, company law, banking services, information society, tourism, agriculture and rural development, fisheries and maritime economy, mining, research and innovation, consumer protection, employment, health, education and youth, culture, audiovisual policy, sport, civil society, regional development and civil protection.

Title VI: Trade and trade related matters: The Parties engage in a dialogue on bilateral and multilateral trade, granting each other the most favourable treatment in the field of trade. The Parties encourage direct foreign investments by developing attractive and stable investment conditions.

Title VII: Financial assistance, and anti-fraud and control provisions: This chapter sets out the rules for the use of financial assistance by Armenia through appropriate EU funding mechanisms and instruments as well as the rules for using loans from the European Investment Bank, the European Bank for Reconstruction and Development and other international financial institutions. The Parties shall implement effective measures, including control principles, to prevent and combat fraud, corruption and other illegal activities in connection with the use of EU funds, including through mutual administrative and legal assistance in the fields covered by the Agreement.

It should be emphasized that in fact *clue* of the Agreement involve the appendixes because harmonisation selected aspects of the law of the Republic of Armenia with the law of the European Union is to be performed in accordance with them. Inter alia, Appendix I (transport), Appendix II (energy), Appendix IV (consumer protection) or Appendix VII (employment) lists hundreds of Union legal acts against which Armenia has undertaken to adapt its law. Harmonization deadlines has been defined since the entry into force of the Agreement: they range from 1 year to several years. Euphemistic term was used in some cases: "*the timeline for implementation will be decided by the Partnership Council after the entry into force of this Agreement*".

Objections of the European Union and its Member States are included in Appendix VIII-A. The analysis of the objections raised by the states showed that in comparison to other EU Member States, Poland reported an average

number of objections. For example, in the field of establishing enterprises, Poland stated that *"The scope of operations of a representative office may only encompass advertising and promotion of the foreign parent company represented by the office. For all sectors except legal services and services provided by health-care units, Armenian investors can undertake and conduct economic activity only in the form of a limited partnership, limited joint-stock partnership, limited liability company, and joint-stock company (in the case of legal services only in the form of registered partnership and limited partnership)."*³³ In the property area, it was claimed that *"direct and indirect requires a permit. A permit is issued through an administrative decision by a minister competent in internal affairs, with the consent of the Minister of National Defence, and in the case of agricultural real estate, also with the consent of the Minister of Agriculture and Rural Development. The acquisition of state-owned property, i.e. the regulations governing the privatisation process (for mode 3) is unbound."* Poland entered the provision of transport services from sector-related objections, and there are relatively many objections regarding the provision of services. As part of liberal profession, these as follows:

- „While other types of legal form are available for EU lawyers, foreign lawyers only have access to the legal forms of registered partnership and limited partnership”;
- „EU nationality condition to provide veterinary services. Foreign persons may apply for permission to practice”;
- „Nationality condition to provide auditing services”.

In addition to the above objections, provisions on the mutual protection of geographical indications together with the list of protected geographical indications are of great importance for reciprocal trade. Thousands are from the EU.

The French reservation of the Cognac name is of the greatest importance to Armenia.³⁴ According to article 235 (5) of the Agreement *"prior trademarks of the Republic of Armenia which consist of or contain the geographical indication of the European Union 'Cognac' or 'Champagne', including in transcription or translation, registered for like products and not complying with the relevant specification, shall be invalidated, revoked or modified in order to eliminate that name*

³³ The catalogue of permissible legal forms of economic activity shaped in this way is quite puzzling; in particular, this applies to the exclusion of a general partnership, in which the liability of a potential investor would be more recognized than, for example, in the case of a limited liability company.

³⁴ According to European Union food law, cognac can be called a spirit drink that meets certain conditions, which was produced only in the Cognac region in France.

as an element of the whole trademark, at the latest within 14 years for 'Cognac' and two years for 'Champagne', following the entry into force of this Agreement." Other transitional provisions are also included therein. It does not change the fact that Armenia "loses" cognac - no Armenian cognac will be so called.

The list also includes Polish protected designations. Lublin onion bun and apples are to be protected in the Armenian market. Only protected indications from Armenia can be shocked in this list - one [sic!] i.e. "Sevani Ishkhan" in the category of "Fish and seafood".³⁵

In the context of the analysis of the agreement in terms of Poland's interests, it is worth paying attention to the justification of the draft ratification act. In my opinion, it is the touchstone of what the agreement can serve. We find there both political and correct simplifications of reality, e.g. that "the attention on Armenia's membership in the Euro-Asian Economic Union was impossible to sign an association agreement/agreement on widening and comprehensive free trade area as originally planned", as and cautious wishful thinking; the authors of the justification are not certain about the effects of the agreement, therefore it is mentioned that "ratification of the Agreement will favour cooperation in the areas specified in the Agreement, contribute to the development of economic cooperation and will create a field for the intensification of political dialogue between Warsaw and Yerevan, simultaneously complementing Poland's active policy towards Armenia. The ratification of the Agreement will also confirm Poland's involvement in the development of the Eastern Partnership policy constituting one of the dimensions of the European Neighbourhood Policy."

The agreement really creates wide opportunities for mutual economic cooperation. The only open question is whether they will be used. Currently, this cooperation is very poorly developed and Armenia itself is not treated with due attention from Poland. Therefore, it should be noted that the wording appearing in official Polish documents that this agreement is supposed to complement "Poland's active policy towards Armenia" is a kind of abuse and overinterpretation of reality.

3. Summary and Conclusions

Analysing more than 20 years' perspective of official Polish-Armenian relations, it can be concluded that a stable legal frame for the development of mutual economic and trade relations was developed. As a rule, each subsequent agreement widened the scope of mutual cooperation. Especially the last Comprehensive and Enhanced Partnership Agreement of 2017 fully shapes and determines the dynamics of further legal transformations (harmonization of selected aspects of Armenian law with the EU, including employment and services). In the appendix

³⁵ It is the Sevastian trout (from Sewan Lake); in Armenian "Սևաստիանի իշխան".

"Partnership priorities between the European Union and Armenia" to the Recommendation no 1/2017 of the EU-Armenia cooperation council of 20 November 2017 on the EU-Armenia Partnership Priorities [2018/315], they were described as "superior".

Due to the transfer of the determination of the Polish-Armenian economic cooperation frame to the EU level, there are not too many bilateral Polish-Armenian agreements in the field of economy (which does not change the fact that there were too many before joining the European Union). The current 4 intergovernmental agreements concern the avoidance of double taxation, economic cooperation and road transport. There are, for example, no agreements in the field of mutual judicial assistance, which Poland concluded with most countries in the region. These agreements either remain within Poland's limited national competence or are subsidiary to the basic agreement of 2017. Although the answer to the question how the presented agreements affect the increase in the balance of Polish-Armenian trade relations and investments is an economic issue that goes beyond the scope of these considerations. However, one can still claim that constant growth in this area is not noticeable.

In addition to the intergovernmental agreements, it is also worth paying attention to the agreements in the field of economic cooperation concluded by ministries and other governmental and non-governmental entities. In this respect, one can specify, for example, the Joint Declaration of the Minister of Economy and Labour of the Republic of Poland and the Minister of Trade and Economic Development of the Republic of Armenia³⁶ (signed in September 6, 2004 in Warsaw); the Agreement between the Ministry of Agriculture and Rural Development of the Republic of Poland and the Ministry of Agriculture of the Republic of Armenia on cooperation in the field of agriculture³⁷ (signed in Warsaw on June 25, 2013); the agreement on cooperation between the Polish Agency for Enterprise Development and the Foundation "National Centre of Small and Medium Entrepreneurship of Armenia"³⁸ (prepared on September 6, 2004 in Warsaw), the Agreement on cooperation between the Polish Chamber of Commerce and the Chamber of Commerce and Industry of the Republic of Armenia³⁹ (signed on July 28, 2011 in Yerevan), the Agreement on cooperation between Employers of the Republic of Poland and the Union of Industrialists and Entrepreneurs

(Employers of Armenia)⁴⁰ (signed on July 28, 2011 in Yerevan) and the Letter of Intent concerning cooperation between the Confederation of LEWIATAN and the Confederation of Employers and Entrepreneurs of the Republic of Armenia⁴¹ (signed on June 25, 2013 in Warsaw). In addition, there are few initiatives such as the launching the direct air connection Warsaw-Yerevan by PLL LOT in 2010. Armenian producers did not appear at the largest food industry fair in Poland (WorldFood), unlike the national stand of Azerbaijan. It is also worth noting that so far, as part of the reconstruction of Polish trade diplomacy after 2017, there has been no Foreign Trade Office in Yerevan (while they exist in neighbouring Georgia and Azerbaijan). To sum up, the range of activities undertaken under the aforementioned agreements and activities is not large and de facto economic cooperation between Poland and Armenia involves most often direct contacts between entrepreneurs and other non-governmental entities from both countries, which are not globally developed.⁴²

The aforementioned "Priorities" state that "cooperation priorities will be based on a joint effort to increase our involvement, considering other international commitments of the EU and Armenia". This statement leads to one more conclusion, which is not so much about Polish-Armenian economic relations, but about the legal and political situation of Armenia itself. It is the only state in the area of the previous USSR, which, while remaining in the processes of economic integration supported by Russia (the Eurasian Economic Union), has a broad economic agreement with the European Union. The effects of such harmonization of laws under the two international organizations will remain open in the coming years, but this issue is beyond the scope of this study.

³⁶ Wspólna Deklaracja Ministra Gospodarki i Pracy Rzeczypospolitej Polskiej oraz Ministra Handlu i Rozwoju Gospodarczego Republiki Armenii.

³⁷ Porozumienie między Ministerstwem Rolnictwa i Rozwoju Wsi Rzeczypospolitej Polskiej a Ministerstwem Rolnictwa Republiki Armenii o współpracy w dziedzinie rolnictwa.

³⁸ Porozumienie o współpracy między Polską Agencją Rozwoju Przedsiębiorczości a Fundacją „Narodowe Centrum Małej i Średniej Przedsiębiorczości Armenii”.

³⁹ Porozumienie o współpracy między Krajową Izbą Gospodarczą a Izbą Przemysłowo-Handlową Republiki Armenii.

⁴⁰ Porozumienie o współpracy pomiędzy Pracodawcami Rzeczypospolitej Polskiej a Związkiem Przemysłowców i Przedsiębiorców (Pracodawców Armenii).

⁴¹ Konfederacja LEWIATAN i Konfederacją Pracodawców i Przedsiębiorców Republiki Armenii.

⁴² In this respect, the published data of the Central Statistical Office of Poland [Główny Urząd Statystyczny] are the best prove.

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REFERENCES TO CONSTITUTIONAL TRADITION IN POLISH CONSTITUTIONAL LAW

ABSTRACT

In face of disputes around sovereignty and international organizations, question of constitutional tradition and identity has become in some way fashionable. Polish constitutional tradition is second oldest in the world and political tradition is one of the oldest in Europe. Among its elements we can distinguish typical tendencies shaping political culture but also movements aiming to deny some of its paradigms – as in comparison of liberal and parliamentary constitution from 1921 and statist, authoritarian one from 1935. Large asset of this tradition was incorporated to today's constitution from 1997, but also elements lasting from puppet, communist system. On the other hand, this variety of references result in inconsistent practice and unstable rules, even though written, constitutional act has almost never been changed. This issue can be illustrated by a picture of contrast between city developed spontaneously or methodically.

Key words: Poland, constitution, history, tradition, political system

REFERENCES TO CONSTITUTIONAL TRADITION IN POLISH CONSTITUTIONAL LAW

1. Constitutional tradition and constitutional identity – different approaches

Principles of constitutional tradition and constitutional identity have been recalled and made a big career as a defense against EU centralization forced by European Court of Justice and other EU institutions. A nonsense of “state without people” and without identity has been well noticed in countries which experienced loss of their independence in the past and now do not find a reason why they should renounce this fought out good to the next empire-like creature¹. Question of state and identity, although not expressed openly, is a significant point of debate about future shape of European Union. This question of EU identity and also last year 100th anniversary of the restoration of Poland is a good occasion to present a current structural role of one kind of identity taken into account in disputes of this kind.

Ideas of constitutional identity and constitutional tradition were formulated long before these EU problems emerged. As an example, Adhemar Esmein in his handbook of constitutional law² indicated that state is a product of human civilization. Besides nation, there are two other key concepts for organized national entity. One of them, sovereignty, is a phenomenon of will which unifies people to one entity. The other one, state, is a permanently present being which personalizes and materializes this will in itself. This French idea to replace absolute monarch with “absolute” nation and its legal “translation” – state (*personne juridique*) led him to the conclusion that this “person” must exist as long as the nation itself regardless multiple “revolutions”, i.e. transformations of actual form and condition of state. Owing to this permanence, we can say about statehood tradition and, from legal viewpoint, constitutional tradition.

Carl Schmitt, German lawyer and philosopher, used a term “identity” for forms of political organization. He defined state as a status of political unity of the people³. This unity can be achieved either with identity or with representation model. According to the second one, this political unity is represented or even replaced by someone else (for example monarch) in real actions. In identity model, nation can act politically itself, as a result of its self-awareness. As Schmitt says, these two models have to overlap, because state is as well not manageable without rep-

¹ G. Friedman, *Poland challenges the European identity*, Sept. 2017, <https://emerging-europe.com/voices/poland-challenges-the-european-identity/>.

² A. Esmein, *Éléments de droit constitutionnel français et comparé*, 6th ed., Paris, 1914, p. 1-2.

³ C. Schmitt, *Verfassungslehre* (Polish edition: *Nauka o konstytucji*), Teologia Polityczna, Warsaw, 2013, Chapter XVI, pt. 2.1-2.3, 3.6.

resentation, as it does not make sense without people. Here emerges the problem of political identity – and, consequently, constitutional identity, as every constitution is also a fundamental act for this political unity.

In contemporary version, constitutional identity has two main roles in structure of power: it serves as a weapon for states against international organizations, especially these with developed internal regulations (as EU), and for judiciary – who claims to be its “guardian” – against other branches of authority. Moreover, both directions are often developed by supreme judiciary of many states to strengthen its own (i.e. judiciary) position as well in internal as external relations. Most famous examples are from German Federal Constitutional Tribunal which developed a whole doctrine of “infinite” rules and principles of German constitution. What is funny, in cases of this kind judges every time find themselves experts of identity problems. To this view, identity becomes identified not with state or any other real substance of legal system, but exactly with a written act which the constitution is. This contemporary mutation seems to be very deformed version of concepts presented above. Contemporary doctrine, especially in Poland, refers only to legal system understood as an abstract set of norms (in Kelsen meaning) without further thought about state as “environment” of these norms⁴.

2. Points of concern about Polish constitutional heritage

First of all, “Polish state” should be more precisely specified. Obviously, it contains three independent “Republics”: ancient Polish state known as the “First Republic”, the “Second” one, restored after WW1 and the contemporary “Third Republic”. Cases of numerous little state-like creatures during XIX-XX century Partitions period and so called “People’s Republic” from post-WW2 era are more complicated. On the one hand, their existence itself and references to “legitimate” tradition as well as influence of its “authorities” on whole society are an argument to incorporate them to Polish state tradition. On the other hand, their puppet status, structure and authorities created abroad and imposed indicate that they were not a product of Polish will and actions. I decided to treat them (and among them – communist period) as a simple “background” and context in which forms of true Polish statehood emerged. Therefore, current objects of analysis are acts enacted in these three Polish states: famous 3rd May Constitution from 1791 as a summary of the First Republic political achievements, “March” and “April” constitutions from interwar period and, of course, today’s constitution from 1997.

⁴ See: A. Śledzińska-Simon, *Koncepcja tożsamości konstytucyjnej: wymiar indywidualny, relatywny oraz zbiorowy* [The concept of constitutional identity: individual, relative and collective dimension], Acta Universitatis Wratislaviensis No 3744. Przegląd Prawa i Administracji CVII, Wrocław, 2016, p. 335-341, 346-349.

As a context of contemporary statehood, I will also refer to communist period and temporary regulations from 1990-97.

3. Asset and implementation of Polish constitutional tradition

3rd May Constitution, the second one in the world (after US), is an important part of Polish national identity. It is a pride of Polish political thought and product of hundred-years political heritage and that is why it well summarizes national inclinations to concrete model of society, state and government. Just after first constitutional works in restored 2nd Republic commentators noticed that despite over 100 years break, constitutional system of reconstructed state seems like natural descendant of viewpoints expressed at the end of XVIII century⁵. First of all, it was a big step for political equality among whole society, not differentiated by bunch of social states, even though the whole system still remained state one⁶. We have to notice that among relatively numerous (around 8%⁷) nobility this postulate of political equality has been realized for a long time with such measures as ban for any title and dignity without previous parliamentary authorization. Beside political equality, other characteristic feature was a large scope of personal and political rights of authorized citizens-nobles. Concerning system of government, lack of confidence to every executive power is a first-sight conclusion⁸. It often resulted (and results) in overpowered parliament being in fact a keystone of state activity, in spite of nominal separation of powers. This dominance of elected assembly also resulted in successive erosion of upper chamber's position until, just pre-WW2, debates about sense of its maintenance, due to lack of serious differences from lower chamber on the one hand and very limited power on the other hand⁹. These four trends, i.e. equality, personal rights, weak executive and dominating assembly can be treated as specifically Polish set of "values", points of reference in majority of public debates about political system¹⁰.

⁵ St. Kutrzeba, *Konstytucja, a tradycja polska [Constitution and Polish tradition]: Nasza Konstytucja. Cykl odczytów urządzonych staraniem Dyrekcji Szkoły Nauk Politycznych w Krakowie od 12 do 25 maja 1921 r.*, Wydawnictwo Sejmowe, Warszawa, 2012, p. 19-24.

⁶ It made almost equal bourgeois with nobles and also limited landowners' rights over peasants. St. Kutrzeba, op. cit., p. 19; *Law on Government [Ustawa Rządowa]*, art. III-IV; *Free Royal Cities Act [Prawo o Miastach]*, art. I-II, 1791.

⁷ N. Davies, *God's Playground*, Warsaw, 2010, drawings H and I.

⁸ This tendency was criticized just before First World War, i.e. during Partitions period, by prof Michał Bobrzyński, famous historian and pre-WWI political leader of conservatives. M. Bobrzyński, *Polskie doświadczenia dziejowe [Polish historical experience]: Michał Bobrzyński. O potrzebie "silnego rządu" w Polsce*, ed. P. Majewski, Wydawnictwo Sejmowe, Warsaw, 2001, p. 49-67.

⁹ St. Kutrzeba, op. cit., p. 20-21; See also debate in: *Ankieta o Konstytucji z 17 marca 1921 [Questionnaire on Constitution from 17th March 1921]*, ed. W. L. Jaworski, Wydawnictwo Sejmowe, Warsaw, 2014, p. 34-41, especially D. Abrahamowicz, *ibidem*, p. 119-122.

¹⁰ Postulate of weakening the executive branch was formulated as well in 1921 as in 1997 and scope and limits of personal rights were also widely disputed. Debates around these points were important part of constitutional works in 1926-35, ended by enacting April Constitution.

March Constitution from 1921 was a first full regulation of this kind in contemporary history of Poland. It was preceded by temporary regulations of so called "Small Constitution" from 1919. Final 1921 act "inherited" many features of that temporary system created by on-going practice. It was enacted by parliament on behalf of the Nation, even though this "Nation" was shown in preamble as a direct founder¹¹. It also introduced a classic formula that "supreme power shall be vested in the Nation", then repeated in today's chapter I of Constitution from 1997. St. Kutrzeba notices that March Constitution, even though connected with Polish tradition, mostly changed existing constitutional terminology, as historical names of parliament, its chambers or supreme court – and this change has become a new standard used in institutional practice¹². Constitution from 1997 was partially based on project of Sejm's Constitutional Commission from 1991, basing on March Constitution. That is why in today's Constitution from 1997 some solutions for system of government are similar¹³. Also in preamble many schemes are alike, as reference to the past and restored independence or significance of rights and freedoms. What is also important, throughout the history March Constitution, despite its numerous defects (as big as its creator, E. Dubanowicz, was one of the first postulators of reform¹⁴), was found "democratic" and in some ways model act of modern, independent Poland.

Works on major amendment of March Constitution officially begun just after political coup of 1926. Its first stage resulted in August Amendment, but works of fundamental change were continued by all political options. After big disputes and many projects presented, the final act was simply forced by dominant "Sanitation" fraction tied with Marshall J. Piłsudski. New act radically cut off connections with previous regulations and based on its own-created ideas. Basic reasoning of this act was a supreme role of state – instead of nation, as it took place in March Constitution. It was an implication of thesis that Poland, after experienced loss of the state, should concentrate on its best maintenance treating it

See: W. Komarnicki, *Ustrój państwowy Polski współczesnej. Geneza i system*, Wilno 1937, Chapter II-V; A. Kulig, *Kształtowanie formy rządów w Konstytucji Kwietniowej z 1935 roku [Development of a new form of government under April Constitution]: Przegląd Sejmowy 2(127)/2015*; St. Gebethner, *Rzeczpospolita w świetle postanowień rozdziału pierwszego Konstytucji z 1997 roku: Podstawowe pojęcia pierwszego rozdziału Konstytucji RP. Materiały Ogólnopolskiej Sesji Katedr i Zakładów Prawa Konstytucyjnego (Wisła, 3-5 czerwca 1999 roku)*, ed. E. Zwierzchowski, Katowice, 2000.

¹¹ Which was indicated as one of internal paradoxes and inconsistencies of this act. See: M. Szerer, *Pojęcie Narodu w Konstytucji z 17 marca [Concept of nation in Constitution from 17th March]: Ankieta...*

¹² St. Kutrzeba, op. cit., p. 16-17.

¹³ See: J. Trzciński, *Zapomniany projekt konstytucji z sierpnia 1991 r. [Forgotten project of constitution from August 1991]: Ustroje: tradycje i porównania*, ed. P. Mikuli, A. Kulig, J. Karp, G. Kuca, Wydawnictwo Sejmowe, Warsaw, 2015, p. 41-42.

¹⁴ A. Kulig, op. cit., p. 15.

as a main environment of national life¹⁵. That is why all identity questions, which were assigned to Polish nation in 1921 act, here were addressed to state. But this state was understood specifically, in the light of realistic Duguit and Petrażycki's concepts, as an association of people connected by set of social ties. It was a content of Article 1 statement that the Republic of Poland is a Common Wealth of all its citizens – this article and its principle was in major part adapted for today's regulation¹⁶. Of course, this supreme role of state denied previous sovereignty of nation rule and long Polish tradition of promoting individual freedom at cost of state institutional strength. The other feature was complete change in distribution of power. Traditional Sejm supremacy was replaced by "uniform and indivisible" state authority "focused" in the office of President – universal supervisor and representative, according to Benjamin Constant concept of moderating power. April Constitution also introduced concept of prerogatives, i.e. independent presidential powers without need of countersignature¹⁷. These solutions facilitated existence of Polish state during WW2 and owing to these advantages were implemented to contemporary constitution as possible proceedings in extraordinary situations. April Constitution can be found a contrary pole of tradition to previously mentioned "liberal" one.

Regarding Polish constitutional tradition and its today's role, it seems clear that constitution from 1997 did not decide to apply one of two contradictory directions and remains in the middle of liberalism and statism, parliamentary and semi-presidential system – which causes constant tensions. It is doubtful to establish one, common doctrine and to extract clear "constitutional identity". This inconsistency is a natural effect of inconsistency inside the nation – and even the consensus to use the same words does not mean using the same meanings, which can be observed in political practice, academic commentaries and sentences of supreme judiciary¹⁸. It implies that every significant legal verdict or political

¹⁵ VIII wywiad Miedzińskiego (1930) [8th interview by B. Miedziński]: Józef Piłsudski. *Pisma zbiorowe. Wydanie prac dotyczących drukiem ogłoszonych*, ed. K. Świtalski, vol. IX, Krajowa Agencja Wydawnicza, Warsaw, 1991.

¹⁶ Contrary to 1935, there is no monopoly of state to organize society now. It remains supreme and most important, but not sole association. St. Car, *Zasady nowej konstytucji. Przemówienie wygłoszone na posiedzeniu plenarnym klubu BBWR dn. 14 grudnia 1933 r.* [Principles of new constitution. Speech on BBWR parliamentary fraction meeting 14th December 1933]: *Polska koncepcja autorytaryzmu*, ed. J. Majchrowski, Wydawnictwo Sejmowe, Warsaw, 1996, p. 150. St. Gebethner, op. cit., p. 25-27, 36; W. Makowski, *Nauka o państwie. Część pierwsza. Teoria państwa [State science. Part 1. Theory of state]*, Wydawnictwo Sejmowe, Warszawa, 2014, p. 218-219.

¹⁷ A. Kulig, op. cit., p. 43-47.

¹⁸ Sometimes the same set of rules can be applied to the same facts completely differently or commentaries to the same article of constitution can lead to totally reverse conclusions, even made by single author! See: opinions of justices B. Zdziennicki and Z. Cieślak in case K 2/07 (Constitutional Tribunal) based on article 1 of Constitution from 1997. Also: W. Sokolewicz, M. Zubik: *Konstytucja Rzeczypospolitej...*, p. 101-102, 119.

decision is in fact nothing more than victory of this or that political fraction. This situation can be summarized in statement that current constitutional order refers to many aspects of constitutional tradition and effectively implements nothing.

Moreover, it looks extraordinarily that after almost 30 years of independence, Polish legal sciences, so dynamic during interwar period, has not elaborated any original thought about state or society. This lack is astonishing in many publications concentrated on problems of constitutional and public law. Basic concepts as state, power or authority are often presented as "unspecified" ones¹⁹.

4. Appendix: People's Republic period

Despite quite clear and negative attitude to so called "rightly passed" period in Polish history which was expressed in preamble to 1997 constitution, many elements were accurately taken from previous system. It is interesting how much this communist context influenced on political system, regardless declarative excision. It deserves even short description, because evolutionary and process character of Polish transformation becomes especially noticeable at this example.

Firstly, despite many other references mentioned in this article, Polish legal system has saved a way of thinking about state and authority typical for Soviet one. These theses, of course, are not clearly stated, but this way of thinking about role of state and authority can be reconstructed from numerous points and notices. Referring to selected problems of constitutional guarantees, contrary to declared principles, state is directly identified with authority²⁰. The same scheme takes place in administrative law doctrine concerning legitimacy of administrative agencies and scope of their subjectivity²¹. Nevertheless, these remarks remain consistent with Lenin theory of state as apparatus of power able to impose its will on ruled individuals. This attitude results in concentration of every activity around bureaucratic, institutional machinery diminishing scope of individual initiative²².

¹⁹ *System prawa administracyjnego*, ed. R. Hauser, Z. Niewiadomski, A. Wróbel, C. H. Beck, Warsaw, 2012, vol. I, p. 12, 60; vol. II, p. V-IX.

²⁰ G. Kuca, *Zasada podziału władzy w Konstytucji RP z 1997 roku [Rule of separation of powers in Constitution of the Republic of Poland from 1997]*, Wydawnictwo Sejmowe, Warsaw, 2014, p. 25, 29-30; *Konstytucja Rzeczypospolitej Polskiej. Komentarz [Constitution of the Republic of Poland. The commentary]*, ed. L. Garlicki, M. Zubik, 2nd Edition, vol. I, Wydawnictwo Sejmowe, Warsaw, 2016, p. 73, 104 126, 155, 170.

²¹ M. Kobak, *Konstytucyjna zasada dobra wspólnego, a sądy administracyjne [Constitutional common wealth rule and administrative courts]: Instytucje procesu administracyjnego i sądowoadministracyjnego. Księga jubileuszowa dedykowana prof. Ludwikowi Żukowskiemu*, Wyższa Szkoła Prawa i Administracji w Rzeszowie, Przemysł-Rzeszów, 2009, p. 220.

²² About apparatus concept in Polish People's Republic: W. Zamkowski, *Teoria państwa. Podstawowe problemy społeczno-prawne państw współczesnych [Theory of state. Principal socio-legal problems of contemporary states]*, Wydawnictwo Uniwersytetu Wrocławskiego, Wrocław, 1978, p. 15-17.

1952/76	1989	1997
Article 1 1. The Polish People's Republic shall be a socialist State.	Article 1 The Republic of Poland shall be a democratic state ruled by law implementing the principles of social justice.	Article 1 The Republic of Poland shall be a commonwealth of all the citizens.
Article 2 2. In the Polish People's Republic authority shall be vested in the working people of town and country.	Article 2 1. In the Republic of Poland supreme authority shall be vested in the Nation. 2. The Nation shall wield such power through their representatives elected to the Diet (Sejm), Senate and to the People's Councils. This power shall be wielded also through expressing the will in referendum. Rules and procedure of holding a referendum shall be determined by statute.	Article 2 The Republic of Poland shall be a democratic state ruled by law implementing the principles of social justice.
Article 8 1. The laws of the Polish People's Republic shall express the interests and the will of the working people. 2. Strict observance of the law shall be the fundamental duty of every organ of State and of every citizen. 3. All the organs of State authority and administration shall function on the basis of the law.	Article 3 1. Observance of the law shall be the fundamental duty of every organ of State. 2. All the organs of State authority and administration shall function on the basis of the law.	Article 3 The Republic of Poland shall be a unitary state.
Article 3 3. The National Unity Front shall constitute a common platform on which social organizations of the working people operate and all the citizens - members of the Party and political organizations and persons with no party adherence, irrespective of their attitude toward religion - patriotically unite to promote interests of the Polish People's Republic.	Article 4 1. Political parties shall associate, on a voluntary and equality basis, citizens of the Republic of Poland to influence by democratic means on the formulation of State policy.	Article 4 1. Supreme authority in the Republic of Poland shall be vested in the Nation. 2. The Nation shall wield such power through their representatives, or directly.
Article 76 The Polish People's Republic shall extend comprehensive care to the veterans of struggles for national and social liberation.	Article 76 The Polish People's Republic shall extend comprehensive care to the veterans of struggles for national and social liberation.	Article 7 The organs of public authority shall function on the basis of, and within the limits of, the law.
Article 11 1. The socialist economic system, based on socialized means of production and socialist production relations, shall be the basis of the socio-economic system of the Polish People's Republic.		Article 11 1. The Republic of Poland shall ensure freedom for the creation and functioning of political parties. Political parties shall associate, on a voluntary and equality basis, citizens of the Republic of Poland to influence by democratic means on the formulation of State policy.
Article 18 The Polish People's Republic shall guarantee to citizens full protection of personal property and the right to inherit such property.	Article 7 The Republic of Poland shall protect ownership and the right of succession and shall guarantee comprehensive protection of personal property. (...)	Article 19 The Republic of Poland shall take special care of veterans of the struggle for independence, particularly war invalids.
Article 103 1. The image of a white eagle on a red field shall be the coat-of-arms of the Polish People's Republic. 2. White and red shall be the colours of the Polish People's Republic. 3. Dąbrowski's Mazurka shall be the national anthem of the Polish People's Republic.	Article 103 1. The image of a crowned white eagle upon a red field shall be the coat-of-arms of the Republic of Poland. 2. White and red shall be the colours of the Republic of Poland. 3. Dąbrowski's Mazurka shall be the national anthem of the Republic of Poland.	Article 20 A social market economy, based on the freedom of economic activity, private ownership, and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland.
Article 104 The coat-of-arms, colours, and national anthem of the Polish People's Republic shall enjoy respect and be an object of special protection. 103 par. 4: Particulars shall be specified by law.	Article 104 The coat-of-arms, colours and national anthem of the Republic of Poland shall enjoy respect and be objects of special protection. 103 par. 4: Details shall be specified by law.	Article 21 1. The Republic of Poland shall protect ownership and the right of succession.
Article 105 Warsaw, the city which embodies the heroic traditions of the Polish Nation, shall be the capital of the Polish People's Republic.	Article 104 Warsaw, the city which embodies the heroic traditions of the Polish Nation, shall be the capital of the Republic of Poland.	Article 28 1. The image of a crowned white eagle upon a red field shall be the coat-of-arms of the Republic of Poland. 2. White and red shall be the colours of the Republic of Poland. 3. Dąbrowski's Mazurka shall be the national anthem of the Republic of Poland. 4. The coat-of-arms, colours and national anthem of the Republic of Poland shall be subject to legal protection. 5. Details concerning the coat-of-arms, colours and national anthem shall be specified by statute.
		Article 29 Warsaw shall be the capital of the Republic of Poland.

Table: Comparison of three constitutions: 1952/76, December Amendment 1989 (end of communism), 1997. Translation from: <http://biblioteka.sejm.gov.pl/konstytucje-swiata-polska/> adapted by author.

Mentality of this kind is visible even in rule of law principles defining state as a set of rules which bind the authorities or that firstly these authorities are

responsible for defining and implementing principles of state and legal order²³. Secondly, order of contents and formulation of many articles is similar or even the same as in the People's Republic constitution from 1952/76. Some parts of current act have been simply copied from that regulations, as rules concerning martial law, state symbols or – surprisingly – vast majority of chapter 2 regulating rights and freedoms. Sometimes simple presentation can say more than detailed description (see table below).

²³ M. Kobak, *ibidem*; P. Sarnecki: *Konstytucja Rzeczypospolitej...*, p. 231.

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АРМЯНО-КАЗАХСТАНСКИЕ ОТНОШЕНИЯ С 1991 Г. ПО СЕГОДНЯШНИЙ ДЕНЬ – АНАЛИЗ ИЗБРАННЫХ АСПЕКТОВ

КРАТКОЕ СОДЕРЖАНИЕ

Данная статья описывает современные отношения между Арменией и Казахстаном с учётом политической, экономической и культурной сфер. В статье говорится об инициативах обеих стран, которые привели к укреплению взаимной дружбы и о стремлении властей Армении и Казахстана к развитию связей с 1991 г. по сегодняшний день. Статья указывает, что несмотря на сложную геополитическую обстановку две удалённые друг от друга страны могут вести между собой дружественный диалог, поддерживаясь на международной арене и развиваясь отношения в разных областях.

Ключевые слова: Республика Армения, Республика Казахстан, международные отношения, торговля, политика, культура

АРМЯНО-КАЗАХСТАНСКИЕ ОТНОШЕНИЯ С 1991 Г. ПО СЕГОДНЯШНИЙ ДЕНЬ – АНАЛИЗ ИЗБРАННЫХ АСПЕКТОВ

1

Вопрос армяно-казахстанских отношений в польских источниках мало изучен, что рождает потребность написать на эту тему соответствующую статью. Это тем более нужно, потому что Польша, как государство претендующее на пост лидера Восточно-Центральной Европы, хочет развивать свои отношения со странами не входящими в Европейский союз, в том числе с Республикой Армения и Республикой Казахстан. Анализ взаимного сотрудничества этих двух государств позволит получить более широкую картину международных отношений, а также представить возможные пути развития для польской дипломатии в сфере связей с Арменией и Казахстаном.

Взаимные армяно-казахстанские отношения набрали оборотов после распада Союза Советских Социалистических Республик, когда на международной арене в 1991 г. появились Республика Армения и Республика Казахстан¹. Однако сам процесс взаимодействия народов живущих в этих странах достигает, по оценке бывшего Чрезвычайного и Полномочного Посла Республики Казахстан в Армении Айымдоса Бозжигитова², времён Средневековья, а точнее XII века. В этот период часть территории сегодняшней Армении, входящих в состав Грузинского царства, находилась в зоне интересов расположенного на юге государства сельджуков. Говорит об этом грузинский сборник летописей «Картлис цховреба»³. Один из этих летописей описывает оборонные действия проводимые правящим тогда Грузией царём Давидом: «Поэтому он, второй Александр, замыслил – ибо не было иного выхода – [призвать кипчаков], (...)»⁴.

Кипчаки происходили из Центральной Азии. Они состояли из разных племён, которые с XI века нашествовали восточные границы Руси. В боях они прославились, как сильные и стойкие воины, поэтому князья Руси пользовались их услугами и брали их на службу. Позднее, после развала Монгольской империи, из кипчаков образовались разные похожие друг на друга этносы, например казахи, или татары⁵.

¹ Армения – 23.09.2018 г., Казахстан – 16.12.2018 г.

² А. Мгдесян, *Казахстан считает Армению дружественной страной с давними узами выгодного сотрудничества* - интервью с послом Казахстана, <https://regnum.ru/news/1767755.html>, доступ 25.07.2018 г.

³ Р. Метревели (ред.), *Картлис Цховреба: История Грузии* <http://science.org.ge/old/books/Kartlis%20cxovreba/Kartlis%20Cxovreba%202012%20Rus.pdf>, доступ 25.07.2018 г.

⁴ Там же.

⁵ *Kipchak*, <https://www.britannica.com/topic/Kipchak-people>, доступ 25.07.2018 г.

Храбрость кипчаков использовалась также грузинскими царями. Указанный выше Давид решил взять их на службу для покорения сельджуков. По приглашению царя Грузии кипчацкие племена поселились, по «Картлис цховребе», в 1118 г. в Ширакской долине, на юго-востоке страны (сейчас северо-западная часть Армении). Приезжие из Центральной Азии успешно давали отпор сельджукам, благодаря чему спасли Грузию от разгрома. Кипчаки в Армении приняли православное христианство и оставили после себя монастырь Хыпчакаванк⁶.

Очередным значимым периодом в истории обеих народов, о котором вспоминает Айымдос Бозжигитов, являются советские времена. В 30-тых годах XX века в историю Казахстана вписался армянин – Левон Мирзоян⁷. Тогда он занимал руководящие должности – сначала в Казахской Автономной Социалистической Советской Республике – был I секретарём Казахского Районного Комитета, а с 1937 г., в Казахской ССР исполнял должность I-ого секретаря ЦК Коммунистической партии Казахстана. Этот партийный деятель показал себя, как умелый организатор. На казахской земле пришлось ему начать своё правление во времена Голода в СССР 1932-1933 гг. Несмотря на трудности связанные с тяжёлой ситуацией в экономике, I секретарь ЦК КПК приказал расширить столицу союзной республики – Алматы. Кроме того Мирзоян активно участвовал в строительстве советского Казахстана. Во время его правления в союзной республике развивались промышленность и сельское хозяйство, а в Москве организовали «Декаду литературы и искусства Казахстана». Внимание уделяли также науке. Мирзоян был отстранен от занимаемой должности в 1938 г., так как оказал сопротивление плану Сталина, в которых шла речь о перемещении сосланных в Казахстан в 1936 г. корейцев из Приморского края с юга на север республики с целью предотвращения выращивания ими риса. Мирзояна жестоко допрашивали, а потом расстреляли. В 1956 г. он был реабилитирован⁸.

Вышеуказанные примеры показывают, что народы Армении и Казахстана не относились друг к другу равнодушно на протяжении веков, а их сегодняшние положительные отношения подкреплены совместной историей. Однако

⁶ А. Каиржанов, *Рецензия на книгу Эдуарда Вартакова «Донские армяне как факт истории и этнофикция»*, <http://журнальныймир.рф/content/recenziya-na-knigu-eduarda-vartanova-donskie-armyane-kak-fakt-istorii-i-etnofikciya>, доступ 25.07.2018 г.

⁷ Больше: <http://levonmirzoyan.an.com/index.html>, доступ 25.07.2018 г.

⁸ Некоторые сомнения может вызывать факт, что в 2013 г. были опубликованы документы из архивов удостоверяющие, что Левон Мирзоян способствовал повышению уровня репрессий в период сталинских чисток. Это по его приказу повышено, так называемые, контингенты, т.е. квоты людей «активного антисоветского элемента» к расстрелу. В Казахстане общественные организации требовали удаления Мирзояна из общественного пространства. Вследствие того, изменились названия улиц, м.пр. в Астане, или в Алматы, а также ликвидировали памятник I-ому секретарю ЦК КПК в городе Актобе (памятник открыли по инициативе президента Нурсултана Назарбаева в 1997 г.).

катализатором развития отношений на государственном уровне, оказался, как сказано выше, расвал СССР. Распад Советского Союза, состоявшего из 15-ти союзных республик, открыл новый этап в истории перед каждым государством образовавшимся на его останках.

2

Дипломатические отношения между Арменией и Казахстаном были установлены 27 августа 1992 г.⁹, а 19 января 1993 г. представители двух государств заключили в Алматы «Договор об основах отношений между Республикой Казахстан и Республикой Армения»¹⁰. С того момента можно говорить о развитии современных армяно-казахстанских связей – развитие которых привело к заключению более 30-ти международных договоров. Стоит отметить, что с 1991 г. по сегодняшний день Казахстан и Армения, несмотря на удалённость друг от друга, построили надёжные механизмы сотрудничества, которые опираются на взаимном доверии и дружбе. Особенную роль в развитии взаимных отношений играют, в этом случае, международные организации, такие как Содружество Независимых Государств, Организация Договора о коллективной безопасности и Евразийский экономический союз, которых членами – учредителями являются Армения и Казахстан.

Основными областями сотрудничества между двумя странами являются, прежде всего, политическая деятельность, торговля, экономика, культура и тоже сотрудничество в военной сфере. Республика Армения и Республика Казахстан являются членами ОДКБ¹¹. В последних годах армянская сторона многократно выступала с поддержкой разных инициатив Астаны, в т.ч. по вопросам проведения ЭКСПО 2017 г., проекта резолюции Генеральной Ассамблеи ООН об установлении 29 августа международным днём действий против ядерных испытаний, или кандидатуры Казахстана на пост постоянного члена Совета Безопасности ООН. Довольно часто проводятся встречи с участием глав государств – в 1993-2014 гг. девятикратно президенты Армении Левон Тер-Петросян (один раз в 1993), Роберт Кочарян (один раз в 1999 и один раз в 2006) и Серж Саркисян (дважды в 2008, дважды в 2009, один раз в 2010 и один раз в 2014) посещали Казахстан.

⁹ Двухсторонние отношения, <http://kazakhstan.mfa.am/ru/bilateral-kz/>, доступ 02.08.2018 г.

¹⁰ «Договор об основах отношений между Республикой Казахстан и Республикой Армения» (http://online.zakon.kz/Document/?doc_id=1002470#pos=1;-27, доступ 02.08.2018 г.).

¹¹ Смотри: Michał P. Sadłowski, *Polityczne rozdroża Wschodniego NATO*, «Raport-Wojsko- Technika- Obronność» 10/ 2017, s. 64-67; tenże, *Militarne aspekty funkcjonowania OUBZ*, «Raport-Wojsko- Technika- Obronność» 11/ 2017, s. 48-52; tenże, *Rola oraz prawno-polityczna pozycja Republiki Armenii w Organizacji Układu o Bezpieczeństwie Zbiorowym*, [w:] «Między bezpieczeństwem, prawem a biznesem- nowy wymiar polityki na obszarze postradzieckim», Warszawa 2017 pod. red. dr. Jarosława Turlukowskiego, s. 9-24.

В этот период президент Казахстана Нурсултан Назарбаев был в Армении два раза (2001, 2010).¹² С июня 1993 г. в Казахстане работает посольство Армении, а с 2007 г. в Армении работает посольство Казахстана. В 1999 г. был заключен «Договор о дружбе и сотрудничестве между Республикой Казахстан и Республикой Армения», который вступил в силу 21 мая 2001 г.¹³. Документ говорит об укреплении дружбы в области взаимной военной безопасности (в том числе в борьбе с международным терроризмом), соблюдении прав человека, развитии торговли, транспорта, науки, защиты здоровья и окружающей среды¹⁴. Кроме того, надо добавить, что Республика Казахстан активно действует в сфере разрешения конфликта в Нагорном Карабахе. В 90-тых годах в этом регионе работала совместная казахстанско-российская миротворческая операция. Казахские власти поддерживают стремления Минской группы ОБСЕ к урегулированию сложившейся тяжёлой ситуации между Арменией и Азербайджаном. Проблема Нагорного Карабаха важна для казахстанской стороны, которая хочет иметь дружественные отношения со всеми субъектами конфликта, а также, действуя, как посредник, получить возможность повышения своего авторитета на международной арене¹⁵.

Очередной значимой областью современных армяно-казахстанских связей является торгово-экономическое сотрудничество, начало которого надо датировать 1993 годом. В это время заключено «Соглашение о принципах торгово-экономического сотрудничества между Республикой Казахстан и Республикой Армения на 1993 год»¹⁶, которое вступило в силу с момента его подписания. Это краткое соглашение определяло основы торгового оборота между странами, квоты взаимных поставок «важнейших видов продукции и товаров», а также обязывало стороны сохранять сложившиеся отношения между хозяйственными предприятиями. Однако в первые годы после обретения независимости торговый обмен между Арменией и Казахстаном достигал низкого уровня. В 1994 г. торговый оборот достиг

¹² Двухсторонние отношения, <http://kazakhstan.mfa.am/ru/bilateral-kz/>, доступ 02.08.2018 г.

¹³ «Договор о дружбе и сотрудничестве между Республикой Казахстан и Республикой Армения» (https://tengrinews.kz/zakon/parlament_respubliki_kazakhstan/mejdunapodnyie_otnosheniya_respubliki_kazakhstan/id-Z000000060_), доступ 02.08.2018 г.).

¹⁴ Там же.

¹⁵ Во время председательства в ОБСЕ Казахстан пытался использовать свою позицию в организации, обращаясь к Армении и Азербайджану за возобновлением переговоров по окончанию конфликта- см.: А. Галиев, *Казахстан, как переговорная площадка по урегулированию армяно-азербайджанского конфликта вокруг Нагорного Карабаха*, «Кавказ & Глобализация», 6/3/2012, с. 39.

¹⁶ «Соглашение о принципах торгово-экономического сотрудничества между Республикой Казахстан и Республикой Армения на 1993 год» (http://online.zakon.kz/Document/?doc_id=1045683#pos=0;0, доступ 02.08.2017 г.).

\$2,3 млн, в том числе импорт - \$1,3 млн, а экспорт - \$1 млн¹⁷. В Казахстан Армения экспортировала механическое оборудование, овощи и фрукты. Армения импортировала из Казахстана мясо, чёрные металлы и механическое оборудование¹⁸. Несмотря на встречи на правительственном уровне и увеличение нормативно-правовой базы сотрудничества, за период 1994-2001 гг. не замечено значимого роста в сфере торгового оборота. В 1999 г., в ходе визита президента Армении в Казахстане решено создать совместную межправительственную комиссию по экономическим вопросам (комиссия впервые собралась в 2005 г.)¹⁹. Стремление государств к улучшению взаимной торговли принесло свои результаты и уже с 2003 г. можно говорить о подъёме уровня торгового оборота (с некоторыми колебаниями), что можно увидеть в нижеприведенной таблице:

Таблица №1. Внешнеторговый оборот между Арменией и Казахстаном за 2003-2011 гг.

Год	Экспорт (тыс., \$)	Импорт по стране происхождения (тыс., \$)
2003	1050,4	8190,8
2004	1748,2	12007,7
2005	2637,2	1052,9
2006	3988,9	159418,3
2007	7248,5	14618,0
2008	2899,9	18487,9
2009	2404,2	3216,4
2010	3083,3	11894,4
2011	4398,5	25335,9

Источник: собственная разработка основана на: <http://www.armstat.am/ru/index.D=398&submit=%D0%9F%D0%BE%D0%B8%D1%81%D0%BA&offset=0>, доступ 14.08.2018 г.

С 2012 г. наступило падение оборота взаимной торговли. В последних годах уровень торгового оборота между странами колебался от 5 до 6 миллионов долларов США²⁰.

¹⁷ А.Сафарян, А.Карпетян, А.Атаев, *Торгово-экономические отношения Армении и Казахстана в 1992-2013 гг., „21-й ВЕК”, №3 (40), 2016г., с. 68.*

¹⁸ Там же, с. 68.

¹⁹ Там же, с. 68.

²⁰ <http://www.armstat.am/ru/index.php?nid=159&thid%5B%D=398&submit=%D0%9F%D0%BE%D0%B8%D1%81%D0%BA&offset=0>, доступ 14.08.2018 г.

Эти всё же небольшие суммы денег, как и часто, значительные разницы в годовом торговом обмене, из-за проблем в логистике между Казахстаном и Арменией. Значимой проблемой, которая мешает увеличению торгового оборота, является отсутствие прямого сообщения, железнодорожного пути и общей границы между обеими странами²¹. Дополнительными проблемами, которые мешают торговле, являются блокада Армении со стороны Азербайджана (что делает невозможным доступ Армении к Каспийскому морю), а также грузинско-российский конфликт в Южной Осетии (что усложняет транспортировку товаров с этого направления)²². Соединение Ирана железнодорожным путём с Арменией улучшило бы торговый потенциал между странами. Существует такая возможность – с 2001 г. между казахским городом Актау и иранским Бендер-Энзели работает каспийская магистраль, проходящая через территорию Туркменистана. К сожалению, из-за политических вопросов, пока не решено, развивать ли магистраль²³. Отсутствие прямого сообщения ограничивает Казахстан в области экспорта в Армению своих традиционных товаров, таких как зерновые продукты, металлы, или сжиженный газ. Казахские товары не являются конкурентоспособными на армянском рынке, особенно используемые в энергетическом секторе, в котором в Армении преобладает Россия. По этому поводу из Казахстана экспортируется небольшое количество продуктов переработки зерна, продуктов бумажной продукции, фармацевтики, или органической и неорганической химии. Что касается Армении, то в наибольшей степени в Казахстан экспортируется алкогольные и безалкогольные напитки, ювелирные продукты, табачные изделия, небольшое количество камня и гипса. В Армении наблюдается низкая активность предприятий с казахским капиталом. Совсем другая ситуация в Казахстане, где существует 145 предприятий основанных армянами²⁴.

Основой для армяно-казахстанского культурного сотрудничества является «Соглашение между Правительством Республики Казахстан и Правительством Республики Армения о сотрудничестве в области культуры»²⁵, которое было заключено 6 ноября 2006 г., вступившее в силу 12 октября 2010 г. В соглашении говорится о развитии культурного сотрудничества, особенно об обмене театральными и музыкальными группами, солистами

²¹ А.Сафарян, А.Карпетян, А.Атаев, *op.cit.*, с. 69.

²² А. Тавадян, Ж. Адилбаев, *Перспективы развития экономических связей Армении и Казахстана*, http://www.noravank.am/rus/articles/detail.php?ELEMENT_ID=16091&print=Y, доступ 14.08.2018 г.

²³ А.Сафарян, А.Карпетян, А.Атаев, *op.cit.*, с. 70.

²⁴ А. Тавадян, Ж. Адилбаев, *op. cit.*, http://www.noravank.am/rus/articles/detail.php?ELEMENT_ID=16091&print=Y, доступ 14.08.2018 г.

²⁵ «Соглашение между Правительством Республики Казахстан и Правительством Республики Армения о сотрудничестве в области культуры», https://online.zakon.kz/Document/?doc_id=30076107#pos=1;-43, доступ 14.08.2018 г.

или исполнителями, о развитии связей в области кинематографии, а также об обмене информацией между музеями, библиотеками и архивами. Продолжением взаимной интеграции было заключение в 2014 г. программы сотрудничества в области культуры на 2015-2017 годы²⁶.

Следует также вспомнить об армянской диаспоре. На территории Казахстана живёт, приблизительно, 25000 армян, предки которых попали туда в XIX и XX веках. В больших казахских городах работают армянские культурные центры, а в 2006 г. в Алматы открыто церковь Святого Карапета. Диаспора в Казахстане издаёт тоже собственную газету и имеет более 10-ти воскресных школ²⁷.

3

Вышеуказанные избранные важнейшие аспекты армяно-казахстанского сотрудничества позволяют прийти к выводу, что уже более 25-ти лет Казахстан и Армения поддерживают взаимные дружеские связи, которые опираются на доверии и стремлении к интеграции. Надо заметить, что эти связи характеризуются стабильностью, которая не была нарушена, несмотря на много противопоставлений в виде расстояния между государствами, отсутствия прямого наземного сообщения, или даже, иногда, тяжёлой политической ситуацией в кавказском регионе. Умелая игра политиков из Армении и Казахстана, направлена на поиск возможных путей развития (даже при плохих показателях торгового оборота) потенциала армяно-казахстанского сотрудничества, позволила удерживать и укрепить узы дружбы между странами. Сотрудничество в рамках СНГ повышает политическое доверие, а также чувство ответственности за общую безопасность на постсоветском пространстве. Взаимная интеграция в рамках ЕАЭС приносит пользу жителям двух государств, получившим возможность свободного перемещения в границах союза, а также доступ к общему трудовому рынку. Однако потенциал армяно-казахстанского сотрудничества, например, в сфере торговли, пока не использован в полной мере. Проблемы с логистикой сдерживают возможные инвестиции, а их решение не является простой задачей²⁸. Самой важной проблемой по этому вопросу является конфликт в Нагорном Карабахе, отсюда понятно стремление казахстанских властей к его урегулированию. Вместе с окончанием армяно-азербайджанского спора, армяно-казахстанские отношения получили бы возможность, благодаря повышению торгового оборота, выйти на новый уровень, открывая перед Казахстаном и Арменией новые возможности и перспективы.

²⁶ Больше: Казахстан и Армения приняли программу сотрудничества в сфере культуры, <https://www.zakon.kz/4658782-kazakhstan-i-armenija-prinjali.html>, доступ 14.08.2018 г.

²⁷ Армяне, <http://assembly.kz/ru/ethnoses/82>, доступ 14.08.2018 г.

²⁸ А. Тавадян, Ж. Адилбаев, *op. cit.*, http://www.noravank.am/rus/articles/detail.php?ELEMENT_ID=16091&print=Y, доступ 14.08.2018 г., доступ 14.08.2018 г.

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INSURANCE CONTRACT UNDER THE POLISH CIVIL CODE

ABSTRACT

The main purpose of this article is the synthetic analysis of the insurance contract under the provisions of the Polish Civil Code. Being of the rapid development of the commercial insurance sector in Poland after 1989, the author found it useful to make readers familiar with main regulations concerning the core of insurance contract. This outline is focused on the Polish Civil Code regulations but the author also wants to highlight that apart from the Civil Code there are a number of additional laws containing provisions which are directly or indirectly related to commercial insurances which are present at both – national and European – levels. The author – making the decision to narrow the described matter down to the Polish Civil Code regulations – intends to make it possible to readers who do not deal with these issues during everyday business to understand the basics and the core of the insurance contract as well as enabling more experienced persons to extend and consolidate their knowledge and furthermore – by dint of rulings included in the article – allow them to face with this type of contract in practical terms.

Key words: Insurance contract, Civil Code, commercial insurance, insurance companies, policyholder, insured, insurant, premium, rulings

INSURANCE CONTRACT UNDER THE POLISH CIVIL CODE

Introductory remarks

The core of this work is an in-depth analysis of the contract of insurance as defined by the Polish Civil Code (KC)¹. This contract is regulated by Book Three of the code, Title XXVII in articles from 805 (on the basics of this contract) to 834 (which deals with the issue of providing false data to the insurer). The author is aware how broad an issue commercial insurance is in Polish and European law. For that reason it must be emphasized in the beginning that the aim of this work is the description of the contract of insurance, as has been indicated before, on the basis of the Civil Code. The author will not be dealing with the so-called 'insurance laws' such as the law of 11 September 2015 on insurance activity, the law of 22 May 2003 on obligatory insurance, the law of 22 May 2003 on insurance brokerage, or the law of 21 July 2006 on the supervision of the financial market. The visible fragmentation of Polish insurance regulation does not make the task of analyzing its structure or properly explaining its essence in a synthetic and comprehensive, any easier. According to the author, considering the entirety of available publications as a systemic backdrop for this article, the rudimentary regulation, which is, as it seems, the regulation in the Civil Code, may well be the most useful aspect for a reader.

The choice of topic seems natural to the author, taking into account the fact that commercial insurance is currently a significant part of the Polish economy. The net profit of PLN 6,65 million, achieved by the insurance sector in 2014, may serve as an example². To enable the reader to assess the functioning of the aforementioned Civil Code provisions in practice, a purely subjective review of relevant case law will be provided by the author. The author would like to stress that he is aware of the fact that the Republic of Poland adheres to a continental civil law system, as opposed to case-based common law systems. It is hard to question, however, that certain trends arise in Polish case law, which contribute to the growing uniformity of the interpretation of some provisions, and are not without influence on their functioning. The author of this article is of the belief that the analysis of the contract of insurance based on a strictly civil background, will constitute a significant contribution to the spread of Polish legal thought, and that this work, thanks to being narrowed down to Code regulations, as well as clear language and concise presentation of individual issues, will contribute to the familiarity

with, and the understanding of, the provisions indicated in it. Emphasis has been put on the choice of most significant issues from the author's point of view, when performing this analysis.

The content and meaning of selected provisions of Title XXVII of the Civil Code regulating insurance

According to the Civil Code, through the contract of insurance, the insurer is obliged, within the scope of their economic activity, to complete a performance for the insured in the case of an incident foreseen in the contract, and the insured party is obliged to pay insurance fees (art. 805 § 1 KC). The insurer's performance is based on paying: 1) in the case of pecuniary insurance - damages for the incident foreseen by the contract 2) in the case of personal insurance - an agreed sum of money, a regular payment, or another performance in the case of an incident in the life of the insured party as foreseen in the contract (art. 805 § 2 KC). The incident should be understood as an uncertain and random event, as legally defined in the law on insurance. The event is also defined as independent of the insured party's will, which causes a damage, whether monetary or personal, or increasing the needs of the insured party³. The later sections of article 805 of the Civil Code are not especially significant for this work. Insurance can be divided into pecuniary and personal insurance; any monetary interest that is not against the law and can be expressed in money, can be the subject of the former. Personal insurance may especially pertain to: 1) in the case of life insurance - the death of the insured party or reaching a certain age; 2) in the case of accident insurance - damage to the body, worsened health or death through an accident (art. 829 § 1 KC). M. Orlicki indicates: „The definition of insurance contract formulated above pertains to the obligation of the insurer to take the risk of paying a certain sum in the case of an accident stated in the contract. The insurer, performing insurance protection, risks the creation of an obligation to pay a certain sum of money should an accident foreseen in the contract arise (an insurance incident). The risk, meaning the uncertainty of the damages or needs arising from the incident, is primarily on the insured party. Insurance protection does not lower the uncertainty of the damage arising, but gives the insured entity a certainty of a beneficial event (payment by the insurer) in the case of an insurance incident⁴.

According to the Civil Code, the contract of insurance is invalid if it is impossible for the insurance incident to occur (art. 806 § 1 KC). Extending the insurance protection to the period before entering the contract is invalid, if any of the parties

¹ Dz.U. z 1964 r. nr 16, poz. 93.

² Z. Brodecki, K. Malinowska, P. Sułkiewicz, *Insurance Law in Poland*, The Netherlands, p. 19.

³ Art. 3 ust. 1 pkt 57 ustawy z dnia 11 września 2015 r. o działalności ubezpieczeniowej i reasekuracyjnej (Dz. U. z 2017 r., poz. 1110).

⁴ M. Orlicki [w:] J. Panowicz-Lipska, *System Prawa Prywatnego*, Tom 8, Warszawa 2007, p. 807.

knew, or should have known, that an accident had already occurred or became impossible (art. 806 § 2 KC). The issue of invalidity can be brought up at any moment, resulting in the exclusion of that contract from legality. A single provision of the agreement or clause is not a cause of invalidity, however (though an insurance contract may cause legal effects up to the moment when the interested party actually brings up the issue⁵. In this context, the general rule of the sanction of invalidity for general insurance conditions (OWU), or illegal clauses, must also be borne in mind. In the Polish law, there is a possibility of entering an insurance contract on another party's behalf (it is not essential to name the insured party in the contract unless this is vital to determine the subject of insurance). As the Supreme Court has ruled, the contract of insurance on another party's behalf arises when the insured party insures the interests of another party, but acts in their own name, which means that the insuring party and the person whose interests are secured by the insurance, are not the same individual (Supreme Court ruling of 25.01.2001 r., I CKN 331/98). The Supreme Court, therefore, rightly stresses that, when insuring on another party's behalf, the insured party is not a party to the contract itself. This combination of factors has certain legal consequences. It must be indicated here that there is no protection based on art. 385¹-385³ of the Civil Code. As it is assumed in the legal doctrine, in the case when the premises of being a consumer are fulfilled by the insured party, they will benefit from protection accordingly (within the bounds of rights and duties of the insured party), applying provisions pertaining to banned contractual clauses⁶. It is also worth mentioning that the contract of insurance on behalf of another party may be entered into both in the case of pecuniary and personal insurance⁷.

The insurer is obliged to confirm the conclusion of the contract with a document of insurance (art. 809 § 1 KC). The legal practice shows that in most cases, this contract is concluded in the offer mode (the insured party submits an offer to the insurer, determining the subject of insurance)⁸. It must be stressed that the provision imposes the obligation of merely confirming the conclusion of the contract of insurance with an applicable document. The conclusion itself may be executed in any form (see Supreme Court judgement – 16.11.2006 r., II CSK 181/06, Pal. 2007, Nr 1-2, p. 289). The insured party, usually the weaker party to the contract, is protected in Polish law. This protection is expressed in art. 811 KC, which stipulates that if, in response to a submission of an offer, the insurer

delivers the document of insurance to the insured party, which includes terms less favorable to the insured party than the offer, the insurer is obliged to reflect this change in a document delivered with the response to the offer, providing at least 7 days for objection. If the insurer fails to do this, the changes unfavorable to the insured party are ineffective, and the contract is concluded on the terms of the offer (art. 811 § 1 KC). If no objection is made, the contract enters into force as stipulated in the insurance document the day following the end of the 7-day objection period (art. 811 § 2 KC). In the context of this provision, J. M. Kondęk rightly states that „the KC does not regulate the criteria of favorable changes. In practice, neutral changes for one person may be unfavorable to another. It seems that the criterion of the average, rational and prudent person in the same financial and legal situation, should be applied”⁹. The lawmaker in the current Civil Code allows for the increase of the risk of the incident as well as a decrease. Both sides of the contract, then, may invoke the need to correct the amount of insurance premiums due, to reflect the current state of affairs (circumstances, which only became known after the conclusion of the contract). In the case of such a correction, both sides have the right to demand the change of the premium amount, though the other party may terminate the contract within 14 days, with immediate effect. In this context it must be stressed that the lawmaker excludes such a possibility in life insurance. The above explanation of adjusting the premiums is therefore irrelevant to this type of insurance, which follows from the very substance of life insurance¹⁰.

The work will now move to the obligations of the parties in the contract of insurance, beginning with the obligations of the insurer. The basic obligation is the fulfillment of a performance in the case of an incident stipulated in the contract (this follows from 817 § 1 KC). Referring to the legal doctrine, the duties of the insurer in the context of pecuniary and personal insurance have been clearly summed up by Z. Radwański and J. Panowicz-Lipska: „Within the scope of pecuniary insurance, the performance of the insurer is paying damages. According to art. 805 and 822 KC, damages in insurance is always monetary, both in obligatory and non-obligatory insurance. The amount due is dependent on the damage and the sum paid cannot, in principle, exceed the amount of damage incurred, unless the contract states otherwise (art. 824¹ § 1 KC). (...) Insurance damages include only the loss of the insured party (*damnum emergens*), but does not include the lost opportunities (*lucrum cessans*). (...) Furthermore, there are limits to the insurance damages resulting from the so-called participation of the victim in compensation and franchising (...) The sum insured, that is the sum in the contract, also influences the amount of damages as it

⁵ H. Ciepla [w:] J. Gudowski, *Kodeks cywilny, Komentarz, Zobowiązania III cz. 2*, Warszawa 2013, p. 825-826.

⁶ J. M. Kondęk [w:] K. Osajda, *Kodeks cywilny, Komentarz, Zobowiązania, Część szczegółowa, Ustawa o terminach zapłaty*, Warszawa 2017, p. 945.

⁷ A. M. Kubiak, *Umowa ubezpieczenia na rzecz osoby trzeciej i na cudzy rachunek*, Bydgoszcz-Poznań 2008, p. 44.

⁸ H. Ciepla [w:] J. Gudowski, *Kodeks cywilny, Komentarz, Tom V, Zobowiązania, Część szczegółowa*, Warszawa 2017, p. 365.

⁹ J. M. Kondęk [w:] K. Osajda, *Kodeks cywilny, Komentarz, Tom II, Zobowiązania*, Warszawa 2013, p. 1653.

¹⁰ H. Ciepla [w:] J. Gudowski, *Kodeks cywilny, Komentarz, Zobowiązania III cz. 2*, Warszawa 2013, p. 851-853.

constitutes a cap on the insurance, that is the amount that is insured, and is the limit of the insurer's responsibility (art. 824 KC). (...) When „insuring the same risk” at two or more insurers, meaning insuring in the case of the same incident, or the same subject of insurance, and the sums of possible payout exceed the value of that subject, the insuring party cannot demand damages exceeding the damage (art. 824¹ § 2 and 3 KC). (...) When establishing responsibility of the insurer, the conduct of the insured party is examined to ensure their degree of possible culpability in the incident. In the case of causing damage deliberately by the insured party or a person in their household (art. 827 § 1 and 3 KC), the responsibility of the insurer is excluded. (...) The insurer is obliged to pay out the damages to the insured party even in the case of a third person being obliged to pay them. When, however, the insurer does pay the damages, the claims of the insured party against the third party, are transferred to the insurer up to the amount paid (the so-called insurance regress right, excluding persons in the insured party's household, unless the tortfeasor acted deliberately - MR). The insurer pays out the damages to the insured party, which is the entity entering into the contract or another person, when the contract has been concluded on their behalf (see art. 808 KC). (...) Due to the insurance of civil responsibility, the injured party, to whom the insured party brings the claims, may directly (*actio directa*) pursue their claims from an insurer (art. 822 § 4 KC). (...) In the scope of personal insurance (however - MR), the insurer is obliged to pay an agreed sum of money, monthly payments or another performance in the case of the incident in the life of the insured party (...). The insurer is obliged to pay out the insured party or the person indicated in case of death (art. 831 KC). (...) Indicating this person (the authorized person) is void if they have died before the insured party did, and when they deliberately contributed to the insured party's death (art. 832 KC). The obligations of the insurer (...) are modified in the case of life insurance in the following ways: 1) the suicide of the insured party does not relieve the insurer of the obligation to pay if it happened following two years after entering the contract 2) after three years of concluding the contract, the insurer cannot invoke the issue that false data had been provided when concluding the contract (...). These dates may be shortened in the contract or general terms of insurance (OWU). The insurer's obligation, regardless of the type of insurance, is to keep details of their agreement a secret, though there is a number of exceptions to this rule (...)”¹¹.

Having analyzed the obligations on the insurer's side, one must examine the obligations of the insured party. Above all, the obligation of 813 § 2 KC must be stressed, which stipulates that, if no other terms were agreed upon, the premium should be paid at the same time as the insurance contract, and if the insurance contract had been concluded before the delivery of the insurance document

- within 14 days of its delivery. It is worth reminding here that the purpose of this is the payment of premiums changed by the insurer (in the case of the revealing circumstances that increase the possibility of an incident), which has been described before. Another obligation of the insurer is giving certain information from art. 815 § 1 KC. According to this provision, the insured party is obliged to inform the insurer of all known circumstances inquired by the insurer in the offer form or before concluding the contract, in other files. In the case of concluding an insurance contract despite the lack of response to individual questions, the omitted circumstances are deemed irrelevant. Another, again, very significant, obligation of the insured party, is informing the insurer about the incident. Specific terms agreed upon in an insurance contract (or in the OWU) may limit this obligation with a deadline. The insurer must also be informed of the change of ownership of the insured property, should such a change arise¹². Moving on, in the case of an accident, the insurer is obliged to use tools at their disposal to save the subject of insurance and prevent damage or decrease its severity (art. 826 § 1 KC). According to the next Civil Code article, the insurer is free of liability if the insured party deliberately caused the damage; in the case of reckless endangerment or gross negligence, the damages are not paid out unless the contract or OWU state otherwise, or the payment of damages is equitable in certain instances (art. 827 § 1 KC).

Now one can consistently move towards a synthetic analysis of the expiry of the insurance relation. Beginning with general code provisions related to the insurance contract, art. 812 and 814 should be emphasized. These provisions regulate inter alia the expiry of the obligations through rescission or termination. If, therefore, the contract of insurance is concluded for more than a 6 month period, the insured party may rescind the contract within 30 days, and if the insured party is an entrepreneur - within 7 days of concluding the contract. Should the insurer, at the moment of concluding the contract at the latest, fail to inform the insured party that is a consumer, about the right to rescind the contract, the 30 day period runs from the day when the consumer insured party learned about this right. Rescission of the contract does not relieve the insurer from the obligation to pay the premium for the period in which the insurer has provided insurance protection (art. 812 § 4 KC). When it comes to the fixed term contract, the insurer has the right to rescind the contract only in predetermined statutory conditions (or important reasons stated in the contract or OWU). However, if the insurer is liable before the payment of the premium or the first regular payment, and the premium or first regular payment is not paid within the deadline, the insurer may terminate the contract with immediate effect and demand the payment of a premium for the period of liability. In the case of a lack of termination, the contract expires at the end of the year when the unpaid

¹¹ Z. Radwański, J. Panowicz-Lipska, *Zobowiązania – część szczegółowa*, Warszawa 2013, p. 336-340.

¹² P. Konik [w:] T. Mróz, *Zobowiązania, Wykłady Becka*, Warszawa 2014, p. 481.

premium was due (art. 814 § 2 KC). In the context of the expiry of the insurance contract it is also noteworthy that in personal insurance, the insuring party may terminate the contract at any time provided they keep the notice period set out in the contract or the general terms of insurance, and in case one does not exist - with immediate effect (art. 830 § 1 KC). The insurer, on the other hand, may terminate the contract of life insurance only in cases provided by the statute (art. 830 § 3 KC). Concluding the synthesis on the expiry of the insurance contract, it is significant to note the length of the expiry period of claims from the insurance contract is - three years (art. 819 § 1 KC).

Conclusion and ending

The institution of insurance in its very core is meant to protect citizens in as broad as possible a way within the bounds of reason. Courts in controversial cases tend to grant the claims of the insured party, rather than insurance companies, as the former is the weaker party to the contract. The Supreme Court has also continuously supported the interests of the insured parties in its judgements for many years. The judgement of 31 August 1981 may serve as an example, whereupon the court has indicated that a single performance stated in the general terms of insurance of accidents paid by the insurance company to the next of kin of the deceased in the accident, does not relieve the party obliged to pay damages from the obligation of covering funeral costs, also when that party has entered into a contract of insurance¹³.

The author is convinced about the continual growth of importance of, and interest in insurance issues by the legal doctrine¹⁴ and sees a range of law changes¹⁵. The Polish insurance market has seen the development of the Polish Chamber of Insurance as a commercial governing body, which consists of all Polish insurers¹⁶. The Chamber has been established due to the expectations of the insurance industry, as well as to respond to new market challenges, which are entwined with economic activity in insurance. In conclusion, the author expresses a hope that this article shall become a valuable help for professionals in the insurance industry, as well as, due to the synthetic nature of the descriptions and an adjustment of difficulty of the language, an introduction to understanding the core constructs of the insurance contract.

¹³ Judgement of 31.08.1981 r., IV CR 293/81, OSN CP 1982, z. 2-3, poz. 40.

¹⁴ W. Bielecki, A. Nowak, p. Nowak [w:] A. Nowak, D. Fuchs, p. Nowak, *Umowa ubezpieczenia, Dyskusja nad formą prawną i treścią unormowań*, Warszawa 2008, p. 5.

¹⁵ M. Orlicki, J. Pokrzywniak, *Umowa ubezpieczenia, Dyskusja nad formą prawną i treścią unormowań*, Warszawa 2008, p. 9.

¹⁶ E. Kowalewski, W. Mogiński, T. Siemiątkowski, *Status prawny i pozycja ustrojowa Polskiej Izby Ubezpieczeń*, Toruń 2015, p. 11.

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ADMINISTRATION OF THE 21ST CENTURY - THE LEGAL CORE OF THE CONSTRUCTION OF THE ADMINISTRATIVE AGREEMENT ON THE BASIS OF POLISH JURISPRUDENCE AND DOCTRINE

ABSTRACT

An administrative agreement under Polish law remains a perfect example of the advantages and disadvantages of implementing modern forms of administration in the countries of Central and Eastern Europe. System provisions regarding many aspects of comprehensive implementation of foreign solutions on the basis of self-government, education law and investment law allow new opportunities for the region. Consideration of young legal solutions in this respect should also be analyzed in the context of Poland's accession to the European Union and the implementation of local projects from Community funds. An administrative agreement (e.g. within the scope of a Community agreement) plays at least a key role in the conclusion and implementation of partnership agreements that enable individuals benefiting from European Union development funds to shape their contract. The considerations also concern the concept of the modern public administration system, which must carry out its tasks on the basis of cooperation and partnership.

Key words: administrative agreement, modern administration, public law, legal governance

ADMINISTRATION OF THE 21ST CENTURY - THE LEGAL CORE OF THE CONSTRUCTION OF THE ADMINISTRATIVE AGREEMENT ON THE BASIS OF POLISH JURISPRUDENCE AND DOCTRINE

Answering the question about effective and forms of modern administration, which is often asked by theoreticians in the process of formulating *de lege lata* postulates, one cannot ignore the significant role of the construction of an administrative agreement. As part of the development of the contemporary Polish legal system, as well as making diagnoses for the legislation of Eastern countries, for whom the transformations in the Republic of Poland may be a laboratory of modern legal solutions for post-Soviet countries, this subject requires a deeper analysis. In this context, it is necessary to look at the division of legal spheres through the prism of administrative sciences. At this stage, it should first be emphasized that the administrative agreement, as one of the forms of cooperation between public administration bodies, aimed at improving the efficiency of the operation of these bodies¹; it is a creation combining features of public and private law. Here, it is important to define the line between those spheres. As Jerzy Klimaszewski rightly points out, "the assumption has to be made that the division is carried out without common criteria, what is important from the point of view of representatives of administrative science, but at the same time, the subject of administrative law relations for representatives of civil law theory remains a secondary criterion. They express the conviction that civil law can only be spoken of as a method of regulation. At the root of this difference lies the constitutional principle of binding public administration bodies with the law, which means that they can act only on the basis and within the frames of law."² At the same time, continental civil law worked out an elementary principle "what is not prohibited, it is allowed" which constructs freedom of private contracts. With regard to state and local government authorities, these theses can never be fully applied in a state in which the rule of law has been established. However, due to the fact that some of the schemes characteristic of civil contracts are reflected in public law, administrative law can open up to new possibilities in a systemic approach. By its nature, an agreement can be an effective tool for the implementation and specification of the social goals of individuals or authorities and their

¹ Barbara Wojtoń-Malicka, *Porozumienie administracyjne środkiem ochrony porządku i bezpieczeństwa publicznego*, Zeszyty naukowe wyższej szkoły informatyki, zarządzania i administracji w Warszawie, t. 14, z. 4(37), Warszawa 2016, s. 125.

² Michał Jerzy Klimaszewski, *Porozumienie administracyjne?*, Kwartalnik Prawa Publicznego 1/3, Warszawa, Toruń 2001, s. 165.

obligations included in substantive law provisions. The relative freedom of shaping the distribution of responsibility within the legal node that creates the agreement is the reason for its great flexibility. An additional advantage is the selection of the number of parties to the agreement and the competence level according to criteria such as the nature and complexity of the matter, local conditions, or the technical and organizational possibilities of the parties. In the wake of these qualities, the rules of financing projects carried out with the help of this form of administration, are based on clear rules. In the light of the Polish Public Finance Act, the ordering of transfers of co-financing of individual investments according to the scope of delegated duties and tasks is reflected in the general principle that the subject performing the entrusted tasks should include in its budget the balance of incomes and expenses related to them. The reflection of this rule in successive provisions referring to budgetary discipline of public administration can be seen in art.237 (2)³ of the aforementioned act, which requires not only to include in the budget of a local government a financial balance of tasks carried out under contracts and agreements between local authorities in a horizontal arrangement (agreement between two entities at the same level), but also to separate, extract (this verb is explicitly used in the text of a normative act) this statement of expenditure and income in an economic account. Thus, the need to systematize the flow of funds, the clarity of settlements within the funds and subsidies and the need for professional or social control of effective realization of projects is indicated. The latter function involves task-oriented character - a characteristic feature of the administrative arrangement, which was separated not at the stage of forming its legal bases or postulates of doctrine, but on the basis of observation of practical application. In the current realities of public administration, in particular at the local government level, this characteristic is evident in the application of the construction of the agreement in the implementation of specific development projects, revitalization, focused on the development of regional innovation. Thus, irrespective of the project planned in the schedule, the agreement focuses on achieving a specific, designed goals: infrastructure, social, economic, etc. The subject of these public-law contracts is usually not competences, which do not serve, by their very nature, for a more efficient pursuit of predetermined results, but are aimed at reproducing a number of ad hoc activities. In the long run, they only change their source - the entity authorized to use them. This would be in clear contradiction with the important principle of the prohibition of sub-delegation, a series of obligations, generally defined in acts, of public law entities, and would lead to chaos in the transfer of responsibility for providing specific services to citizens of the state. The subject of the agreement are commitments

³ Ustawa z dnia 27 sierpnia 2009 r. o finansach publicznych, Tekst jedn. Dz. U. 2017 r. poz. 2077, z 2018 r. poz. 62.

regarding the implementation of tasks from the administrative sphere, which are indirectly aimed at achieving the given assumption. In this, the trait of this specialize form, which for the purposes of this study can be called "task-oriented", is realized. There is no doubt that it is an intermediate property, shaped on the basis of experience of practice of the Polish system and is not itself a *sine qua non* condition, although its presence guarantees the remaining requirements set by law and doctrine regarding the proper shaping of the agreement.

In recent years in Poland, the platform on which the issues can be discussed best is the implementation of projects financed from European funds as a part of the tasks of local government. An administrative agreement (eg in terms of a communal agreement) plays at least a key role in the conclusion and implementation of partnership agreements⁴ that enable entities benefiting from European Union development funds to shape a contract on an individual basis. As the researchers point out, the generic aspect of the administrative agreement in question is "set out in the doctrine in general and it is the implementation of public tasks within the framework of cooperation of at least two entities operating in a decentralized system"⁵. The issues of initiating and completing the project, final settlements and claims of the parties, liability for the risk of failure of the project, etc., may be, within the framework of the freedom freely restricted by mandatory provisions, adapted to the realities of the situation. Thus, the effect of the systemic implementation of the form of agreement in many branches of state authorities may be perceived on the Polish example as a beneficial and desirable phenomenon in other systems. Intensification of the development of the administrative agreement in the country of the post-Soviet administrative model, which is Poland, encourages the diagnosis that the flexibility of the functioning of administration in the spirit of new management visions can be achieved in Eastern European countries through this legal form. The public contract remains at all times in the strict legal order: increased supervision of higher instances and financial control (for example, through the above-mentioned clear distinction of funds allocated for the implementation of investments in the main budget). The specific legal basis does not apply as a circumstance justifying the adoption of a given agreement, but as a frame that closes the content of the agreement. The attention is drawn to the systemic nature of the institution, in which, due to reasonable system solutions (apart from the general possibility of initiating an initiative of an agreement that requires a specific legal basis), form, possibilities of its modification and termination

of the contract are outside the strict scope of the law, leaving these categories under pain of the general principles of substantive law and administrative proceedings⁶. Undoubtedly, this increases the field of administration, which is not slowed down by a number of formal constraints. This feature distinguishes the administrative agreement, for instance, from the voivodship contract institutions, whose initial content and the mode of concluding and modifying the provisions are strictly regulated by the legal acts. In Polish law, this institution also has a qualified character of the parties, while there is no transfer of administrative power between them connected with the implementation of a given investment (which takes place in agreement). In addition, statutory regulations go beyond the construction of the voivodship contract and already include detailed guidelines of the preparatory stage. A number of local law acts, expert opinions, or planning documents must be obtained so that a special agreement can be established at all⁷. The reference to the above example shows the fact that not every new form of administration activity, which was introduced into the legal system EU countries over the last decade, is characterized by ease and interdisciplinarity. Therefore, the existence of alternative is not always accompanied by flexibility, which also affects consistently efficiency, because the example of a not very popular voivodship contract in Poland shows that in combination of the traditional methods of administration and innovative solutions with a similar degree of legal binding, old and new law (a hence, unknown to many body organs and their technical back-up facilities), subjects will inevitably choose a solution that is conventional and verified in the public-law market. Although the agreement in publications of Polish science has long been universally qualified as a legal form of administration⁸, it may still pose difficulties in practice. It results, in a way, from its "multi-layeredness". The catalog of entities that can enter into an administrative agreement is much broader and includes local government units (in Poland: voivodships, poviats, communes), government administration entities, local government legal entities and others. In the wake of a wide range of entities, there is multilevelism (vertical dimension, higher and lower hierarchical units) and multi-dimensionality (horizontal dimension, units hierarchically equal). The number of agreements is also often arbitrary determined in the field of *lex specialis* by genre or species. One entity should only appear on the side of the trustee of the task. Thus, entities fulfilling certain criteria are most often allowed in Poland to enter into agreements on the basis of the same regulations, what guarantees the maintenance of the parties' equality and their respective competences. An excellent example may be the combina-

⁴ Elżbieta Kornberger-Sokołowska, Rafał Cieślak, Julia Zdanukiewicz, *Jednostki samorządu terytorialnego jako beneficjenci środków europejskich*, wyd. 2, red. Elżbieta Kornberger-Sokołowska, Warszawa 2012, s. 249.

⁵ Małgorzata Gieda, *Czy kontrakt wojewódzki jest porozumieniem administracyjnym?*, [w:] *Miedzy tradycją a przyszłością w nauce prawa administracyjnego: księga jubileuszowa dedykowana Profesorowi Janowi Bociowi*, Wydawnictwo Uniwersytetu Wrocławskiego, Wrocław 2009, s. 172.

⁶ Patrycja Brzezicka, *Porozumienie administracyjne - problemy węzłowe*, „Państwo i Prawo” 2000, nr 6, s. 45.

⁷ Małgorzata Gieda, *Czy kontrakt wojewódzki...*, s. 167-175.

⁸ M. Ofiarska, *Formy publicznoprawne współdziałania jednostek samorządu terytorialnego*, Warszawa 2008, s.108.

tion of educational institutions and schools, admitted in Polish education law, into one unit only in the scope of the competences of the organs running them and exercising administrative control over them. In addition to this exacerbation, the number and nature of the parties can be freely determined⁹. An administrative agreement, in connection with its task character, is most often connected with a number of technical and organizational activities, which not only result from its content, but are designed to introduce clients of administration in the established realities and inform about the manner of investment implementation.

The previous considerations have been focused on the systematic regulation of modes and forms of concluding administrative agreements, which are an area of the state legal shaping that is quite free as well as constitute a distinctive feature for public-law contracts. However, it should be pointed out that in accordance with the rule of law and legal certainty in force in European standards of administration (which includes not acts of law, but also various forms linking public entities), the agreement can not jeopardize the established division of competences or tasks clearly assigned to specific units by legal acts. In the realities of German and Polish administration, case law and practice have developed the principle of transferring competences only downwards and "sideways" (an equivalent unit in the state system)¹⁰. Authorizing all levels of the local government to enter into agreements, even with government bodies as relatively broad, is strongly influenced by the views of the judges regarding the rules of concluding those acts. Administrative courts, in order to eliminate abuses, stress that the agreement as such, in the constitutional system, is an exception to the rule of fulfilling its own tasks. The latter follows directly from Article 164 (3) of the Constitution of the Republic of Poland¹¹. It is logical, then, that all such agreements are situated entirely in the sphere of public law¹², despite their high similarity to the forms of private law, a "public reflection" of which they somehow are. The consequence of such a systemic configuration is the requirement of a clear legal basis, which allows a given subject (which acts on the basis and within the law) to conclude an administrative agreement. This authorizing provision must fulfill two conditions, also shaped by the jurisprudence and consistently reproduced: first, the possibility of making such a contract must result directly from the provisions, and secondly,

this basis must be separate from the rules governing the authority of the initiator¹³. Thus, the lack of any regulations regarding the transfer of tasks can not be construed as silent consent, and the general scheme of activities allowing the form in question (eg articles 8 (2) or 8 (2a) of the Local Government Act¹⁴) must be unconditionally specified in the catalog of specific situations in which it can be applied (most often specific provisions and specialist acts). Thus, on the basis of Polish practice, one can notice the dual nature of the agreement that makes itself felt on two levels: the nature of the contract and its legal regulation. Both these properties result from each other and complement each other. The nature of the contract manifests itself primarily in the legal basis and matter, which may be regulated in such type of contracts, and these situate it unquestionably in public law. On the other hand, however, a specific nature of the agreement is manifesting itself, which rather results from the freedom of cooperation, lack of acting in the manner of power, equality of parties and clear will towards a commitment. These elements bring associations with private law. This clearly distinguishes the essence of the agreement from the freedom to shape the relationship attributable to private law. Undoubtedly, numerous doubts about this concept, which are reflected in the jurisprudence of administrative courts and rely on the problem of distinguishing it from civil law transactions, result from the unusual form of joining organs to the act and the effect of which cooperation is the sense.

The second pillar of the dual nature of the agreement, i.e. legal regulation, is to a much greater extent determined by systemic laws and general rules resulting not only from national regulations, but also from corresponding acts, such as Council of Europe Recommendation 31/77 or the European Code of Good Administrative Behavior. For example, on the ground of the Code of Good Administrative Behavior, analyzing its postulates from the perspective of administrative agreement, the principle of commensurability (Article 6 of the Code), or the prohibition of abuse of public authority for a different purpose than it was entrusted (Article 7 of the Code) indicates that the target effect of actions taken resulted from a specific legal basis or public interest¹⁵. These points can be directly related to a public contract, which must be subject to supervision from the point of view of legality (presence of an appropriate legal basis, competence provisions etc.) and efficiency control within the general balance of public administration (economy, efficiency), which is reflected in the above-mentioned provisions budget for commune units.

⁹ Małgorzata Giełda, *Czy kontrakt wojewódzki...*, s. 170.

¹⁰ Wyrok NSA z dn. 21 stycznia 2010 r., sygn. I OSK 1140/09, http://www.orzeczenia-nsa.pl/wyrok/i-osk-1140-09,skoly_i_placowki_oswiatowo_wychowawcze_skargi_na_uchwaly_rady_gminy_w_przedmiocie_art_a_ustawy_2baa347.html (dostęp: 25.05.18).

¹¹ Wyrok WSA w Gliwicach z dn. 27 stycznia 2014 r., sygn. II SA/GI 1543/13, http://www.orzeczenia-nsa.pl/wyrok/ii-sa-gi-1563-13/warunki_zabudowy_terenu_zagospodarowanie_przeznaczenie/3ab566.html (dostęp: 25.05.18).

¹² Wyrok WSA w Krakowie z dn. 6 marca 2014 r., sygn. I SA/Kr 60/14, <http://orzeczenia.nsa.gov.pl/doc/135E6ED77B> (dostęp: 25.05.18).

¹³ Wyrok WSA w Lublinie z dn. 11 maja 2010 r., sygn. III SA/Lu 26/10, <http://orzeczenia.nsa.gov.pl/doc/46BDE88999> (dostęp: 25.05.18).

¹⁴ Ustawa z dnia 8 marca 1990 r. o samorządzie gminnym, Tekst jedn. Dz. U. 2016 poz. 446, 1579, 1948.

¹⁵ Helena Babiuch, *Europejski Kodeks dobrej Administracji a polska procedura i praktyka administracyjna*, Zeszyty Naukowe Państwowej Wyższej Szkoły Zawodowej im. Witelona w Legnicy 1, Legnica 2007, s. 8.

On the other hand, the freedom in the sphere of the mode and forms of concluding is significant and distinctive for the agreement. Regulations in this matter are characterized by a large degree of generality. This aspect was emphasized by the Supreme Administrative Court, stating that in the agreement none of the parties, "especially the government administration body, has a dominant position"¹⁶. This reflects the trend of contemporary thinking about management and administration, promoting in the alternative ways of administration (which is, among others, agreement) greater flexibility and distraction in the activities of organs, in which it departs from the core of the administration of Max Weber (permanent distribution of tasks, hierarchical supervision and detailed rules and regulations). While rigid competence standards "make the office a mechanical organization",¹⁷ the agreement implies the freedom of initiative of an entity that reveals its entrepreneurship and creativity in it. Thus, summing up the "two-face agreement", absolute rules together with quite general co-create the basis of the system conception of the administrative agreement. In the countries of the Eastern legal culture, in which emphasis is placed on close hierarchical affiliation and extensive surveillance apparatus, the administrative agreement can be implemented as a positive eclectic form that can reconcile modern standards of "soft administration" with the traditional model. The public contract is also part of the innovative trend of the management model, which some authors call a "learning organization"¹⁸. Translating the models of effective operation from the point of view of commercial managers on the ground of public administration, the agreement can be built "in contrast to the traditional mechanistic vision of the organization as a bureaucratic, rigid hierarchy focused on its own inflexible goals"¹⁹. Thus, it can act as a link between old and new concepts under the banner of "learning administration". This self-education includes the perception of the usefulness of elements of other branches of law, their proper reproduction and modification for the purposes of realizing their own tasks. The relatively broad subjective catalog of the agreement allows for the implementation of a number of regional tasks and the implementation of governmental projects based on activities which are not realized in the manner of power.

¹⁶ Wyrok NSA oz. w Rzeszowie z 5 grudnia 1995 r., sygn. SA/Rz 1109/95, http://www.orzeczenia-nsa.pl/wyrok/sa-rz-1109-95.ustroj_samorzadu_terytorialnego_w_tym_referendum_gminne_samorzad_administracyjne_postepowanie,21d7561.html (dostęp: 25.05.18).

¹⁷ Stanisław Mazur, Karol Olejniczak, *Rola organizacyjnego uczenia się we współczesnym zarządzaniu publicznym*, [w:] *Organizacje uczące się. Model administracji publicznej*, red. Karol Olejniczak, Warszawa 2012, s. 30-31.

¹⁸ Por. Peter Senge, *The Fifth Discipline: The Art and Practice of the Learning Organization*, Smith 2006, s. 443.

¹⁹ Karol Olejniczak, Jakub Rok, Adam Płoszaj, *Organizacyjne uczenie się i zarządzanie wiedzą – przegląd koncepcji*, [w:] *Organizacje uczące się...*, s. 81.

The most important role in increasing the effectiveness of administrative activities is played by the public contract in the case of Poland at the local level. Distinguish between the types of agreements between authorities: municipal agreements, agreements transferring "by agreement a specific sphere of tasks together with the right to issue administrative decisions"²⁰ or between local government units and agreements in the meaning of a number of reconciliation and consulting activities preceding the issuance of an act by the entity. The third meaning, distinguished for the purposes of applying the guidelines of the Polish Code of Administrative Procedure, is mentioned here only as a side note, because as such it is not a form of a special agreement discussed in this study. Communal agreements as special forms were the subject of lively discussion in the Polish doctrine at the end of the first decade of the 2000s, especially in the context of features that differentiate them from inter-municipal associations in the light of teleological interpretation²¹. Despite the twinning forms of *sensu stricto* agreements, they do not have such a strong focus on the transfer of tasks having their sources in the declaration of will on behalf of the individual and specific provisions. It is in the transfer of tasks and resources for their implementation that the consensual sources of the discussed agreement are visible. It must be achieved on the basis of findings that lead to the consensus of the authorities, and not imperative influence. This acting in manner of power in the sense of the socialist administrative doctrine was the starting point for the desire to find a place for administrative agreement in the legal system of the country, where "the basic criterion of (...) division is the legal possibility of applying coercion and sanctions on the part of state organs"²². After the time of a huge and thorough transformation of the Polish system of the 1990s and then adapting it to the Community law within the European Union, the legal regulation of the agreement to this day is dispersed, unstructured. However, this should not be perceived as a negative phenomenon, because the versatility of its application and the large number of forms, forces us to place them in many acts setting up the activity of subsequent organs. It is not without significance for such a place in the system of internal law that the general generality of regulations remains, which allows to keep the duty of the initiative on the part of the entities and adapt the said institution to a specific project. without narrowing the sphere of the administration's activities to the issue of concluding contracts, the issue of broadly understood activities belonging to the economic sphere qualified as private-law activities arises. In this respect, the provisions of the public

²⁰ Michał Jerzy Klimaszewski, *Porozumienie administracyjne?*,..., s. 166.

²¹ Por. Anna Milewska, Tomasz Czaban, *Formalnoprawne aspekty funkcjonowania związków międzygminnych*, [w:] *Zeszyty Naukowe Szkoły Głównej Gospodarstwa Wiejskiego Ekonomika i Organizacja Gospodarki Żywnościowej* nr 106, Warszawa 2014, s. 121 i n.

²² J. Starościak, *Stosunek administracyjnoprawny* [w:] *System prawa administracyjnego*, t. III, Warszawa 1978, s. 15.

procurement law regarding relations with external entities to the administration of the public finance sector having resources for the implementation of public tasks should be recalled on the basis of Polish law²³. Here, comprehensive civil law agreements operate on the basis of public law regulations²⁴. Without delving into the above-mentioned issues, it should be stated that an administrative agreement requires at least two public entities making a joint declaration of a clearly public-law nature. Thus, from the very beginning, it is aimed at achieving constructive agreement in order to improve the functioning of the state.

The complexity of the structure of the agreement, analyzed in terms of the effectiveness of its application in terms of the system, constitutes only a fraction of the overall study of the role of administrative agreement in the contemporary administrative system, its nature, form and practical application. However, on the basis of the above analysis, it can be concluded that the discussed non-functional form of administration, thanks to its dual nature and flexibility to match public tasks, is a stimulus and incentive stimulating entrepreneurship of administration bodies and deepening citizens' trust in the state at the national and local level.

²³ Ustawa z dnia 29 stycznia 2004 r. Prawo zamówień publicznych, tekst jedn. Dz. U. z 2015 r. poz. 2164, z 2016 r. poz. 831, 996, 1020, 1250, 1265, 1579, 1920, 2260.

²⁴ Wyrok Sądu Najwyższego z dn. 13 września 2001 r., sygn. IV CKN 381/00 http://www.sn.pl/orzecznictwo/SitePages/Baza_orzeczen.aspx?ItemID=9990&ListName=Orzeczenia1&Sygnatura=I-V+CKN+381%2f00 (dostęp:25.05.18).

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