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Some conclusions and recommendations of personal taxation harmonization taking account globalization process

Некоторые выводы и рекомендации по гармонизации индивидуального налогообложения с учетом процессов глобализации

Summary

The article proves that taxation of personal incomes is an extremely complex phenomenon which should be analyzed not only through the legal prism but also through social, cultural, economic and political and constitutional prisms. We cannot isolate the economic sphere from the tax sphere, as personal income taxes directly affect taxpayers, their purchasing power, they also determine labor costs for entrepreneurs and thus they significantly influence the GDP growth rate.

Keywords: income tax, harmonization, tax competition, tax technique

Аннотация

Статья доказывает, что налогообложение личных доходов является чрезвычайно сложным явлением, которое следует анализировать не только через правовую призму, но и через социальные, культурные, экономические, политические и конституционные призмы. Мы не можем изолировать экономическую сферу от налоговой сферы, поскольку личные налоги на прибыль напрямую влияют на налогоплательщиков, их покупательная способность, они также определяют затраты на рабочую силу для предпринимателей и, таким образом, они оказывают.

Ключевые слова: подоходный налог, гармонизация, налоговая конкуренция, налоговая техника

Introduction

Referring to PIT it was emphasized that the tax should remain at discretion of member states. The only harmonization activities should concern removing barriers to four economic freedoms and providing uniformity of taxation. Similarities in the personal income tax in Community states concern the following areas[1]:

- The tax is related to total (global) income of a taxpayer,
- Scales are progressive with various numbers of ranges and minimum and maximum tax rate values,
- Most countries use tax-free amounts,
- Tax burdens are usually adjusted to inflation rate through the system of automatic or semi-automatic indexation o changes to tax thresholds,
- Personal income tax reflects the principle of taxpayer's payment capacity through its varied system of tax reliefs and exemptions;
- Different rules are used for taxation of family incomes, revenues from selling property and movable assets and capital incomes,
- There is a varied system of costs of obtaining revenues, related to the way in which revenue is gained,
- It does not differentiate tax burden due to sources of revenues from which it is obtained and its allocation,
- Income tax contains tax preferences related to the way the income is spent.

Tax competition

Tax competition is a phenomenon directly related to globalization processes, especially to the growth of international mobility of employees and capital. Liberalization of labor and capital factors flow and decline of transaction costs account for the fact that individuals as well as capital seek attractive jurisdictions for their deposits, not only at home but also abroad. Theoretically, lowering tax rates does not have to result in lower budget revenue, as due to the flow of labor and capital factors, tax base will grow. However, if (theoretically) all EU countries decide to lower personal tax rates, the relative attractiveness of countries for PIT taxpayers (who may be treated as investors) will remain unchanged, while their budget revenues will decline. The tax income decline caused by lowering rates at unchanged tax base accounts for a situation when the country can allocate less money to

[1] Compare: J. Kesti, European Tax Handbook 2013-2015, IBFD International Bureau of Fiscal Documentation, Amsterdam 2013-2015; A. Krajewska, Podatki, Unia Europejska, Polska, Kraje nadbałtyckie, PWE, Warszawa 2004; A. Krajewska, Podatki w Unii Europejskiej, PWE, Warszawa 2012; J. Kulicki, Opodatkowanie osób fizycznych, Podatek dochodowy w państwach UE. Analiza porównawcza z symulacją obciążeń fiskalnych w Polsce. Biuro Studiów Ekspertyz Kancelarii Sejmu, Wasrszawa 2006.

accomplish their tasks of providing public goods[2]. The essence of tax competition often boils down to the belief that small tax burdens are the main factor determining the development of a given territory and its perception as an attractive place for final tax settlement[3].

The author's own research proves that tax competition in the area of PIT (and social insurance contributions, years 2013-2015) does not contribute to the increased mobility of workers. The obtained Pearson's correlation coefficient at the level of rxy = 0.20 (respectively rxy = 0.22) indicates that there is no relation between the level of PIT (level of social insurance contributions) and increased workers mobility. The factors determining the increased migration of employees are flexibility of labor market, levels of remuneration and social and welfare infrastructure[4]. Therefore it should be clearly indicated that the harmonization of the effective PIT rates and social insurance rates is not necessary or essential for the functioning of common market and four migration freedoms. Since the general level of social and economic competitiveness and attractiveness obviously includes a tax element, it is difficult to deprive particular countries of their right to shape their own tax system adequate to their possibilities and needs. It should be expected that the potential progress of the tax harmonization process will limit this competition in a larger or smaller degree. Tax competition is manifested in reduction of tax rates and introduction of tax preferences in order to stimulate activity of national economic entities and attract foreign investment (PIT is of no importance in this respect). This means that the public authorities use tax policy instruments to enhance the attractiveness of their own area. It should be emphasized that after the introduction of the common currency in some EU countries, income tax has become one of the last "economic variables", depending only on local and central law-making bodies, which may be a measurable stimulus for stimulating taxpayers behavior. The author's own research shows that PIT is not a decisive factor in capital mobility, nor is it an instrument determining the attractiveness of a given country both for the workforce and investment[5].

The best situation would be the one in which the marginal cost of providing the next unit of public goods and services equals the cost of PIT taxation. Such optimal level of taxation can be established in a closed economy, that is when regardless of the size of tax, human and capital factors do not flow in or out. For an open economy, benefits of providing public goods and services remain un-

[2] M. Desai, F. Foley, J. Hines, Economic Effects of Regional Tax Havens, NBER Working Paper No 10806/2004.

[3] R. McGee, *The Philosophy of Taxation and Public Finance*. Boston-Dordtech-London, 2004, s. 105–107.

[4] Statutory research, Department of Economics of Enterprises and Local Development University of Economics and Innovation in Lublin, Lublin 2015.

[5] Statutory research, Department of Economics of Enterprises and Local Development University of Economics and Innovation in Lublin, Lublin 2014.

changed, whereas the costs of PIT taxation grow. This is so as each income tax growth leads to the flow of capital to countries with lower rates. On the other hand, income tax decreases will have much weaker than in a closed economy effects, since (theoretically) they will attract foreign capital to the country. Taxation of this increased human and capital base may partly offset the losses incurred by lowering the PIT rate. We may infer from the above that in an open economy the stimuli for lowering the PIT taxation are stronger than in a closed economy. Such reasoning may be conducted for each country separately, therefore we can assume that they will all be inclined to lower their PIT rates. However, if they all do lower their rates, the benefits of such conduct will disappear: human and financial capital will not flow into the country with lowered taxes if taxes are lowered in other countries as well. The general capital resource will not change, in principle (if capital resource grows, it will only be due to the ability of lower taxes to generate new investment). On the other hand, all countries will experience lower incomes, thus they will be able to allocate fewer resources for allocating public goods and services. This process of lowering tax rates which leads to excessive reduction of budget revenues is often known as the race to the bottom. Assuming that in a situation preceding the opening of economies, all countries had optimal PIT rates, as a result of the race to the bottom the possibility of providing public goods and services by them must deteriorate. It would seem that the optimal solution in this situation would be an agreement between countries that they will not compete with tax rates. Unfortunately, this solution is impossible to implement. This can be attributed to the fact that citizens of various countries differ in their preferences for goods that in their opinion should be provided by the state. Moreover, a state renouncing its sovereignty in fiscal policy would politically be very controversial and it is hard to imagine any government that would decide to take such steps. Moreover, to achieve the desired effect, tax coordination would have to take place in all countries remaining in economic relationships. If it is done only by a group of states, other countries will be undisturbed in their race, which will bring about the flow of capital to them and the deterioration of the economic situation of the group of countries with harmonized rates.

It seems that we should be cautious when assessing the phenomenon of tax competition in PIT. This is mainly because the only obvious and measurable indicator related to this phenomenon on an international scale are differences in PIT rates (and social insurance rates, integrated with PIT) between particular countries. It must be added that although data on differences in nominal rates are easy to obtain, their interpretation, as well as the evaluation of differences in effective rates, calls for taking into account a lot of extra information (such as applied incentives, tax reliefs or the structure of national economy) and are methodologically complicated. What is more, it is hard to determine the power of influence of differences in effective PIT rates which are the main symptom of "*tax competi-*

tion" on phenomena considered to be its effects. For example, we cannot clearly determine what percentage of the whole decline in corporate income tax revenue is caused by the changes to the effective rate of such tax in another country. It is impossible to isolate some phenomena in fiscal sphere out of all economic conditions. Moreover, the power of influence of the tax competition phenomenon on a given country depends on the specific characteristics of that country as well as on the characteristics of the "tax competitor" (for example Poland versus Slovakia versus Czech Republic). Finally, even if PIT is radically lowered in one country, but the risk of conducting economic activity remains very high, the likelihood of attracting potential taxpayers from abroad is low.

Flexibility and freedom enjoyed by public authorities of every member state of the European Union these days in determining income tax rates guarantee the creation of favorable climate for economic activity and sound competition between countries, which may bring long-term benefits to all participants of this market game, provided they take advantage of opportunities available to them. A competitive game to attract investors is not a zero-sum game in which someone has to lose for another person to gain, especially in the long run. Sound tax competition between countries, apart from gradual decrease of tax rates, should force sanative activities in the public finance sphere and make countries with lower burden more attractive to investors. We should obviously remember that it is not only the level of PIT, but also lower labor costs (pension system), infrastructure, quality of workforce and administration, transparency of law, including tax and business law, that determine the investment attractiveness of a particular region or country and competitiveness of enterprises operating there.

Harmonization of employment

The issue of taxing incomes from employment abroad is a complex one, since we need to analyze not only Polish regulations, but also international ones (including relevant agreements on avoiding double taxation concluded between Poland and particular countries) and regulations in a country where work is performed. It is necessary, inter alia, to determine whether such incomes must be settled in Poland at all. If the answer is positive, then the question arises of how to avoid double taxation, if, for example, these incomes were also taxed in the country where a person performed their job. This is of vital important both in case of people who individually start working for foreign employers and for employees delegated by employers to work abroad. An essential issue is to determine in which country an employee is obliged to pay social and health insurance contributions. This is regulated by the so-called coordination provisions issued by relevant bodies of the European Union. They also include regulations governing some specific groups, for example employees delegated to work abroad or running their own business acti-

vity also on the territory of another country. Another issue concerns regulations governing benefits which can be obtained when working in various EU countries, for example the amount of future retirement pension. Additionally, it is essential to know where and how this retirement pension will be taxed. It may happen that a particular person (taxpayer) will have more than one place of residence (that is both in Poland and in a country where he or she works – on the basis of internal regulations of these countries). In this case, in order to determine which country is the final country of residence for tax purposes, certain criteria are applied, based on a relevant agreement on avoiding double taxation, concluded between Poland and that country. As a result of such analysis, a taxpayer should be able to determine in which country their final place of residence is. It is advisable that this should be confirmed with a tax residence certificate issued in that country. This does not mean, however, that the taxpayer will pay taxes only in one country. If this person is a tax resident of a given country, but performs work in another, he may be subject to taxation both in the country where he works (as the country of source) and in the country of tax residence. In order to avoid double taxation, an appropriate method adopted in a relevant agreement on avoiding double taxation must be applied.

It is worth remembering that it is possible to deduct from obtained income (or – respectively – tax) mandatory social and health insurance contributions paid in another country of the European Union, European Economic Area or Switzerland. In order to take advantage of this entitlement, one must meet certain requirements. The deduction does not concern contributions whose calculation base is income exempted from tax on the basis of agreement to avoid double taxation (that is when we apply the method of exclusion with progression to particular revenue). Moreover, contributions cannot be deducted from income (tax) in a country where the work is done. It is also necessary to have legal base arising from an agreement on avoiding double taxation or other international agreements ratified by Poland in order to provide the tax authority with some information from the tax authority of a state in which the taxpayer paid contributions. EU countries have widely varied PIT structures and retirement pension contributions systems, which makes it practically impossible to fully harmonize these public tributes. Nevertheless, it is possible to attempt at coordinating the principles of calculating and settling, without harmonizing the rates, tax credits, or tax deductions and reliefs.

The rulings of the ECJ exert significant influence on the PIT in EU countries as well as on the areas of potential harmonization. These rulings translate into automatic (forced by the rulings) coordination of tax legislature and provisions regulating social insurance. ECJ rulings greatly affect domestic tax law and, by the necessity of implementing rulings into domestic tax law, they contribute to standardization (harmonization) of tax provisions, especially in the area of human flow and PIT settlement as well as SSC in member states. As a result of ESC ru-

lings, regulations are becoming similar and uniform, which is an element directly preceding potential future harmonization (of selected elements in PIT structure).

According to ECJ rulings, it is forbidden to discriminate citizens of one member state in another member state[6]. Tax discrimination takes place when different people in comparable situation are treated differently by tax regulations. Different tax treatment of residents and non-residents does not have to mean discrimination. The situation of individuals who have limited tax obligations in a given member state is not comparable to the situation of individuals with unlimited tax obligation. A taxpayer's personal situation is usually taken into account when taxing income in a country of their residence. However, if a non-resident obtains in the source country "most of their income" or "the whole or nearly the whole income", whereas he or she does not obtain in the country of residence sufficient income to take advantage of tax reliefs used there (for example – joint taxation with a spouse), then the source country should threat such a person as its resident and grant them relevant tax reliefs[7]. The situation of both categories of taxpayers is comparable concerning tax rates, therefore it is not allowed to use a higher personal income tax rate for an individual with limited tax obligation[8]. Within research work, we analyzed the tax rulings of the ECJ vital for the freedom of human flow[9]. The ECJ rulings have led to numerous amendments (standardization) or even repealing of internal tax regulations. The analysis of the ECJ rulings allows us to formulate a number of conclusions related to harmonization, essential for the standardization of the PIT structure in the EU countries and indicating areas of further harmonization:

1. The community law bans all forms of tax discrimination not only related to nationality, but also bans hidden forms of discrimination which lead to the same result by using various differentiating criteria. The application of a permanent place of residence with reference to the return of PIT down-payments usually results in worse treatment of citizens of another member state.
2. Failure to grant tax relief to taxpayers who paid social insurance contributions for foreign insurers is compensated by exempting benefits paid out in the future from tax. If a state was to allow deduction of social insurance contributions, it should also be able to tax the sums paid out by citizens. Obliging the insurer to collect tax or adopting solutions in bilateral agreements are no less restrictive means. In the Bachmann case, the argument concerning the coherence of a tax system concerned the same taxpayer and the tax of the

[6] Compare cases: Schumacker (C-279/93); Saint Gobain (C-307/97); Wielockx (C-80/94) and Asscher (C-107/94).

[7] See more: case Schumacker (C-107/93); Sermide (C-106/83).

[8] See more: Asscher (C-107/94).

[9] Rulings of ECJ: Biehl (C-175/88); Bachmann (C-204/90); Werner (C-112/91); Schumacker (C-279/93); Wielockx (C-80/94); Gilly (C-336/96); Gschwing (C-391/97); Gerritse (C-234/01); Wallentin (C-169/03); Ruffler (C-544/07) and Asscher (C-107/94).

same kind, whereas there was a close relationship between deducting insurance contributions and taxation of future benefits.
3. In a situation when a non-resident obtains in the country of their employment most or all of their income, while not obtaining sufficient income in the country of residence to take advantage of tax reliefs (such as joint taxation with a spouse), then the country of employment should treat such a person as its resident and grant them relevant tax reliefs.
4. Non-resident who obtains the whole or nearly the whole income in a country where they perform their job is in the same situation as the resident of this state who performs the same job.
5. Member states are competent to determine the reasons for taxation in order to avoid double taxation via international agreements.
6. Granting tax reliefs in PIT in the source country (tax credit, joint taxation) depends on where a taxpayer obtains most of their taxable incomes.
7. Taxation of people who work or receive retirement or disability pension, but live or have dependant relatives in another member state has always been a source of problems. Generally speaking, bilateral agreements allowed to avoid double taxation, but did not solve such issues as application of different forms of tax reliefs available in the country of residence with reference to the income obtained in the country of employment.
8. There is a rule according to which a given member state, when collecting income tax and social insurance contributions, cannot treat EU citizens not residing in this country but, taking advantage of free movement, working in its territory, in a less beneficial way than its own citizens.
9. Generally, we can say that integration in the area of direct taxation of individuals has taken place more as a result of the European Court of Justice rulings than normal legislative procedure.

Ways of harmonization of personal income taxation principles

Analysis of community tax legislation (rulings and cases of the ECJ) allows us to formulate a thesis that harmonization of personal income taxation principles is impossible to historical, political, social and technical reasons. The Court rulings cannot influence harmonization of personal income taxation principles, as these concern only taxation of savings income and exchange of tax information, while the progressing and visible "quiet harmonization" is a result of competition among national tax systems, not ECJ rulings. Generally, individuals may appear as parties in the court proceedings only before their home courts. Generally, difficulties in harmonizing personal income tax cover the following issues:

- Political factors – income tax payers are a very numerous group of voters. Politicians are unwilling to resign from using the PIT tax technique in implementing regulatory and stimulating function of taxation, as it is a valuable instrument in their relations with voters.
- Harmonization of personal income tax has never been a vital factor for creating the common market. It is a neutral form of taxation for internal trade and does not disturb competition conditions in the common market.
- Personal income tax is imposed mainly on income from work and retirement benefits, while the level of fiscal burden does not translate into increased migration in Europe.
- In EU countries, social security systems are financed from various sources. These are both contributions made by taxpayers and direct financing from state budget (premiums are then included in general taxes – as in Denmark).
- EU countries have various systems of rewarding work and shaping the population income level. There are various systems of costs of obtaining revenue, methodology of shaping progression, etc.
- Personal income tax plays both fiscal and non-fiscal role in EU state tax systems, which makes it impossible to create a homogenous system of personal income taxation, especially if we take into account the necessity of unanimity of the Council in passing any directives in this respect.
- This thesis is supported by the work of an outstanding specialist in OECD fiscal policy, *Ken Messere*. He distinguishes five groups of countries in the European union, differing in tax solutions adopted in their tax policy (excluding new member states). The classification allows us to identify characteristic elements of EU tax systems. We have:

The first group consists of Northern European countries: Belgium, Denmark, Finland, the Netherlands and Sweden. The personal income tax share is high, often integrated with social insurance contributions. Personal income tax is either passed in full or almost in full to local budgets.

The second group covers Southern European countries: Greece, Spain, Portugal and Italy. "Southern" tax mentality accounts for large share of 'grey zone' (especially in Greece – the highest share of grey zone in the EU), therefore PIT effectiveness is relatively low. The common feature of these countries is high share of indirect taxes and social insurance contributions in budget revenues. Those countries do not make efforts aimed at extending (exploiting) their tax base.

The third group is composed of two Central European countries: Austria and Germany. They have a similar, three-level division of tax entitlements, typical for federal states. However, PIT principles are different. A unique feature of German personal income tax is the use of a mathematical formula (instead of ranges) in

tax progression and introduction of additional tax burden (solidarity tax) in 1991 and 1995 for developing eastern lands, in the amount of additional 5.5%.

Western European countries, namely Ireland and Great Britain, constitute **the fourth group**. They are characterized by a relatively large share of income tax in GDP and relatively low share of social insurance contributions. Apart from this, a major source of income revenues is revenue from property tax and VAT. Taxation of personal incomes is deprived of social reliefs (relative neutrality). This function is performed by various social allowances.

Conclusions

Personal income constructions widely differ in the European Union countries. It is even difficult to compare such key elements in the personal income tax construction as the number and level of tax rates and related level and span of tax thresholds. In particular countries the issue of general exclusion of incomes at specific level from taxation is approached differently, some have zero tax rate, others different amounts of tax credit. An additional difficulty in comparisons is presented by the application of tax rates of various amount depending on the source of income. The problems with comparing the personal income tax structure are also related to various systems of transfers to different public finance sectors – incomes from this tax may finance not only central budget but also budgets of self-government budgets or social insurance funds. Currently, most EU countries use progressive PIT rates, depending on the level of incomes, though 7 countries – Bulgaria, Czech Republic, Estonia, Lithuania, Latvia, Romania, Slovakia – have a flat tax. From the taxpayer's point of view, what really matters is the size of the minimum and maximum tax rates and the number of the so-called tax thresholds. However, on the basis of these data it is impossible to draw final conclusions concerning the size of personal income burden in particular member states, as of vital importance here is the method of determining tax base and all deductions from income or from tax amount. Below I will present changes in time concerning basic parameters characterizing taxation of personal incomes in the European Union countries. As we already mentioned, the need to harmonize of personal income taxation was discerned much earlier, and recently this has been manifested in the Lisbon Strategy, in which the common tax policy of the European Union was treated as a necessary requirement to be met in order to improve the competitive ability of the whole economic system but this concerns especially tax policy towards companies (no PIT principles).The need to develop a common position on corporate taxation was manifested in the so-called Tax Package, whose element is the Code of Conduct for Business Taxation. The importance of this code, adopted in 1997, consists in obligation of member states to observe principles of fair com-

petition and to resign from solutions causing harmful tax competition. In a case of PIT, the most important arguments against harmonization are listed below:

1. **firstly**, further loss of sovereignty in local (national) financial policy, which constrains the possibilities of influencing economic and especially social processes by the government. Harmonizing the principles of calculating the tax base and adopting uniform rates (rate) means passing tax prerogatives to a transnational institution – in this case the European Union. In this situation each country must conduct its own cost/benefit analysis.
2. **secondly**, various social models which determine various financial needs of the state
3. **thirdly**, historical conditions, that is factors which shaped national tax systems;
4. **fourthly**, inequality in competition between companies operating exclusively in the internal market and those which operate in many countries of the Community.

Bibliography

Desai M., Foley F., Hines J., Economic Effects of Regional Tax Havens, NBER Working Paper No 10806/2004.

Kleist J., *European Tax Handbook 2013–2015*, IBFD International Bureau of Fiscal Documentation, Amsterdam 2013–2015.

Krajewska A., *Podatki, Unia Europejska, Polska, Kraje nadbałtyckie*, PWE, Warszawa 2004.

Krajewska, A., *Podatki w Unii Europejskiej,* PWE, Warszawa 2012.

Kulicki J., *Opodatkowanie osób fizycznych, Podatek dochodowy w państwach UE. Analiza porównawcza z symulacją obciążeń fiskalnych w Polsce*, Biuro Studiów Ekspertyz Kancelarii Sejmu, Warszawa 2006.

McGee R., *The Philosophy of Taxation and Public Finance*. Boston-Dordtech-London, 2004, s. 105–107.

Rulings of ECJ: Biehl (C-175/88); Bachmann (C-204/90); Werner (C-112/91); Schumacker (C-279/93); Wielockx (C-80/94); Gilly (C-336/96); Gschwing (C-391/97); Gerritse (C-234/01); Wallentin (C-169/03); Ruffler (C-544/07) and Asscher (C-107/94); Schumacker (C-279/93); Saint Gobain (C-307/97); Wielockx (C-80/94); Asscher (C-107/94); Sermide (C-106/83).

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Гуманизация социально-трудовых отношений как стратегическое направление социально-экономической политики в информационном обществе

Humanization of the social and labor relations as the strategic direction of social and economic policy in information society

Аннотация

Рынок труда находится в турбулентном состоянии. Если говорить о конкретных цифрах, то снижение спроса на персонал наблюдается в отраслях автомобилестроении, строительной (отрасль довольно сильно пострадала, повсеместно – недострой, недофинансирование и др.). Нефтегазовая отрасль пострадала меньше, однако, и здесь активно сокращают персонал.

Summary

The labor market is in a turbulent state. If we talk about specific numbers, the decline in demand for staff is being observed in the sectors of automotive, construction (industry quite badly damaged, everywhere – unfinished, underfunded, and others.). Oil and gas industry has suffered less, but here are actively reducing staff.

Ключевые свова: проблемы рынка труда, условиях кризиса, рынок труда

Keywords: problems of the labor market, crisis, the labor market

Введение

В условиях перехода от индустриального к информационному технологическому способу производства и потребления, характеризующемуся внедрением принципиально новых информационных, цифровых, компьютерных и других технологий, пришедших на смену технологиям промышленным, в условиях дальнейшего углубления и развития концентрации, кооперации и интеграции общественного производства, его функционирования на принципах сетевой организации цивилизованные социально-трудовые отношения, как и вся система социальных отношений в обществе, должна осуществляться на основе регулирующего воздействия общества, государства и других регулирующих механизмов.

Формирование цивилизованных социально-трудовых отношений является главным стратегическим направлением гуманизации социально-экономического развития в информационном технологическом способе производства и потребления. В этой связи очевидно, что в масштабах страны необходимо сформировать концептуальные основы государственной политик гуманизации социально-трудовых отношений.

Государственная политика

Государственная политика в области гуманизации социально-трудовых отношений по своему содержанию представляет собой деятельность органов государственной власти, направленную на формирование системы социально-трудовых отношений, стимулирующих и мотивирующих работников, работодателей и общество в целом к активизации процесса совершенствования труда на гуманистических принципах.

Центральное место в политике гуманизации социально-трудовых отношений должно отводиться стратегии гуманизации социально-экономического развития.

Стратегия гуманизации социально-трудовых отношений в условиях информационного общества должна иметь четкую общую цель, а также инструменты и методы ее реализации. Такая стратегия должна быть направлена на формирование объективных условий и факторов активизации процессов гуманизации трудовой деятельности в различных отраслях народного хозяйства.

Стратегия гуманизации социально-трудовых отношений представляет собой научно обоснованные видение главных приоритетных действий, как на долгосрочную, так и средне- и краткосрочные перспективы. Стратегия гуманизации социально-трудовых отношений должна включать в себя весь комплекс вопросов, охватывающих данную проблематику.

В современном цивилизованном обществе государственная политики гуманизации социально-трудовых отношений должна лежать в основе системы государственного управления трудом[1].

Такая система регулирования должна быть направлена, прежде всего, на формирование духовно-нравственных ценностей и проблем эффективной занятости трудоспособного населения, сокращения безработицы, повышения уровня и качества жизни на основе повышения оплаты труда, формирования доходов населения, способных обеспечить высокий прожиточный минимум.

Регулирование современной системой социально-трудовых отношений в информационную эпоху должно быть направлено на повышение образовательного уровня населения страны на основе создания системы профессионального образования, которое должно выступать как доступное, всеобщее и бесплатное общественное благо.

Регулирование системы социально-трудовых отношений в социально ориентированном обществе должно быть также направлено не только на обеспечение высоких доходов, но и создание в обществе высокой культуры и образования, патриотического воспитания и уважительного отношения к коллегам по совместной деятельности и труду, гуманизацию труда.

Развитие системы социально-трудовых отношений в современную эпоху должно быть неразрывно связано с их дальнейшей гуманизацией.

Понятие гуманизма означает, прежде всего, человеческое начало, человечность. Нравственная ценность и содержание понятия гуманизма состоит в сочетании любви, уважения и доверия к человеку в сочетании с высокой требовательностью и непримиримостью к различным формам попрания и унижения человеческой личности.

Высший гуманистический смысл цивилизованного общества состоит в том, чтобы воспитывать и утверждать отношения к человеку, к его личным ценностям и интересам неразрывно с учетом интересов трудового коллектива и общества на основе гармонии развития духовного потенциала человека.

Движение общества по пути научно-технического и социально-экономического прогресса неразрывно связано с процессом гуманизации социально-экономических, в том числе и социально-трудовых отношений.

Современная история со всей убедительностью свидетельствует, что в те исторические эпохи и в тех государствах, где отсутствует или проявляется лишь минимально позитивное отношение к человеку, гуманистическое

[1] A. Żywicka, *Zasada zrównoważonego rozwoju a prowadzenie działalności gospodarczej na przykładzie działalności w zakresie obrotu środkami ochrony roślin lub ich konfekcjonowania,* [w:] *Działalność gospodarcza na obszarach chronionych,* R. Biskup, M. Pyter, M. Rudnicki, J. Trzewik (red.), KUL, Lublin 2014, s. 127-139.

отношение к природе, окружающему миру, человеку отступает на второй план, где на первый план выходит технократический подход, основанный не на любви к человеку, а бездуховности, происходит разрушение фундаментальных основ прогрессивного развития общества.

В этой связи становится очевидно, что социально-экономические трансформации, происходящие в Российской Федерации и направленные, прежде всего, на развитие рыночных отношений, фитишизации денег, доходов и прибыли, должны быть скорректированы с финансово-технократической траектории на социально-гуманистические. Речь в нашем обществе должна идти не только о максимизации доходов и прибыли, пополнении бюджета на основе затягивания поясов, а, прежде всего, о гармоничном развитии общества на основе гуманистических ценностей во всех сферах жизни: политике, экономике, научно-техническом прогрессе, социальной сфере, экологии и др. Другими словами, речь должна идти о гуманизации перестройки всех ценностных категорий российского общества.

Эффективное социально-экономическое развитие общества на основе внедрения достижений научно-технической революции невозможно без формирования мощного гуманистического фундамента.

В настоящее время гуманизация, общечеловеческие ценности имеют тенденцию к глобализации.

Вместе с тем это никоим образом не означает, что дальнейшее развитие общественного производства в условиях информационного технологического способа производства и потребления должно отказываться от хозяйственных, социально-экономических интересов работодателя, когда речь идет о процессах планирования, организации, мотивации и контроля за производством и трудовой деятельностью. Речь идет о том, чтобы, по возможности, обеспечить баланс интересов между созданием благоприятных условий, адекватных общественным интересам и возможностям трудовой деятельности человека и получением прибылей работодателями как объективной предпосылки для дальнейшего эффективного развития предприятий и организаций в условиях рыночных отношений. Таким образом очевидно, что в общественном сознании должна формироваться модель современных социально-трудовых отношений, построенных на балансе социально-экономических интересов общества, государства, работодателей и наемных работников в процессе организации эффективной производственной деятельности, с одной стороны, и необходимости обеспечения достойного жизненного уровня и качества жизни наемных работников и членов их семей, то есть создание модели разумного сочетания внедрения достижений научно-технического прогресса, создания благоприятных условий для гуманизации труда и обеспечения высокого уровня и качества жизни в обществе, в целом.

В этом контексте необходимо рассматривать и понятия гуманизации социально-трудовых отношений. Рассмотрим некоторые точки зрения современных авторов на эту проблему.

Каменецкий В.А. в своем научном труде «Социальное партнерство в Европе и России: Проблемы реформирования и развития» констатирует, что «под «гуманизацией труда» следует понимать комплекс организационно-технических и социально-экономических мероприятий по изменению условий труда, производственной среды и содержания труда в целях улучшениявзаимного соответствия человека и его трудовой деятельности»[2].

Гуманизацию же труда Каменецкий В.А. рассматривает как процесс формирования наиболее интересных для наемных работников условий, способных обеспечить их мотивацию к высокому качеству и производительности труда на основе улучшения содержания труда и условий трудовой деятельности.

Как отмечают многие современные исследователи, гуманизация социально-трудовых отношений и в теории, и на практике остается неразработанной и невостребованной.

По сути дела, существующие социально-трудовые отношения, о чем свидетельствует практика последних десятилетий, направляется на адаптацию людей труда к изменяющимся чаще всего в негативную сторону обстоятельствам и условиям жизни. Такая система социально-трудовых отношений не способна создать необходимые предпосылки, условия и факторы для гуманизации труда, трудовой деятельности и жизни наемного работника и е членов его семьи.

Очевидно, что сложившаяся система социально-трудовых отношений должна перестраиваться с принципов пассивной адаптации к ухудшающимся условиям труда на принципы гуманизации, в основе которых должны лежать высокие нравственные ценности и гармонизация развития человека труда, работодателя, государства и общества. Причем, эти тенденции должны проявляться на предприятиях различных форм собственности и масштаба[3].

На основе изучения и обобщения различных точек зрения мы пришли к выводу, что гуманизация социально-трудовых отношений представляет собой процесс создания благоприятных предпосылок, условий и факторов для формирования, развития и эффективной реализации потенциальных возможностей человека, его самореализации в трудовой деятельности, а также совершенствование связей между работодателями, обществом

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[2] Каменецкий В.А. *Социальное партнерство в Европе и России: Проблемы реформирования и развития*.- М.,1999.

[3] Przychocka I., *Wspieranie sektora małych i średnich przedsiębiorstw w Unii Europejskiej i w Polsce*, Difin, Warszawa 2009, c. 130.

и наемными работниками в целях повышения эффективности развития общества на основе научно-технического и социально-экономического прогресса.

Процесс гуманизации системы

Процесс гуманизации системы социально-трудовых отношений главной своей целью имеет минимизацию влияния факторов, определяющих их антисоциальный характер и деградацию и придания им гармоничной сбалансированности социально-экономических интересов общества, государства, работодателей и руководителей предприятий, наемных тружеников. Такие интересы обеспечивают расширения свободы людей наемного труда, способствуют очеловечиванию отношений между людьми в обществе.

Гуманизация социально-трудовых отношений в современном обществе имеет преобладающую тенденцию. Однако на отдельных фазах социально-экономического развития время от времени проявляются обратные тенденции дегуманизации этих отношений. Деградация социально-трудовых отношений, проявляющаяся в их антисоциальной направленности формирует так называемые антиценности, по своему содержанию и направленности совершенно противоположные процессу гуманизации.

Направленность и содержание процессов, определяющих гуманизацию систему социально-трудовых отношений, определяется в результате развития истории и обусловливается разнообразными, как объективными, так и субъективными условиями, предпосылками и факторами. Среди таких наиболее значительных факторов следует выделить:

а) уровень развития производительных сил и общественных отношений на каждом историческом этапе развития человечества и преобладающий технологический способ производства и потребления;
б) сложившиеся в обществе модели отношений собственности на основные средства производства, степень их гуманизации, либо антигуманизации как одной из решающих предпосылок гуманистического развития системы социально-трудовых отношений;
в) тенденции и направленность общественных отношений в сфере политики, экономики, образования, культуры, определяемые сложившимся технологическим способом производства и преобладающими в обществе ценностями (антиценностями), интересами и потребностями, как отдельных индивидов, так и правящих элит и влиятельных социальных групп;
г) содержание и творческий характер труда наемных работников, как следствие развития материально-технической базы и социальных

отношений, уровня внедрения достижений научно-технического прогресса;

д) степень развития гражданского общества, как главной предпосылки и фактора реализации гуманистических тенденций в социально-трудовых отношениях;

е) тенденции глобализации в развитии процессов, определяющих гуманистические тенденции совершенствования социально-трудовых отношений и, прежде всего, на основе развития моделей, проявляющихся в социальном партнерстве;

ж) содержание трудовых законодательных актов, регулирующих содержание и направленность социально-трудовых отношений между работодателями, наемными работниками, обществом и государством;

з) степень влияния общества и государства, их роль и значение в гуманистических процессах, определяющих тенденции развития системы социально-трудовых отношений и т.п.

Помимо этого существенными факторами, определяющими гуманистические тенденции в содержании процессов и формах трудовой деятельности, являются:

- тенденции возрастания доли интеллектуального труда в процессе общественного производства, повышении уровня образования и культуры наемных работников;
- существенное увеличение возможностей для повышения образовательного уровня, профессиональной подготовки и переподготовки работников, самореализации их профессионального потенциала;
- увеличение численности высокопрофессиональных конкурентоспособных работников, имеющих высокий уровень образования и культуры, как важнейшей предпосылки активизации и расширения профессиональной мобильности в условиях тотальной глобализации процессов гуманизации социально-трудовых отношений;
- признание важнейшей ценностью высокий профессионализм, профессиональный опыт работников организации, как на основе подготовки обеспечения карьерного роста собственных работников, так и приглашенных высококвалифицированных специалистов со стороны.[4]

Кроме того направленность и содержание гуманистических тенденций предопределяется:

- масштабами и степенью совершенства общественно-идеологических процессов и, прежде всего, в научной и литературной сферах, сферах искусства и т.п.;

[4] http://vocabulary.ru/dictionary/817/word/%D4%E0%EA%. Дата обращения 1.04.2016

- изменениями, происходящими в структуре производимых и потребляемых экономических благ, в расширении и совершенствовании их набора;
- релятивностью и амбивалентностью производимых и потребляемых в обществе благ (степень пользы либо время от производимых и потребляемых товаров и услуг);
- несовершенством сложившихся в общественном сознании и практике структуры потребления (потребление продуктов, наносящих ущерб здоровью отдельным индивидам и обществу, в целом; имеющие место излишества в потреблении продуктов, их порчи и недоиспользование и др.);
- криминализацией общественно-экономической жизни, распространением теневой экономики, криминального бизнеса и коррупционных отношений;
- степенью и уровнем развития в системе общественного производства процессов креативизации как основы творческого, созидательного труда человека и его освобождения от тяжелого труда;
- уровнем сложившихся в обществе нравственных устоев, их влияния на нездоровое мышление и поведение людей, искажение вкусов, образа и норм жизни и т.д.;
- уровнем развития в общественном сознании практики необходимости формирования созидательно-креативной модели деятельности человека в различных сферах, постоянной выработки эффективных гуманистических, социальных теорий и проектов, обеспечение их практической реализации;
- преобладающим уровнем развития и направленности общественных интересов на социальные и духовные ценности в противовес ценностям материального сверхпотребления; сбалансированности духовных, социальных и материальных ценностей при ведущей роли первых.

В современном обществе степень гуманизации системы социально-трудовых отношений может служить признаком-индикатором, характеризующим в обществе уровень социального, экономического и научно-технического развития.

Тенденции гуманизации и дегуманизации развития социально-трудовых отношений предопределяются, прежде всего, их социально ориентированной иди антисоциально ориентированной направленностью представителей правящих элит и преобладающих социальных групп, а также степенью самосознания людей наемного труда и развития гражданского общества.

Гуманистические тенденции направленности социально-трудовых отношений и их конкретное содержание представляет собой следствие длительного социально-историческогоразвития. Причем в основе формирования и развития тех или иных тенденций лежат формирующиеся

в обществе объективные социально-экономические противоречия, их изменение и движение.

Эти противоречия, как правило, возникают между интересами наемных работников, работодателей и собственников по поводу степени эксплуатации работников как инструмента получения максимальной прибыли в результате дегуманизации социально-трудовых отношений и интересами наемных работников, связанных с улучшением условий и качества труда и жизни, необходимостью обеспечения соответствия этих условий имеющимся в обществе принципам гуманизации и социализации системы социально-трудовых отношений.

Возникновение социально-экономических противоречий происходит в результате несовпадения социально-экономических ценностей, интересов и потребностей общества. государства, правящих элит, работодателей и, естественно, наемных работников.

Такие различия в интересах и потребностях между субъектами социально-трудовых отношений существуют всегда.

Формируясь в общественном сознании, те или иные социально-экономические ценности, интересы и потребности могут, как совпадать, так и не совпадать с объективными социально-экономическими интересами общества и государства.

Степень сбалансированности, совпадений и несовпадений их интересов определяется содержанием и формами процессов гуманизации социально-трудовых отношений.

Разрешение социально-экономических противоречий как механизма процессов гуманизации социально-трудовых отношений происходит следующим образом. Поначалу формируются новые направления, либо гуманизации, либо дегуманизации таких отношений, которые постепенно переходят границу сложившихся в тот или иной исторический период системы социально-трудовых отношений. Потом подобная трансформация переносится с отдельных субъектов и объектов на всю модель общественных социально-трудовых отношений, которые в дальнейшем укрепляются в качестве нормы и являются, по сути дела, следствием укрепляющейся доминанты ценностей, интересов и потребностей правящих элит и ведущих производительных классов общества.

Несмотря на то, что гуманизация социально-трудовых отношений в различных государствах имела историческую национальную и иную специфику, ей присущи определенные общие закономерности. Такие закономерности играют важнейшую роль, как в развитии теории гуманизации, так и реализации ее на практике.

Наиболее известными общими закономерностями гуманизации социально-трудовых отношений являются:

- процесс развития социально-трудовых отношений исторически представлен двумя противоположными тенденциями – гуманизацией и дегуманизацией социально-трудовых отношений;
- направленность гуманистических и дегуманистических тенденций социально-трудовых отношений формируется под влиянием политических, экономических, социальных интересов правящих элит и классов и, конечно, доминирующей в обществе формой собственности (общественной, коллективной, частной);
- процессы гуманизации и дегуманизации социально-трудовых отношений имеют динамичный характер и в процессе своей эволюции система социально-трудовых отношений, в конечном итоге, приобретает тенденцию преобладающего социально ориентированного характера;
- в процессе эволюции существенным образом изменяется содержание элементов социально-трудовых отношений: на смену устаревшим элементам гуманизации приходят новые, соответствующие интересам и потребностям правящих классов, общества в целом и адекватных господствующему способу производства и потребления.

Наряду с общими закономерностями развития процесса гуманизации социально-трудовых отношений существуют и специфические закономерности. К таким закономерностям можно отнести:

- тенденцию на ориентацию гармоничного профессионального общекультурного и нравственного развития личности;
- индивидуализацию профессионально-этической ответственности творческого подхода, позволяющих определять стратегии самоорганизации и самосовершенствования в том или ином виде деятельности;
- усовершенствование социальной среды, принимающей и воплощающей тенденции гуманизма, направленной на формирование человека-творца;
- постоянное совершенствование в процессе развития социально-трудовых отношений трудового потенциала, как коллективово организации в целом, так и отдельных работников;

К основным гуманистическим тенденциям развития социально-трудовых отношений в условиях информационного общества относятся:

- тенденции постоянного совершенствования социально-трудовых отношений на основе развития профессионального, общекультурного, социально-нравственного потенциала работников. Эта тенденция характеризуется тем, что на основе гуманизации развития личности работника человек становится более свободным и творческим созидателем.

В условиях ускорения процессов перехода общества от индустриальной к информационной эпохе возникает объективная необходимость создания всех предпосылок, обеспечивающих реальную возможность освоения работниками не только базовых профессиональных знаний, но и основ общечеловеческой культуры, гуманистических ценностей. В результате более высокий уровень культуры способен активизировать и побуждать работника к эффективному творческому труду. В итоге, чем более разнообразной и продуктивной, существенно значимой для работника становится его деятельность, тем эффективнее осуществляется процесс овладения профессиональной и общечеловеческой культуры.

Подведение итогов

Обобщение исследований отечественных и зарубежных авторов по проблемам гуманизации и дегуманизации социально-трудовых отношений показало, что:

- тенденции гуманизации социально-трудовых отношений адекватно развиваются вместе с гуманистической, социальной направленностью ценностей, интересов и потребностей правящих элит, ведущих производительных классов общества, работодателей и работников. В этом случае формируются необходимые объективные предпосылки для поступательного динамичного процесса социально-экономического развития по пути инноваций, гуманизации и социального прогресса;
- дегуманистические тенденции в развитие социально-трудовых отношений, как правило, складываются в условиях, когда социально-трудовые отношения в масштабах общества тормозят социально-экономический прогресс в различных его направлениях.

На протяжении всей истории человечества постоянно прослеживаются тенденции гуманизации и дегуманизации социально-трудовых отношений.

Важными факторами гуманизации социально-трудовых отношений служит стремление человечества освободиться от тяжелого физического неквалифицированного труда, тяжелых некомфортных условий жизни работников и членов их семей, стремление людей к самореализации, самоутверждению и саморазвитию, развитию созидательно-креативного потенциала человека.

Развитие процессов гуманизации социально-трудовых отношений обеспечивается непрерывным совершенствованием технико-технологической базы производства на основе внедрения достижений НТП. Более совершенная и развитая материально-техническая база каждого следующего технологического способа производства и потребления

приводит к активизации и повышению уровня творческой активности и производительности труда.

Социально-экономическое развитие современного общества на принципах гуманизации, как правило, характеризуется позитивными изменениями структуры экономических благ, совершенствованием их состава и ростом объемов.

Экономический и социальный прогресс общества характеризуется, как правило, гуманизацией, как социально-трудовых отношений, так и экономике, в целом.

Вместе с тем следует отметить, что позитивные процессы социально-экономического развития нередко сопровождаются различными негативными характеристиками, носящими зачастую антигуманистические тенденции.

Библиография

Гурьев В.В. Регулирование социально-трудовых отношений. Саратов, 2011.

Каменецкий В.А. Социальное партнерство в Европе и России: Проблемы реформирования и развития.- М., 1999.

Колот АМ Социально-трудовые отношения: теория и практика регулирования: Монография - М.: Финансы и статистика, 2003.

Крайнов Н.Н., Кочетков А.А. Рынок труда и гуманизация социально-трудовых отношений в современной экономике.- М.: Изд. АПКиППРО, 2011.

Крайнов Н.Н. Гармония труда. Гуманизация социально-трудовых отношений // Креативная экономика. № 4/2011.

Степанов А.А., Савина М.В., Степанов И.А. Проблемы гуманизации социально-экономических отношений в инновационной экономике/ В сб. «Инновационное развитие России: условия, противоречия, приоритеты». Часть I/ Материалы IX международной научной конференции, 28 марта 2013 г., М.: Новые печатные технологии, 2013.

Żywicka A., *Zasada zrównoważonego rozwoju a prowadzenie działalności gospodarczej na przykładzie działalności w zakresie obrotu środkami ochrony roślin lub ich konfekcjonowania,* [w:] *Działalność gospodarcza na obszarach chronionych,* R. Biskup, M. Pyter, M. Rudnicki, J. Trzewik (red.), KUL, Lublin 2014.

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The significance of legal units of measurement and national measurement standards for the development of entrepreneurship – legal aspects

Значение легальных единиц мер и государственных образцов единиц мер для развития предприимчивости – юридические обусловленностьи

Summary

The uniformity of measurement and the correctness of measures are essential elements of the economy, which contribute to the growth of entrepreneurship in various sectors. These two factors make a significant impact on the quality of manufactured products and influence the decisions regarding their acceptance or rejection. The state supervises the correctness of measurements in areas connected with the protection of public interests (health and safety) as well as consumer and environmental protection. The legislature appoints certain authorities of administration of measures to the implementation of public tasks in the field of ensuring the uniformity of measurements and the required accuracy of measures, which at the same time grants the administration of measures competencies in providing the metrological security of the country.

Keywords: legal units of measurement, administration measures

Аннотация

Единообразие мер и правильность измерениия – один из основных элементов хозяйственного оборота обуславливающим рост предприимчивости в разных отраслях экономики. Существенно влияет на качество производа продуктов а также на приняте решения относительно их одобрения или отвержения - следовательно инструмент генерирующий рост предприимчивости. В пространство жизни быть тесные связи со защитой государственных интересов (здоровье и безопасность) и защитой потребителей и среды, над правильностью совершанных измерение заботится государство. Единицы мер и измерители представляют собой технический инструмент хотя их применяние в хозяйстве вызывает следствия о значительно более широком значении юридический-экономический и общественном обуславливанный рецептами общеобязательного права. По этой причине можно их анализировать велёвонтково как на технической плоскости как и юридической, экономической и общественной.

Ключевые слова: легальные единицы маир, администрация измерения

Introduction

The uniformity of measurement and the correctness of measures are essential elements of the economy which contribute to the growth of entrepreneurship in various sectors. These two factors make a significant impact on the quality of manufactured products and influence the decisions regarding their acceptance or rejection. Consequently, the uniformity of measurement and the correctness of measures are instruments which provide the growth of the entrepreneurship. The state supervises the correctness of measurements in areas connected with the protection of public interests (health and safety) as well as consumer and environmental protection. Units of measurement and measuring instruments are kinds of technical instruments. However, their use in the economy has a much broader – legal, economical and social sense, which is governed by the generally applicable legal provisions. For this reason, they can be analyzed in many ways, e.g. technical, legal, economical and social one. The legislature appoints certain authorities of administration of measures to the implementation of public tasks in the field of ensuring the uniformity of measurements and the required accuracy of measures, which at the same time grants the administration of measures competencies in providing the metrological security of the country.

The scope and the forms of activity of metrological administration of measures evolved as a result of changes in the economy implied by legal regulations and market needs. Since the Polish accession to the European Union, EU policies and directives have been an essential determinant of shaping the national legal order in the field of metrological regulations. Significant changes in this area started to appear much earlier – in 1993. Since that time the legislator has started to gradually delegate the responsibility for the correctness of measures from the area of metrology regulated by law to the area of voluntary metrology. The first clear symptom of the new direction of normative changes was the introduction of the authentication pursuant to the Act of 3 April 1993 – the Law On Measures[1]. According to the definition, the authentication meant checking a measuring instrument for its compliance with the metrological requirements set not only in the metrological legislation but also in international standards and recommendations. The indications of a measuring instrument were referred to the national measurement standards thus ensuring the consistency of measurement[2]. At the same time, the catalogue of measuring instruments subject to metrological control was reduced. However, pursuant to the Act of 11 May 2001 – the Law On Measures[3] the authentication ultimately ceased to exist, which resulted in a more important role of calibration of measuring instruments remaining under

[1] Dz. U. (Journal of Laws) from 1993, No. 55 item 248.
[2] Act of 3 April 1993 – the Law On Measures, Art. 11 Paragraph 2.
[3] Dz. U. (Journal of Laws) 2016 item 884, uniform text.

the exclusive competence of the administration of measures and the maintenance of other types of legal metrological control.

1. Legal units of measurement in Poland

The establishment, the implementation and the harmonization of legal units of measurement on a national and above all global level is undoubtedly a necessity, primarily due to the need of consistency of measures in the international trade. Currently, the vast majority of countries in the world, including Poland, applies a uniform International System of Units (SI). This system is the result of work which started with the Metre Convention on 20 May 1875. Seventeen countries signed the Convention whose purpose was to provide worldwide uniformity of measurements by spreading and enhancing the metric system. The Convention created three main international organizations: the General Conference of Measures (Conférence Générale des Poids et Mesures – CGPM), the International Bureau of Weights and Measures (Bureau international des poids et measures – BIPM), the International Committee for Weights and Measures (Comité International des Poids et Mesure - CIPM). Moreover, the work on international prototypes of units of measurement was initiated. The activity concerning these matters lasted until 1971 when the International System of Units (Systeme International des Unites – abbreviated: SI) was accomplished. Clearly, the attempts to enhance the system are still being held[4]. Currently, the International Metre Convention has 58 members and associates further 41 members[5]. Poland joined the Convention in 1925.

In the current legal status, units of measurement in Poland are regulated by the Law on Measures, Art. 7. According to this Act, legal units of measurement in Poland are:

1. Units of the International System of Units (SI);
2. Units which do not belong to the International System of Units (SI), approved for use on the territory of the Republic of Poland;
3. Decimal aliquots and multiples of the aforementioned units.

Legal units of measurement in the Republic of Poland are defined in the Regulation of the Council of Ministers of 30 November 2006 on Legal Units of Measurement[6] which regulates: names, definitions and symbols of legal units of measurement, legal units of measurement which do not belong to the International System of Units (SI) but can be used on the territory of the Republic of Poland, prefixes and their symbols used to create decimal aliquots and multiples

[4] K. Markiewicz, D. Habich, W. Popiołek, E. Michniewicz, Ł. Litwiniuk, Z. Ramotowski, J. Borzymiński, P. Fotowicz, A. Goszczyńska, *Polska administracja miar. Vademecum*, Warszawa 2015, p. 120.

[5] State on September 17, 2016 according to data published on an Internet website of BIPM http://www.bipm.org/en/about-us/associates/.

[6] Dz. U. (Journal of Laws) 2006 No. 225, item 1638.

of legal units of measurement as well as spelling rules for symbols of legal units of measurement[7].

The units of measurement which are the basic units of the International System of Units (SI), have the following names and symbols:

1. „meter" refers to a unit of length with the symbol „m";
2. „kilogram" refers to a unit of mass with the symbol „kg";
3. „second" refers to a unit of time with the symbol „s";
4. „ampere" refers to a unit of electric current with the symbol „A";
5. „kelvin" refers to a unit of thermodynamic temperature with the symbol „K";
6. „mole" refers to a unit of the amount of substance with the symbol „mol";
7. „candela" refers to a unit of luminous intensity with the symbol „cd".

The obligation to apply the legal units of measurement refers to the use of measuring instruments, carrying out measurements and expressing physical quantities. Under the international agreements on maritime, aviation and rail transport, it is acceptable to use different units of measurement from the legal ones as well as to use additional symbols expressed in other units of measurement. However, the symbol expressed in the legal unit of measurement has precedence, which is clearly shown in the obligation to express the symbols using characters not smaller than the ones expressing a different unit of measurement.

The use of other than legal units of measurement by the entrepreneurs is a practical problem of technical and legal nature. This phenomenon is connected with the accuracy of measurement and is also reflected in the illegal activity of entrepreneurs. Such activity is still quite often used by the entrepreneurs of some sectors of the economy and poses new challenges for the authorities of the administration of measures in the field of searching for optimal ways of enforcing the requirements set in the legislation in a manner which is comfortable for entrepreneurs and consumers. The following problem arises: how, if at all, should legal units of measurement be introduced to absolutely all areas, if we do not intend to generate or at least want to minimize the risk of negative consequences of such activities? The introduction of legal units of measurement may sometimes – which sounds absurd – result in a lack of understanding and hamper the communication between parties of commercial contracts, thus bringing more losses than benefits to the economy and it may act in a collision with the public interest. Other than legal units of measurement, which are fixed in the economic trade, are uneasy to remove from use. An example is such a unit of measurement as an inch (used by

[7] Due to the Polish membership in the EU, Polish law was harmonized in this field with EU legislation through the implementation of Council Directive 80/181/EEC of 20 December 1979 on the Approximation of the Laws of the Member States relating to Units of Measurement (and repealing the Directive No. 71/354/EEC) Official Journal L 039 of 15 February 1980 (amended by Directives 89/617/EEC and 99/103/EEC).

TV manufacturers for years) which is not a legal unit of measurement regulated by the Polish legislator.

However, the problem of eliminating illegal units of measurement from the market must always be considered in a global context. Nowadays, the international trade is highly developed and the exchange of goods and services is universal. Therefore, it is necessary to link the national system of measurement with the world system and to continually fulfill the conditions so that other countries recognize the link. The implementation of this task in the Polish legal and political conditions has been fulfilled since 1925 and lies within the scope of responsibility of the President of Central Office of Measures (GUM).

2. Creation and maintenance of national measurement standards and providing the consistency of measurements

Measurement standards play a key role in the economic trade of a state in the national and international scale, as they allow the production and international exchange of goods, because they enable users to determine the clear quantitative relation between the products. The standards allow the reconstruction of units of measurement, and the increasing accuracy in this area facilitates the development of industry in key areas of the economy and enhances the progress in all branches. National standards provide consistency of measurement through the transfer of units of measurement to other standards or to measuring instruments used in the economy. Without the consistency with the standards no measurement result may be regarded as consistent with the applicable SI System. This implies the need for the state to maintain the standards with the highest measurement accuracy[8].

The following is meant under the national measurement standard – it is the standard of a unit of measurement characterized by the highest metrological quality in the country and linked to the international system of units, which is a reference for other standards. The measurement standard guarantees the consistency of measurement in the country. There are following terms of recognition of a measurement standard as a national one: providing the common access to the national standard and bearing the costs of upgrading and maintaining the

[8] K. Markiewicz, D. Habich, W. Popiołek, E. Michniewicz, Ł. Litwiniuk, Z. Ramotowski, J. Borzymiński, P. Fotowicz, A. Goszczyńska *Polska administracja miar. Vademecum*, Warszawa 2015, p. 136.

standard, including the costs of links with international standards and with the standards in other countries[9].

President of the Central Office of Measures has the following competencies: the development and the maintenance of national measurement standards and other measurement standards with the highest precision of units of measurement in the country and ensuring the consistency of national measurement standards with international standards. In the light of the Law On Measures Art. 16 Par. 1 the responsibilities of the President include: maintenance and development of the system of legal units of measurement and national measurement standards, in particular:

- construction, maintenance and modernization of national measurement standards and measurement systems used to transmit units of measurement stored and used in the Office, as well as development in this field,
- informing in the way of announcement about measurement standards fulfilling conditions set for national measurement standards,
- providing, in the way of comparisons, the link of national measurement standards with international measurement standards or measurement standards in other countries, as well as validation of competence in ongoing calibrations and measurement,
- providing the transmission of legal units of measurement from national measurement standards to measuring instruments, including the transmission to entities performing activities to provide consistency of measurement and accuracy of measurements connected with the defense and state security,
- supervising the activities of organizational units and laboratories outside the administration of measures which own national measurement standards, maintain and provide access to these standards,
- production and certification of reference materials,
- providing expertise and research of measuring instruments,
- determining the quantity through measuring the objects in relation to which the measurement activities are undertaken,
- organizing and conducting the national interlaboratory comparisons.

National measurement standards are maintained by the Central Office of Measures. They are measurement standards officially recognized in the Republic of Poland as the basis for assigning values to other measurement standards of a given physical quantity. According to the hierarchical system of testing, the

[9] Conditions and procedure for recognition of measurement standards as national ones are defined in the Regulation of the Minister of Economy, Labour and Social Policy of 30 January 2003 on the recognition of measurement standards as national measurement standards, Dz. U. (Journal of Laws) 2003, No. 31, item 257 and regulation of Minister of Economy of 27 February 2007 amending the regulation on the recognition of measurement standards as national measurement standards, Dz. U. (Journal of Laws) 2007, No. 44, item 280.

standards of lower order, which are accessible to the offices of measures, accredited laboratories or industry, are referred to national standards.

The link of the national system of measurement to the international system and providing the consistency of national measurement standards are carried out in the way of international comparisons of standards conducted by the metrological institutions of different countries. In Poland, the role of national metrological institutions is entrusted to the Central Office of Measures. The significance of these comparisons for the national economy is substantial, because their results show that the national measurement standards provide the transfer of units of measurement which are in compliance with the International System of Units SI to the measuring instruments. Thus, they give entrepreneurs the confidence that measurements carried out using the measuring instruments, which were calibrated using national measurement standards, are accepted in the country and in the world, acting as the first link in the chain which provides metrological safety of economic trade.

The statutory obligation of the administration of measures is providing the transfer of the legal units of measurement from national measurement standards to measuring instruments used in trade. In this regard, the authorities of administration of measures perform the calibration of measuring instrument at the request of interested parties. According to the definition in the International Vocabulary of Metrology „calibration means, firstly, determining the relationship between the values of quantity presented by the measuring standard together with their measurement uncertainties and the corresponding indications of a calibrated object together with their uncertainties, and secondly, using the information to determine the characteristics allowing to obtain the results of measurements on the basis of indications"[10]. The calibration can also include the evaluation of the compliance of the measuring instrument with requirements or specifications indicated by the applicant. The result of a calibration enables the assignment of the indications of a measuring instrument to the suitable measurements quantity values or the determination of corrections of these indications and errors. It is moreover certified by the authority of the administration of measures in the calibration certificate.

It is worth noting that in Poland there are currently 20 national measurement standards and the Central Office of Measures maintains 18 of them[11]. National measurement standards provide a reference in many sectors of the economy, including most branches of industry and trade, health care, life and environment

[10] PKN-ISO/IEC Guide 99-2010 Międzynarodowy słownik Metrologii. Pojęcia podstawowe oraz terminy z nimi związane (VIM) – International Dictionary of Metrology – Basic Concepts and Terms Associated with them.

[11] The standards are immaterial and exist in the form of localized positions in calibrating laboratories of Central Office of Measures. Only the standard of mass – kilogram has a material form.

protection, public safety and order, protection of consumer rights, carrying out the customs control, the packaged goods, etc. The quantitative demand for the calibration of measuring instruments with less and less uncertainty has been growing for many years together with the development of technology and increasing number of precise measuring instruments.

The development of new technologies in the economy is connected with the increased demand for more and more precise measuring instruments, which can perform accurate measurements in many fields of economy. Both the process of calibration and legalization of measuring instruments are essential factors of economic development of the country due to the extensive use of measuring instruments in most areas of the economy.

Conclusions

The implementation of public duties by the administration of measures in providing the uniformity of measurement and the required accuracy of measurements of physical quantities takes on a new meaning in the face of technological progress and the development of new branches of industry. There are more and more new areas that could not develop without the metrology. This situation causes that metrology does not play a secondary role in the technological development, but it co-creates it. This phenomenon determines the importance of accuracy and quality of measurements in new areas of the economy, which results in an increasing role of calibration of measuring instruments.

National measurement standards provide the uniformity of measurements, without which users of measuring instruments in the economy could not be certain if products manufactured or sold by them will meet the requirements necessary to ensure their quality and competitiveness in the national and international market. To meet these expectations, the administration of measures constantly develops the methods of calibration of measuring instruments which must comply with national and international requirements. The accuracy of measurement is one of the factors affecting the competitiveness of the economy, which makes this task pivotal for protection of the public interest.

Although metrology belongs to the technical sciences and the attention to measurement standards is put mainly in this area, one should not underestimate the normative area which regulates the scope of their use in trade, because the authorities of public administration exercise in this field the supervision over their use. The state is responsible for creating legal provisions which will properly protect both the public interest and the interests of individual entrepreneurs. It is therefore necessary to continuously improve the provisions of the Law on Measures depending on the changes in metrology and measurements used in the economy.

After the analysis of the Polish legislation regulating only the legal units of measurement and the rules of transmitting the values of legal units of measurement from national measurement standards to measuring instruments used in trade it can be concluded that they generally take into account the reality of Polish business transactions and the solutions worldwide. However, the legal situation is not that obvious when we refer to specific issues such as the supervision over the use of legal units of measurement, legal metrological control and the issues of the use of uniformity assessment systems for measuring instruments. In these areas there is still a lot of inconsistency and ambiguous regulations which require improvement.

Bibliography

Act of 3 April 1993 – Law on Measures, Dz. U. (Journal of Laws) from 1993, No. 55, item 248.

Act of 11 May 2001 – Law on Measures, Dz. U. (Journal of Laws) from 2016, item 884, uniform text.

Regulation of the Council of Ministers of 30 November 2006 on Legal Units of Measurement, Dz. U. (Journal of Laws) from 2006, No. 225, item 1638.

Regulation of the Minister of Economy, Labour and Social Policy of 30 January 2003 on the Recognition of Measurement Standards as National Measurement Standards, Dz. U. (Journal of Laws) 2003, No. 31, item 257.

Regulation of Minister of Economy of 27 February 2007 amending the regulation on the Recognition of Measurement Standards as National Measurement Standards, Dz. U. (Journal of Laws) 2007, No. 44, item 280.

Council Directive 80/181/EEC of 20 December 1979 on the Approximation of the Laws of the Member States Relating to Units of Measurement (and repealing the Directive No. 71/354/EEC) Official Journal L 039 of 15 February 1980.

K. Markiewicz, D. Habich, W. Popiołek, E. Michniewicz, Ł. Litwiniuk, Z. Ramotowski, J. Borzymiński, P. Fotowicz, A. Goszczyńska *Polska administracja miar. Vademecum*, Warszawa 2015, p.136.

PKN-ISO/IEC Guide 99-2010 *Międzynarodowy słownik Metrologii. Pojęcia podstawowe oraz terminy z nimi związane* (VIM) – *International Dictionary of Metrology – Basic Concepts and Terms Associated.*

http://www.bipm.org/en/about-us/associates/

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Crisis management in case of functioning of public administration units

Антикризисное управление на примере функционирования единиц государственной администрации

Summary

The article is devoted to the problems of crisis management as an inherent component related to the functioning of public administration units. Crisis management in public administration is an integral part of national security. It fulfills an essential role in resolving – under time pressure – a situation of crisis, where is a risk, tension and threatening the security of citizens.As is known, disasters are prevalent, concentrated in time and space, occurring at any latitude. People around the world face a variety of risks to health by weather and phenomenas occurring in the environment. The aim of the article is to present a broad term of crisis management at different levels of public administration.

Keywords: crisis management, crisis situation, crisis response, phases of crisis management, principles of crisis management

Аннотация

Статьяпосвященапроблемамантикризисного управления, как неотъемлемого элемента связанного с функционированием единиц государственной администрации.

Антикризисное управление в государственной администрации – неотделимый элемент национальной безопасности. Оно исполняет ключевую роль в решении кризисных ситуаций (в условиях ограниченного времени), которые несут риск, давление и составляют угрозу для безопасности граждан.

Известно, что катастрофы – явления повсеместные, они сконцентрированы во времени и пространстве и могут произойти на любой из географических широт. Люди во всем мире сталкиваются с разного рода опасностями, связанными с угрозой здоровью, погодой и явлениями, которые имеют место в естественной среде.

Целью данной статьи является отображение широкого понятия антикризисного управления на отдельных уровнях государственного управления.

Ключевые слова: антикризисное управление, кризисная ситуация, антикризисное реагирование, этапы антикризисного управления, основы антикризисного управления

1. Definitional recognition of crisis management

Crisis management developing was based on the experience of many generations. For years, there was a conduction of research management processes in difficult situations – experimental situations. It currently allowed on directing projects related with increase of safety indicators[1].

According to the law on crisis management crisis management is an activity of public administration which is part of national security, which relies on crisis prevention, preparation for taking control over them through planned activities, responding on crisis situations and restoring of infrastructure or its original character[2].

The most important element of the system of public safety of the state is a system of crisis management that is able to respond appropriately on the threats on crisis management system, the so-called *crisis management*, also called as an emergency management system. This system should effectively respond on emerging threats, and remove their effects. It should be flexible and capable for identifying and analyzing new threats that have not yet been placed in the catalog of threats and unforeseen procedures that can counter them[3].

In the literature there are various definitions of crisis management, which they call as such action: „a combination of organizational, logistical and financial actions aimed on prevention of crisis situations, ensuring on the efficiency of decision-making structures at all levels of management, maintaining constant readiness of forces and resources on making actions, proper response and liquidation of consequences of the existing situation"[4].

The interpretation of the term by J. Gołębiowski also seems be reasonable, while he states that such action is: „a complex of system solutions in the field of civil protection, executed by public authorities at all levels, in cooperation with specialized organizations and institutions, in order to prevent difficult, dangerous situations, which are posing a threat to life, health, property, environment and infrastructure"[5].

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1 J. Pilżys, *Zarządzanie kryzysowe*, Międzynarodowe Stowarzyszenie „Edukacja dla Obronności i Bezpieczeństwa", Szczecin 2007, p. 68.

2 Journal of Acts of 2007, No 89, item 590 with changes.

3 J. Pilżys, *Zarządzanie kryzysowe*…, p. 151.

4 See: E. Ura, *Stany nadzwyczajne i zarządzanie kryzysowe,* [in:] *Bezpieczeństwo wewnętrzne państwa*, Rzeszów 2015, p. 45.

5 J. Gołębiowski, *Zarządzanie kryzysowe*, „Myśl Wojskowa" 2001, no 1, p. 76.

2. The specificity of the crisis situation and the essence of crisis management

Defining the „crisis situation" is necessary for the proper functioning of crisis management. A crisis should be understood a situation which consequents the threat and leads to the interruption or significant impairment of social connections while there is a serious disturbance in the functioning of public institutions, but in a such an order that the resources used for safety restoring do not cause implementation of any of the emergency states, to which is referred to in an Article 228, paragraph 1 of the Polish Constitution[6].

Thus, the objective of crisis management is to minimize potential risks, and of proper, effective activities conduction in case of their occurrence. Efficiency and effectiveness depends largely on the skills, competencies and knowledge of both the people directing the operation, as well as individuals participating in rescue activities. Efficiency here means the ability to achieve the planned objectives, while effectiveness – the degree of their achievement.

Crisis management is to ensure the rationality in taking action and resource management, so to allow them to have such a choice and allocation that will ensure maximization of results[7]. In other words, the point of crisis management is to proceed with such activities, which will prevent any of crisis situations. Therefore, emphasis should be placed on preparation against potential threats, planning activities, the assignment of responsibilities and competences, technologies, spatial management and security systems[8].

The essence of crisis management is to formulate objectives of the action, planning, acquiring and organizing resources (human and material), command and control, which is the basic management[9]. The goal of reacting on crisis situations is to neutralize (eliminate) a threat as well as control (take control on a threat) to significantly reduce its effects.

Crisis management is aimed especially on: prevention and counteracting on threats, maintaining the efficiency of crisis management, including reacting on crisis situations, fulfillment of at least such living conditions of people during an emergency or crisis, which are necessary to protect their life or health, fulfillment of such conditions of business activity continuation and public administration functioning during the emergency or crisis, which are necessary for the realization of the objectives mentioned above.

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6 A. Żywicka, *Rola samorządu gospodarczego w rozwoju branży turystycznej w Polsce*, „Zeszyty Naukowe WSEI, seria Administracja (1/2011)", Lublin 2011, s. 153–163.

7 R. Szymaniuk, *Istota sytuacji kryzysowej*, „Myśl Wojskowa" 2006, no 1, p. 12.

8 J. Gryz, W. Kitler, *System reagowania kryzysowego*, Toruń 2007, p. 203.

9 J. Kurnal, *Twórcy naukowych podstaw organizacji*, Warszawa 1972, p. 16.

3. Crisis management at different levels of public administration

Crisis response is currently dynamically developing kind of strategic activities in the field of security. Its essence is to effectively deal with the crisis in order to take control over it ("extinguish it"), while eliminating (reducing) potential sources of possible renewal of the crisis in the future. Increasing of interest in concepts of crisis response arise from rapid spread of various crisis threats of different types such as: international and internal, military and non-military (civilian)[10].

The political changes in Poland caused necessity of usage of internal security system in organizational structure of the state. After the prevail of administration functioning by usage of the branch layout over state administration functioning by layout of the territorial and administrative powers and concentration at the central level, it also made changes in the functioning of the internal security system in the commune, district and province[11].

The current administrative system determined by certain laws provides system, in which the responsibility for carrying out the functions of the state in terms of security of the citizens in certain area is put on appointed, single authority (palatine, the governor, mayor, president of the city). Imposing liability is connected with granting of certain rights and obligations.

Executing subject of power – a single authority of public administration, which is responsible for the proper and effective performance of functions of the state, primarily in the sphere of internal security, peace, public order, obeying of the law, as well as in emergencies.

Generally this is responsibility for the outcome of the functioning of the entire administration at such level of territorial division, including all services, inspections and guards.

As a result, the province governor, the governor, the mayor are responsible for political and legal aspects of consequences of their own activities and subordinate departments. The responsibility for ensuring the safety and the possibility of evacuation in the system of threat to life, health, property or the environment, also is on the owner, manager or operator of the building, area or land, relatively to the people staying there. It is comparable with the responsibility of public administration authorities.

According to the current administrative division of the country, we can distinguish the following levels of crisis management system. Firstly communal, in which communes perform basic tasks related with the protection of the population, focusing their efforts primarily on: warning, alerting and informing the

[10] S. Kozieł, *Wstęp do teorii i historii bezpieczeństwa*, Warszawa 2010, p. 16.

[11] Z. Jagiełło, *Wybrane problemu bezpieczeństwa państw, narodów oraz społeczności lokalnych na początku XXI wieku*, Wałbrzych 2008, p. 270.

public about the risks, conducting evacuation and providing evacuees medical and social services, especially in terms of accommodation and meals. The next level is the county crisis management system. Counties perform the same tasks as communes and also coordinate emergency response in the area of the county, supporting them with subordinate activities: services, inspections, security supported by non-governmental organizations and provided for plan of emergency response of the county. Third – provincial level – provides necessary assistance to the authorities of the county, where the opportunities in current situation do not provide effective actions. And finally the last level – central. When possessed province strength and resources are insufficient to control the crisis situation, the province governor refers to the central authorities for appropriate assistance from the upper level (including the natural disaster status in a part or the whole area of the province)[12].

In crisis management in the area of the commune, county, state or the entire country it becomes necessary to create management philosophy focused on the coordination of independent actions and separate organizational units for each random crisis situation. Such approach requires "one way" management structure possibility to take wide area of public administration and links its activities with functioning economic entities. The thing is to efficiently coordinate the activities performed by combined administration, which is controlled by the authority of the governor[13].

In the case of military and non-military threats, organs of state power, after analyzing the situation and determining the needs of the necessary resources to counter the threat, according to the nature of the crisis may provide emergency status or martial law. The Constitution of the Poland Republic contains interpretations regarding to the possibility of providing of emergency statuses[14].

4. Phases and principles of crisis management

Taking into account the possible project, there are two phases of crisis management: before – and after an emergency. The first phase is divided in two phases: prevention and preparation. This phase covers all activities at all levels of public authorities, non-governmental organizations, media, heads of factories and other legal entities whose activities have an impact on the living conditions of the popu-

[12] M. Kopczewski, *Zarządzanie kryzysowe elementem systemu bezpieczeństwa wewnętrznego państwa6* [ц:] *Paradygmaty badań nad bezpieczeństwem. Zarządzanie kryzysowe w teorii i praktyce*, ed. M. Kopczewski, I. Grzelczak-Miłoś, M. Walachowska, Poznań 2013, p. 295.

[13] J. Ziarko, J. Walas-Trębacz, *Podstawy zarządzania kryzysowego*, Kraków 2010, p. 146.

[14] Z. Jagiełło, *Wybrane problemy bezpieczeństwa państw*…, p. 258.

lation, forming its surroundings before the risk in any of its possible forms may appear. In extreme situations, it is possible to start emergency procedures[15].

In the phase of prevention are measures that eliminate or reduce the likelihood of a disaster or limit its effects through the threats analysis (categorization). Firstly analysis is made for: assessment of the susceptibility of the public to the threats, law regulation, rational planning of land using, budget management, assessment of human losses, property and infrastructure caused by the disaster, the term plan of preventive actions, determine the principles and methods of control and supervision[16].

In the next phase, named as preparation, are raised such problems as: possible ways to respond in case of a disaster, as well as actions made to increase amount of resources and forces which are necessary for an effective response by: developing a crisis management plan, construction of a crisis management center, defining of communication basis, monitoring system, organization of alarm and alerting population system, determining procedures for assistance request, determining the rules for the use of law enforcement in relation to the population, non-governmental organizations and the private sector, creation of database for possible funds and materials obtaining, public education, improvement of emergency services, public acceptance of the costs, actualization of the preparation elements[17].

The second stage – realization – is taking place at the time of detection of impending danger or occurrence. Emergency response occurs when the risk exceeds the limits of the standard. Only such a situation authorizes the mobilization of additional forces or emergency procedures. This starts with the initiation of non-routine activities, and ends with the restoration of normal living conditions. This stage includes two phases: the response and recovery[18].

Response phase is a direct response to the identified or expected situation which is or may be a threat to the infrastructure of the state population, property or environment. Response phase is specific, because if any error occurs it can cause certain effects, and there is no time to repeat the steps. Activities in this phase are held in conditions of spontaneous reaction of injured people. Response should include possible variants of behavior and methods of analysis[19].

Response phase is a set of actions, which are following the occurrence of a disaster, in order to respond is to provide aid to the injured and to limit secondary damage and loss by: starting the procedure of information (information manage-

[15] K. Sienkiewicz-Małyjurek, F. Krynojewski, *Zarządzanie kryzysowe w administracji publicznej, zarządzanie bezpieczeństwem*, Warszawa 2010, p. 105.

[16] Ibidem.

[17] K. Sienkiewicz-Małyjurek, F. Krynojewski, *Zarządzanie kryzysowe w administracji*…, p. 105.

[18] A. Zabłocka-Kluczka, *Próba oceny procesu zarządzania kryzysowego w kontekście zapewnienia Bezpieczeństwa publicznego w Polsce*, „Zeszyty Naukowe Wyższej Szkoły Oficerskiej Wojsk Lądowych im. gen. T. Kościuszki, no 3 (157)", Wrocław 2010, p. 193.

[19] Ibidem.

ment), arranging a contact point (informing the public), launching the warning and alert system, immediate local community response, launching rescue activity, start of evacuation procedures, neutralizing outbreaks of threats, organizing of social self-help, supporting operations by the armed forces, the participation of social and humanitarian organizations, launching psychological protection of victims, immediate creation of conditions for the victims.

The main actions in responding to a crisis situation are: assessment of the situation, prevention of possible negative situation progress, defining goals and objectives, identifying of the resources needed, definition of the plan and structure of the action, making actions[20].

Phase Four is restoration. Actions made in this phase are to restore the previous state, and more – reconstruction of an infrastructure that will be less vulnerable to the next disaster. At this stage, the activity is manifested by: assessing the damage, providing help to the population, treatment and rehabilitation, compensations to the injured, informing about their rights and obligations, restoring and refilling of supplies – preparedness – emergency services, law initiatives, proper administration, realization of liabilities, modification and updating of plans, documentary work (eg. reports)[21].

In all of that, the important thing is to continuously monitor and analyze developing after the occurrence of any risk associated with critical events and estimate the physical damage caused by its occurrence. These marks and other information will determine the pace, type, size, course of human reaction on a traumatic situation and properly plan as the reconstruction, as the minimization of losses in the future.

5. Principles of crisis management

Crisis management, like any organizing activity, is characterized by certain rules. The principle of the primacy of the government is considered as the basic structure of the model system of the territorial state and brings sector system to the assisting function. Thus, the overall anti-crisis measures starts at the lowest levels. The presence of one-man management – is to delegate decision-making powers to the single authorities that provide actions over a proper area of competence (the mayor, the governor, the province governor, prime minister, president). The principle of responsibility by public administration authorities, which are granted as well with the power as well with responsibility for decision-making in crisis situations. The principle of unity, which takes on competencies and responsibility in case of making decisions in crisis situations.

[20] K. Ficoń, *Logistyka kryzysowa. Procedury, potrzeby, potencjał*, Warszawa 2011, p. 300.
[21] Ibidem, p. 320.

Principle of categorizing threats is based on separation of threats into groups by type, size and assigning them certain legal, organizational and financial solutions. The principle of universality – crisis management is organized by public authorities in collaboration with the existing specialized institutions and organizations and public in general[22].

Conclusions

Nowadays, we can speak of a new quality of security, because security is such an object, which interests scientific community, as well as leaders of international organizations, leaders of the states, and representatives of local communities. This is justified by a much different interpretation of security than it used to be. Original definition of security was only used in military and political terms, but now it speeded on important aspects, such as: social, economic, cyber, environmental and many others.

Undoubtedly, public administration units play a subordinate role to the public, including taking care of its safety.

Public sector organizations should be innovative, flexible and effective in activities related to crisis management. Aiming to ensure security, broadly understood as ensuring the freedom and ability to protect and defend against continual and inevitable threats, as it is one of the main tasks of the democratic state and its organs.

Safety is a fundamental value for both the individual and social communities. Ensuring public safety, order and organization of crisis management requires actions of the legislative branch, whose job is to create a regulatory framework for defining acceptable behavior of individuals and human communities, as well as the responsibilities and powers of the entities responsible for security and crisis management.

Bibliography

Ficoń K., *Logistyka kryzysowa. Procedury, potrzeby, potencjał*, Warszawa 2011.

Gołębiowski J., *Zarządzanie kryzysowe*, „Myśl Wojskowa" 2001, no 1.

Gryz J., Kitler W., *System reagowania kryzysowego*, Toruń 2007.

Kopczewski M., *Zarządzanie kryzysowe elementem systemu bezpieczeństwa wewnętrznego państwa,* [in:] *Paradygmaty badań nad bezpieczeństwem. Zarządzanie kryzysowe w teorii i praktyce,* M. Kopczewski, I. Grzelczak-Miłoś, M. Walachowska (red.), Poznań 2013.

Kozieł S., *Wstęp do teorii i historii bezpieczeństwa*, Warszawa 2010.

Kurnal J., *Twórcy naukowych podstaw organizacji*, Warszawa 1972.

[22] M. Nepelski, *Zarządzanie w sytuacjach kryzysowych*, Szczytno 2016, p. 200.

Jagiełło Z., *Wybrane problemy bezpieczeństwa państw, narodów oraz społeczności lokalnych na początku XXI wieku*, Wałbrzych 2008.

Journal of Acts of 2007, No 89, item 590 with changes.

Nepelski M., *Zarządzanie w sytuacjach kryzysowych*, Szczytno 2016.

Pilżys J., *Zarządzanie kryzysowe*, Międzynarodowe Stowarzyszenie ,,Edukacja dla Obronności i Bezpieczeństwa", Szczecin 2007.

Sienkiewicz-Małyjurek K., Krynojewski F., *Zarządzanie kryzysowe w administracji publicznej, zarządzanie bezpieczeństwem*, Warszawa 2010.

Szymaniuk R., *Istota sytuacji kryzysowej*, „Myśl Wojskowa" 2006, no 1.

Ura E., *Stany nadzwyczajne i zarządzanie kryzysowe* [w:] *Bezpieczeństwo wewnętrzne państwa,* Rzeszów 2015.

Zabłocka-Kluczka A., *Próba oceny procesu zarządzania kryzysowego w kontekście zapewnienia Bezpieczeństwa publicznego w Polsce*, „Zeszyty Naukowe Wyższej Szkoły Oficerskiej Wojsk Lądowych im. gen. T. Kościuszki, no 3 (157)", Wrocław 2010.

Ziarko J., Walas-Trębacz J., *Podstawy zarządzania kryzysowego*, Kraków 2010.

Żywicka A., *Rola samorządu gospodarczego w rozwoju branży turystycznej w Polsce*, „Zeszyty Naukowe WSEI, seria Administracja (1/2011)", Lublin 2011.

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Right of the detained person of the defence in the light of domestic and european standards

Право задержанного человека обороны в свете внутренних и европейских стандартов

Summary

The article is devoted to the subject of detainee's right to defend with the special emphasis of the right to contact the attorney. The precise establishing of the limits concerning the detainee's right to defend and indicating regulations that guarantee the legality of the detainment as well as its control seems to be the key factor in respecting detainee's rights that result from both national regulations and international standards. Due to that fact, the author starts from the analysis of the regulation found in the contents of Art. 42 (2) Polish Constitution, and continues through more elaborated provisions resulting from Art. 245 Polish Code of Criminal Procedure by analyzing its premises and the conditions of detainee's unrestricted contact with the lawyer and indicating the weightiness and significance of the premises found in these provisions in the context of the right to defend. These deliberations are complemented by the references to the stance of European Court of Human Rights which on the account of its judicial decisions provided standards that make the confidentiality of the consultations between the detainee and the attorney even more important.

Keywords: detained person, right to defend, contact with the lawyer

Аннотация

Статья посвящена вопросу права задержанного на защиту с особым акцентом на право контактировать с адвокатом. Точное установление ограничений в отношении права задержанного на защиту и указание правил, которые гарантируют законность задержания, а также его контроль, по-видимому, является ключевым фактором уважения прав задержанного, которые являются результатом как национальных положений, так и международных стандартов. В связи с этим автор исходит из анализа регулирования, содержащегося в содержании ст. (2) Польская Конституция, и продолжает более детально разработанные положения, вытекающие из ст. 245 польского Уголовно-процессуального кодекса, проанализировав его помещения и условия неограниченного контакта задержанного с адвокатом и указав весомость и значимость помещений, содержащихся в этих положениях, в контексте права на защиту. Эти обсуждения дополняются ссылками на позицию Европейского суда по правам человека, которая за счет своих судебных решений предоставляет стандарты, которые делают конфиденциальность консультаций между задержанным и адвокатом еще более важным.

Ключевые слова: задержанное лицо, право на защиту, контакт с адвокатом

1. Introduction

Trial detention, being a legally acceptable breach from the constitutionally guaranteed right of liberty, determined in contents of Art. 41 Polish Constitution, constitutes one of the most neuralgic trial institutions. Triggered by "short-term depriving the man of freedom by competent state agencies"[1] interference in the liberty of the subject, constitutionally provided for the individual, does not mean the lack of determined mechanisms by law pointing to the scope and character of this intervention. On the contrary, it forces the need for precise determining its limits as well as equipping the detained person with the number of rights guaranteeing the legality of apprehension and the control of its correctness, both in the light of constitutional and trial assumptions.

One of the key guaranteeing rights of the detained person is the right of the defence, which should be understood as broadly as possible, on the account of the fact that it is not only a fundamental rule of a criminal trial but also an elementary standard of the legal democratic state, finding its expression in constitutional provisions. Equipping the detained person with the right of the defence both in the constitutional as well as procedural presentation cannot raise any doubts, if we take into consideration that premises of the right of the defence are being updated at the moment of apprehension. It does not only justify the possibility of defending personal interest by the detained person (e.g. possibility of the refusal to testify, the right to inspect the fact files and submit the motion to present evidence), but also to use the help of the lawyer appointed by the defendant or ex officio[2].

Equipping the detained person with the right of the defence is even more justified if attention is paid to a difficult situation of the detained person who does not still have the status of suspected person, and who does not often have knowledge and experience letting him take care about his own rights and interests correctly[3]. In turn, it can cause that decisions made without consultation with the lawyer, can be leading the detained person to behaviours incompatible with his legally protected businesses.

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1 Constitutional Tribunal Judgement from 6 December 2004, SK 29/04, OTK ZU n. 11/A/2004, pos.. 114, pt V and Constitutional Tribunal Judgement from 5 February 2008, K 34/06, OTK ZU n. 1/A/2008, pos. 2, pt III.1.

2 Constitutional Tribunal Judgement from 17 February 2004, SK 39/02, OTK ZU n. 2/A/2004, pos.. 7, pt III 3.; and Judgements from : 6 December 2004, sygn. SK 29/04; 19 March 2007, K 47/05, OTK ZU n. 3/A/2007, pos. 27; 28 April 2009 P 22/07, OTK ZU n. 4/A/2009, pos. 55.

3 Polish Bar Council opinion from 07 May 2013 NRA-56/1/13, http://www.adwokatura.pl/admin/wgrane_pliki/adwokatura-tresc-7580.pdf.

2. Right of the defence of the detained person in the light of Art. 42 par. 2 Polish Constitution and the provisions of the Polish Code of Criminal Procedure

Art. 42 par. 2 Polish Constitution offers essential settling in this regard. It constitutes that everyone against whom criminal proceedings are being conducted, has the right of the defence at all stages of proceedings. Phrase used in this provision "at all stages of proceedings" means that the right of the defence should appear both at prejudical stages as well as before adjudicating bodies, that is courts of all instances.

What is essential from a point of view of the detained person, wording used the Art. 42 par. 2 Polish Constitution "at all stages of such proceedings" should be related to the stage of proceedings which precedes charging the detained person, that is the stage at which the justified presumption exists that person could commit a crime. Right of the defence which is talked about in the Art. of 42 par. 2 Polish Constitution refers to this phase of proceedings which precedes formal charging of a given person.

In connection with constitutional assumptions, the number of rights of the detained person can be found among the provisions of Polish Code of Criminal Procedure. They embrace both the right to obtain information about reasons for the apprehension and the rights asserted to the detained person, and additionally the right of listening to the detained person (Art. 244 § 2 Polish Code of Criminal Procedure), the right to contact the lawyer (Art. 245 § 1 Polish Code of Criminal Procedure), right to notify the closest person about the apprehension (Art. 245 § 2 Polish Code of Criminal Procedure) right to the complaint to the court (Art. 246 § 1 Polish Code of Criminal Procedure).

The scope of these rights finds fulfilment in the situation of justified suspicion of committing a crime by the detained person, not his formal charging, because indicated rights materialize upon starting by investigator bodies first activity aimed at prosecution of the determined person exactly in connection with the justified presumption that the person had committed a crime, or there is a possibility of escape or hiding of the person or covering up evidence of the crime or it is not possible to determine the identity of the person or there are premises to the conduct accelerated procedure. It results in the fact that at the very moment, the

person becomes an entity asserted to use the complete catalogue of rights within the broadly comprehended right of the defence[4].

3. The nature of the right of the detained person to the contact with a lawyer in the light of the regulation of Art. 245 of the Polish Code of Criminal Procedure

From a point of view of the right of the defence of the detained person, the biggest significance is attached to a right of the detained person to contact a lawyer stipulated in contents of Art. 245 Polish Code of Criminal Procedure. It is realization on the level of the procedural act of the right of the defence, stipulated in the Art. 42 par.2 of Polish Constitution, because making a decision to detain is indicative of the existence of justified assumption of committing a crime which updates guarantees determined in the Art. 42 par. 2 of Polish Constitution. It should be underlined that the moment of the apprehension and the first procedural activities are associated with the stress and surprise of the detained person which can lead, especially a person who is the first time is this position, to take premature decisions which can have negative influence. Due to the fact that the behaviour of the suspect in the initial phase of proceedings can be significant for a more distant course of the process and have influence on a possibility to exercise his rights[5], equipping the detained person with the right to contact the lawyer seems fully legitimate. It allows the detained person to avoid the critical mistakes for his legal situation. The mistakes can be avoided by providing the possibility for the detained person to have a professional (as well as unrestricted with presence of the detaining authority) legal advice.

On account of these circumstances, it is essential to enable the detained person to have the effective and professional legal advice at the preliminary stage of criminal proceedings. Such a conversation can effectively serve its purposes – and serve in realization of the right of the defence – only when it is an unrestricted

[4] Judgement of Polish Supreme Court SN from 9 February 2004, V KK 194/03, Prok. i Pr. 2004, n. 7–8, pos. 11 and approbatory opinions: M. Szewczyk, OSP 2004, z. 11, p. 160, S. Pałka, Mon. Praw. 2006, n. 16, p. 891, critical note, A. Sakowicz, PS 2005, n. 9, p. 141; Judgement of Polish Supreme Court from: 26 April 2007, I KZP 4/07, OSNKW n. 6/2007, pos. 45 and from 20 September 2007, akt I KZP 26/07, OSNKW n. 10/2007, pos. 71; Supreme Court opinion adduced by Constitutional Tribunal in judgement in the case K 42/07, jw., pt. III 3., see: A. M. Tęcza-Paciorek, *Pojęcie osoby podejrzanej i jej uprawnienia*, Prok. i Pr. 2011, n. 11, p. 56–57 and B. Nita, *Dostęp osoby zatrzymanej do pomocy obrońcy*. Remarks connected with the judgement of European Court of Human Rights a from 10 March 2009 in Płonka against Poland case, Pal., 2011, n. 11–12, p. 43.

[5] P. Hofmański, A. Wróbel [w:] *Konwencja o ochronie praw człowieka i podstawowych wolności*. Comments to article. 1–18, t. I, ed. L. Garlicki, Warszawa 2010, p. 434.

conversation[6]. Only in conditions of confidentiality, the lawyer can assume that the statements of the detained person are sincere and full. From a perspective of the fundamental principle of equality of arms, it is crucial that the detained person can have access to the professional legal assistance as soon as possible, but also to unrestricted presence of third party. This contact cannot only be boiled down to looking through the records of criminal proceedings and reading the evidence of subject matter, but should, above all, include the contact of the lawyer with his client. The right to obtain the unrestricted legal advice by the detained person – in the preliminary stage of criminal proceedings - has a key importance for guaranteeing the effective possibility to defend on the later stage of the proceeding.

Direct conversation should serve to obtain by the detained person the effective legal advice. It is not only about explaining to the detained person rights asserted to him, but also the consequence for not using them. The contact of the detained person (suspected person, in case of the occurrence of justified assumption of committing a crime) with the lawyer is crucial for ensuring the right to an effective preliminary line of defence in the course of the entire criminal proceedings, if information shared with the lawyer by the detaining person results in possible charging the detained person. The contact of the detained person with the lawyer can be decisive to later course of proceedings and help choose the effective defence.

Taking all above aspects into account, it should be pointed out, that thanks to the personal contact with the client, the defender acquires factual knowledge about the acts of the alleged perpetrator and circumstances of the event being a subject matter of the proceedings, builds the defence strategy, files motions of evidence, if necessary cooperates with other defenders acting in the case. The purpose of the contact and a direct conversation which are mentioned in Art. 245 § 1 Polish Code of Criminal Procedure should be understood exactly this way. Emphasizing the difficult situation of the detained person was a will of the legislator formulating presented code solutions which should guarantee the detainee the possibility of obtaining the direct legal advice from the lawyer, which is undoubtedly the purpose of a real opportunity of contact and conversation between the detained person and the lawyer.

On a side note, one should notice that direct conversation which is mentioned in Art. 245 § 1 Polish Code of Penal Procedure, can also consist in the conversation using modern technologies, so also unrestricted conversation in such a form should be allowed by the detaining authority[7]. However, the contact with the lawyer means the contact with the person who meets the requirements determined by provisions of the structure of the Bar. It can be a counsel appointed as the defender of the detained person in already pending proceedings (Art. 82 and

[6] Polish Bar Council opinion, in the work cited.

[7] Constitutional Tribunal Judgement from 11December 2012 akt K37/11, http://www.dziennikustaw.gov.pl/du/2012/1447/1.

next) or every other counsel, also when the detained person has an already appointed defender in pending proceedings[8].

Attention also be paid to scope of the regulation stipulated in the contents of Art. 245 § 1 Polish Code of Criminal Procedure. Apart from the need to enable detainee on his demand immediate contact with the defender, it also contains essential limitation of the scope of this contact through in fine expression in sentence 1: that "in special cases, justified by exceptional circumstances, detaining authority may reserve his presence".

4. The premise of exceptional circumstances and the contents of the regulation Art. of 245 Code of Penal Procedure

The current wording of contents of the Art. 245 Polish Code of Criminal Procedure is a result of improving procedural guarantees of the detained person. It is an effect of the Constitutional Tribunal (CT) decision from 11 December 2012 K 37 / 11, in which CT recognised, in that in its original notation Art. 245 § 1 was not incompatible with Art. 42 par. 2 in relation to Art. 31 par. 3 Polish Constitution, on this account, it did not show the premise which justified the presence of detaining authority during the conversation between the detainee and the lawyer. Current contents of the regulation Art. 245 Polish Code of Criminal Procedure, amended by the act from 27 September 2013 about the amendment to the act – Polish Code of Criminal Procedure (Journal of Laws of the Republic of Poland pos. 1282) envisage that as for the principle literal wording of the act the exceptional admissibility of reserving the presence of detaining authority during the conversation between the detained person and the lawyer, as the premise points out "in exceptional cases, justified by special circumstances".

Amendment changes of the contents of Art. 245 § 1 Polish Code of Criminal Procedure, being the result of the unconstitutionalities of prior records, justify the participation of detaining authority in a direct conversation with the detained person, exclusively in the situation of the need to protect the correct course of the activities taken in relation to the detention. It should be underlined that the presence of detaining authority at such a conversation may aggravate to exercise the right to the defence for the detained person in proceedings that are about to start or the pending ones[9]. That way, the detained person cannot communicate freely with the lawyer. In particular, he cannot inform the defender of these facts which in his evaluation can indicate his fault. Consequently, this situation can make it

[8] L.K. Paprzycki, Comment to article. 245 Polish Code of Criminal Procedure, [w:] *Kodeks postępowania karnego. Komentarz aktualizowany*, Paprzycki L.K. (ed.), Steinborn S., Grajewski J., LEX/el. 2015.

[9] Ibid.

difficult or even impossible for the lawyer to give the full legal advice to the detained person.

In case of the detention, a general principle should be a direct conversation of the detained person with the defender in absentia of third parties, and reserving the presence of detaining authority should be regarded as the exception. However, it should be underlined that in spite of implementing the limiting premise in the form "exceptional circumstances justifying the presence of detaining authority during the direct contact between the detainee and the lawyer" the verification of the circumstances allowing such presence would be cause a lot of interpretational problems, creating the opportunity for over interpretation, and consequently for abuses in applying the premise on the side of the detaining authority.

The lack of precise determination of circumstances which justify invoking the premise of exceptional circumstances causes the justified concerns that officers of law enforcement agencies will effectively and arbitrarily hinder the direct, not--disrupted contact of the detained person with the lawyer. They will try to prevent the detained person from agreeing on statements or explanations, or the possibility of sharing information via lawyers with other people It can be raised as effectively fulfilled premise of exceptional circumstances justifying, in the assessment of detaining authority, its presence during the direct conversation between a detained person and his lawyer as essential to ensure the correct course of proceedings.

Today law enforcement agencies point out that the presence of the detaining authority during conversations between a detained person and the lawyer is necessary because of:

1. the need to prevent phone contacts of the detained person with other persons than enumerated in the Polish Code of Criminal Procedure, the contacts which are not authorised to the detained person;
2. making impossible the communication of detainee with other persons in order to cover up the tracks, destroy or hide evidence being significant for criminal proceedings or evidence of helping the detained person in hiding;
3. the need to reduce the threat to life and the health of officers and third parties;
4. the need to protect the correctness and the usefulness of performing other procedural activities in the case.

Especially alarming are these arguments which point out to the need of the presence of detaining authority during the conversation between detained person and the lawyer due to concerns that information shared by the detained person to the lawyer will concern preparatory proceedings and consequently will be made available to third parties. It must be strongly emphasized that the lawyer is a profession of the public trust as defined in the Art. 17 Polish Constitution. The lawyer is as trustworthy as police officers, the public prosecutor or the court. On account of ethical and legal norms, it is not possible for the lawyer to share information

obtained from the client with other persons or to perform other actions having features of the aiding and abetting. Assuming that information received from the detained person will be used in order to hamper criminal proceedings is objectionable.

On side note of above deliberations, it should be noticed that in spite of enforcing applied regulations justifying the presence of detaining authority as an exception to the rule, in practice, there are still cases when the representative of the detaining authority invoke the exceptional circumstances, without authenticating them, reserves their presence during the conversation between the detained person and the lawyer. It occurs at equal frequency that the representative of detaining authority is present during such a conversation even without formal stipulating of such presence. It often happens that officers suggest the detainees (prior to their meeting with the lawyer), what consequences they will face if they do not admit to the charges (e.g. applying the temporary detention), as well as situations in which from the moment of detention until the arrival of the lawyer, the detaining authorities conduct unofficial talks with the detained person, aiming at convincing him about the pointlessness of using the help of the lawyer, or even that his presence or the compliance to his advice, will be resulting for the detained person in adverse and negative effects. The practical form of bypassing new regulations is conducting so-called operating activities together with the detained person which actually result in questioning the detained person.

According to the reports of the Ministry of Internal Affairs, the organizational units of Police and Border Guard do not keep statistics determining the number of people exercising a right to the contact with the lawyer, as well as the number of cases, in which officers are present during the conversation between the lawyer and the detainee. The contact of the detained person with the lawyer usually consists in the phone call made in the presence of the police officer, in the course of which the lawyer is officially appointed as the defender in given case. It also happens that the same lawyer appears at the organizational unit of Police and demands the contact with many detained persons in the same case. Few persons exercise the right to contact the lawyer in the moment of detention. In the majority of cases, there is no such a contact, simultaneously police officers often discourage from the contact with the lawyer. Demanding the contact with the lawyer is often ineffective and is not reflected in the records of undertaken activities.

Filing the appropriate stipulation by the detaining authority resulting in his presence in the course of the conversation between detainee and the lawyer, is still supported by the need to protect the public interest, to which Art. 245 § 1 in fine Polish Code of Criminal Procedure should serve, and which in this case is the public safety. The possibility of the stipulation of the detaining authority presence is supposed to counteract sharing information hampering the conduct of criminal proceedings. However, it should be underlined, that collecting evi-

dence indicating the crime, is independent of limiting the free contact between the detained person and the lawyer. It is irrational to treat the presence of the detaining authority during the direct conversation between the detainee and the lawyer as the instrument which serves as a way to gather evidence of the crime in criminal trial. The account of the effectiveness of the proceedings cannot lead to disproportionate limiting the right of the defence[10].

Art. 245 § 1 in fine of the Polish Code of Criminal Procedure does not specify what in fact is the presence of the detaining authority during the direct conversation between the detainee and the lawyer. Practically, it often happens that detaining authority representative is in the same room as the detained person and his lawyer and listens to their conversation.

Art. 245 § 1 in fine of the Polish Code of Criminal Procedure does not also regulate, whether and in what way the detaining authority can use the information obtained because of the presence during the direct conversation between the detainee and the lawyer. Art. 245 § 1 in fine of the Polish Code of Criminal Procedure does not decide in any way, that this information should be encompassed by exclusionary rule. It also does not point out to circumstances which justify filing by detaining authority stipulation. the provision does not determine a form, in which a stipulation should be filed.

In the context of made adjudications, it must be noticed that in spite of the fact that the lawyer providing legal advice to the detainee in the mode of Art. 245 § 1 Polish Code of Criminal Procedure is not a defender, but only a legal adviser of the detained person, in terms of facts he learnt while giving the advice, there is an exclusionary rule of questioning as the witness, so provisions determined in the Art. 178 Polish Code of Criminal Procedure of the impossibility of questioning as a witness are applicable. If during the period of the detention, a detainee is charged with committing a crime (Art. 313), the proxy will acquire the status of the defender[11].

5. Right of the detained person to the contact with the lawyer in ETPC (Convention for the Protection of Human Rights and Fundamental Freedoms) judicature

In the light of above dilatations, attention should be paid to judicature standards developed by ETPC, which in many occasions emphasized the significance of the confidentiality of consultation between the detained person and his lawyer.

[10] Constitutional Tribunal Judgement from 03 June 2008. Akt K 42/07, pt. III.3, http://isip.sejm.gov.pl/Download?id=WDU20081000648 01&type=1.

[11] B. Nita, in the work cited, p. 43.

The crucial conclusion in this respect contained in the context of right of defence can be found in Art. 6 par. 3 c) Convention for the Protection of Human Rights and Fundamental Freedoms which assumes the right to defend personally or by the personally appointed defender, and if there are insufficient funds to cover the costs of the defence, to use the free help to the public defender, appointed ex officio, when interest of justice requires it[12]. The similar scope of the regulation is stipulated in Art. 14 par. 3 d) International Covenant on Civil and Political Rights (EKPC). It grants the right of the presence at the trial, to defend personally or by the chosen defender; to receive information, if the person does not have the defender, about the existence of the above mentioned right and to have an appointed defender for the person in every case, when interests of justices require it, without bearing the costs of the defence in cases when the accused does not have sufficient funds to bear them.

It should be pointed out that ETPC relates a right of the defence determined in Art. 6 par. 3 EKPC also to the preliminary stage of criminal proceedings. Art. 6 EKPC shall apply from the moment in which the position of a given person is changed, even if he was not officially charged (e.g. ETPC judgement from 19 February 2009 on Shabelnik against Ukraine, No. 16404 / 03, § 57)[13].

According to judicature of Strasbourg Tribunal, supervision is acceptable only in case of "very weighty reasons" justifying using it, and the supervision in the form of the authorised person should always constitute the "ultimate remedy" (ultimum remedium)[14].

From the perspective of EKPC, it is unacceptable to conduct acts of legal procedure such as unofficial interrogation (so-called inquiring) of the detainee without the presence of the lawyer in frames of the listening mentioned in Art. 244 § 2 in fine Polish Code of Criminal Procedure[15]. It can create temptation to force incriminating testimony which next can be used as evidence in the case. ETPC point out, that person who demands the legal advice should not be subjected to procedural activities until the advice is obtained (ETPC judgement from 24 September 2009 on Pishchalnikov against Russia, No. 7025 / 04, § 79)[16].

ETPC assumptions and judicature based on it, make it possible to state that also the infringement of the right of the defence takes place when the detained person

[12] International Covenant on Civil and Political Rights from 16 December 1966 r., Journal of Laws of the Republic of Poland 1977 n. 38 pos.167.

[13] Convention for the Protection of Human Rights and Fundamental Freedoms judgement from 19 February 2009 in Shabelnik against Ukraine case, n. 16404/03, § 57.

[14] Convention for the Protection of Human Rights and Fundamental Freedoms judgement from 13 January 2009, *Rybacki against. Poland*, complaint n. 52479/99,§ 57 i n.

[15] J. Skorupka, *W kwestii konstytucyjnych uprawnień zatrzymanego*, [in:] *Węzłowe problemy procesu karnego*, P. Hofmański (red.), Warszawa 2010, p. 455–456.

[16] Convention for the Protection of Human Rights and Fundamental Freedoms judgements from 24 September 2009 in *Pishchalnikov against Russia* case, n. 7025/04, § 79.

is not provided with legal advice (contact with the lawyer) which in consequence will lead to testify which will become a base of pressing charges (ETPC judgement from 27 November 2008 on Salduz against Turkey, No. 36391 / 02, § 55; judgement on Brusco case, § 44–45)[17].

ETPC regulations clearly state that there is a requirement to provide the access to the lawyer from the moment of the first police interrogation. It is even confirmed in ETPC judgement from 17 January 2012 in Fidancı against Turkey case, No. 17730 / 07, § 38[18]. In the light of the ETPC judgement in Salduz case, the help of the lawyer must be already ensured at the first police interrogation, "unless – in the light of particular circumstances of the given case – the appearance of compelling reasons will be demonstrated for limiting the right to lawyer. Even if such compelling reason can exceptionally justify the refusal of the access to the lawyer, such a restriction – whatever its justifying would be – cannot illegitimately violate the rights of the accused, guaranteed in Art. 6. EKPC. The right of the defence is, in principle, violated in the irreparable way when incriminating explanations, submitted during police interrogation without the participation of the defender, are used for later conviction"[19] (also ETPC in the judgement from 17 January 2012 in Fidancı case, § 38).

ETPC directly assumes that a possibility of the contact with the lawyer is one of basic components of the right of the defence outside the scope of the listening of third parties (see ETPC judgements in the John Murray case, § 63 and from 13 January 2009 in the Fishing against Poland case, No. 52479 / 99, § 56) which enables open and honest conversation between the lawyer and his client (ETPC judgement from 19 December 2006 in the Oferta Plus SRL against Mołdowia case, No. 14385 / 04, § 145). The lack of possibility of confidential communication, also receiving secret orders from the client, causes the legal advice to lose much of its effectiveness, while EKPC requires the protection of rights in the practical and effective way (ETPC judgement from 28 November 1991 S. against Switzerland case, No. 12629 / 87, § 48). In Brennan case, ETPC acknowledged that presence of the police officer within hearing range during first consultation between suing person with his lawyer violated his right of the defence (§ 58–63 judgement). ETPC assumed that: "the right to communicate with the lawyer out of hearing range of third parties is one of the primary requirements of the reliable process and results from Art. 6 § 3 c) EKPC (…) If the lawyer is not able to confer

[17] Convention for the Protection of Human Rights and Fundamental Freedoms judgement from 27 November 2008 in *Salduz against Turkey*, n. 36391/02, § 55; judgement in *Brusco case*, § 44–45.

[18] Convention for the Protection of Human Rights and Fundamental Freedoms judgement from 17 January 2012 in *Fidancı against Turkey*, n. 17730/07, § 38.

[19] J. Skorupka*, W kwestii konstytucyjnych uprawnień zatrzymanego,* [in:] *Węzłowe problemy procesu karnego,* P. Hofmański, Warszawa 2010, p. 434–435 and Convention for the Protection of Human Rights and Fundamental Freedom in judgement from 17 January 2012 in *Fidancı* case, § 38.

informally and receive orders from the client, the legal advice loses much of its usefulness, while EKPC requires the guarantee of rights and freedoms which are practical and effective" (judgement §58).

ETPC allows the possibility of certain limitations in the unrestricted contact between the imprisoned client and his lawyer (judgement in the Rybacki case, § 56 and 58), on one condition, there must be an important reason which requires evaluation, whether from a perspective of the entire proceedings this restriction does not cause the violation of right for the reliable process (ETPC judgement from 08 February 1996 in John Murray against the United Kingdom case, No. 18731 / 91, § 63).

What is particularly essential, ETPC in the judgement from 16 October 2001 in Brennan against Great Britain case, No. 39846 / 98, accepted - by stating the EKPC infringement – that presence of the police officer within hearing range during first consultation between suing person with his lawyer, violates his right of the defence (judgement § 58–63). ETPC made such a conclusion in the case of the Irish citizen detained on charges of terrorist activity in Northern Ireland. Limiting the confidentiality of the legal advice in the suing person case was based on the specific regulation (Northern Ireland Emergency Provisions Act 1991, sec. 45) envisaging – exclusively as the exception to the rule – the possibility of the limited access to the lawyer and the confidentiality of the legal advice only if it leads to hampering proceedings concerning acts of terrorism.

ETPC stated the infringement of Art. 6 EKPC in the indicated scope also in the Polish case. Violation of the right of the defence took place due to the fact that the public prosecutor was permanently present, for a few months, during contacts between person in pretrial detention and his defender (judgement in Rybacki case § 57–61). ETPC, allowing the possibility of limiting the right to the unrestricted contact with the defender (see judgement § 58), pointed at the arbitrary character of a decision of the public prosecutor from the account of the lack of abilities of hampering preparatory proceedings in progress as a result of the unrestricted contact between person in pretrial detention with his defender (Ibid., § 59). It was noticed that there had been no accusation of illegal or unethical practices on the side of the defender (Ibid.,, see also a judgement in S. against Switzerland case, § 49).

What is more, the lack of the access to the lawyer in the initial phase of criminal proceedings was one of the essential arguments leading to the infringement of Art. 6 c) EKPC (ETPC judgement from 31 March 2009 in Płonka case § 40 and from 2 March 2010 in the Adamkiewicz against Poland case, No. 54729 / 00, § 89–91.

ETPC explicitly supported providing the detained person with the access to the lawyer. Consequently, it means that ETPC allows a possibility of introducing restrictions in this respect, but on condition of the existence of good cause and provided that from a perspective of the entire proceedings it does not transla-

te into the violation of the right to the reliable process (ETPC judgement from 8 February 1996 in John Murray against the United Kingdom case, No. 18731 / 91, § 63). ETPC is of the opinion that a legal advice should be provided for the imprisoned person in a way, that a conversation with the lawyer about the subject of the case is possible, as well as preparing the defence, collecting evidence beneficial for the suspected person, the preparation for interrogation, supporting the accused and controlling conditions of the detention (ETPC judgement from 13 October 2009 in Dayanan against Turkey case, no. 7377 / 03, § 32).

Conclusions

Examples of the European judicial decision which were presented above, as well as domestic regulation of the right to the contact between detainee with the lawyer, and hence his right of defence emphasize the significance of discussed solutions. The need of the unrestricted contact of the detained person with the professional attorney constitutes the sign of the exercise of the right of the defence, but first of all actual applying equality of arms which in the light of the amendment of the Code of Criminal Procedure seems to be the core of the problem.

Bibliography

Constitutional Tribunal Judgement from 17 February 2004, SK 39/02, OTK ZU n. 2/A/2004, pos. 7, pt III 3.

Constitutional Tribunal Judgement from 6 December 2004, SK 29/04, OTK ZU n. 11/A/2004, pos. 114, pt V.

Constitutional Tribunal Judgements from : 6 December 2004, sygn. SK 29/04; 19 March 2007, K 47/05, OTK ZU n. 3/A/2007, pos. 27; 28 April 2009 P 22/07, OTK ZU n. 4/A/2009, pos. 55.

Constitutional Tribunal Judgement from 5 February 2008, K 34/06, OTK ZU n. 1/A/2008, pos. 2, pt III.1.

Constitutional Tribunal Judgement from 03 June 2008. Akt K 42/07, pt. III. 3, http://isip.sejm.gov.pl/Download?id=WDU2008100064801&type=1.

Constitutional Tribunal Judgement from 11 December 2012 akt K37/11, http://www.dziennikustaw.gov.pl/du/2012/1447/1.

Convention for the Protection of Human Rights and Fundamental Freedoms judgement from 27 November 2008 in Salduz against Turkey, n. 36391/02.

Convention for the Protection of Human Rights and Fundamental Freedoms judgement from 13 January 2009, Rybacki against Poland, complaint n. 52479/99.

Convention for the Protection of Human Rights and Fundamental Freedoms judgement from 19 February 2009 in Shabelnik against Ukraine case, n. 16404/03.

Convention for the Protection of Human Rights and Fundamental Freedoms Judgement from 24 September 2009 in Pishchalnikov against Russia case, n. 7025/04.

Convention for the Protection of Human Rights and Fundamental Freedoms Judgement from 17 January 2012 in Fidancı against Turkey, n. 17730/07.

Hofmański P., Wróbel A., [in:] *Konwencja o ochronie praw człowieka i podstawowych wolności*. Comments to article. 1–18, t. I, ed. L. Garlicki, Warszawa 2010.

International Covenant on Civil and Political Rights from 16 December 1966 r., Journal of Laws of the Republic of Poland 1977 n. 38 pos.167.

Judgement of Polish Supreme Court SN from 9 February 2004, V KK 194/03, Prok. i Pr. 2004, n. 7–8, pos. 11.

Judgement of Polish Supreme Court from: 26 April 2007, I KZP 4/07, OSNKW n. 6/2007, pos. 45.

Judgement of Polish Supreme Court from 20 September 2007, akt I KZP 26/07, OSNKW n. 10/2007, pos. 71.

Nita B., *Dostęp osoby zatrzymanej do pomocy obrońcy.* Remarks connected with the judgement of European Court of Human Rights a from 10 March 2009 in Płonka against Poland case, Pal., 2011, n. 11–12.

Paprzycki L.K., *Comment to article. 245 Polish Code of Criminal Procedure,* [in:] Paprzycki L.K., Steinborn S., Grajewski J. (ed.), Kodeks postępowania karnego. Komentarz aktualizowany, LEX/el. 2015.

Polish Bar Council opinion from 07 May 2013 NRA-56/1/13, http://www.adwokatura.pl/admin/wgrane_pliki/adwokatura-tresc-7580.pdf.

Skorupka J., *W kwestii konstytucyjnych uprawnień zatrzymanego*, [in:] *Węzłowe problemy procesu karnego*, P. Hofmański (ed.), Warszawa 2010.

Tęcza-Paciorek A. M., *Pojęcie osoby podejrzanej i jej uprawnienia*, Prok. i Pr. 2011, n. 11.

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Доступ польши к рынку каботажных перевозок в странах евросоюза в свете юридических регулирований

Polish access to eu market of a cabotage transportation according to the legal regulations

Аннотация

В статье поднимается проблематика каботажных перевозок и их регулирование в законах Евросоюза. Рассматривается процесс внедрения общесоюзного транспортного права в законодательство новых стран членов.

С начала 90-х годов, на территории Евросоюза был отмечен рост каботажных перевозок, большую часть из которых выполняли перевозчики из малых стран. В связи с этим, были изменены обязывающие правовые регулирования, однако для новых стран-членов, большой каботаж был ограничен по причине слишком низких цен.

Автор постарался на примере Польши представить законы обязывающие страны члены Евросоюза в сфере транспорта, а также процесс перехода от ограничений для новых членов к полноценному выполнению каботажных перевозок.

Ключевые слова: каботажные перевозки, юридические регулирования Евросоюза, доступ к рынку

Summary

The article raises the problems of cabotage transportation and its regulation by the EU legislation. It includes discussion of the process of introduction of Union transport right to the law of a new members countries.

Since the early 90's, cabotage transport in the territory of EU visibly increased, mostly due to contribution of small countries. In this regard, legal regulation has to be modified for new member countries, and big scale cabotage has been limited due to very low prices.

Authordiscussed the actual legal rules obligatory for EU members in the field of transport, as well as the transition from the restrictions for a new members to the full implementation of cabotage.

Keywords: cabotage transportation, EU legal regulation, access to the market

Введение

После расширения Европейского союза от 1 мая 2004 года, новые страны, должны были принять положения также в сфере международного транспорта. Эти положения позволяли различать так называемый большой каботаж, означающий перевозки между отдельными странами Евросоюза, а также малый каботаж, который означал перевозки внутри другого, относительно местопребывания перевозчика, членского государства ЕС.

Таким образом Польша при вступлении в Евросоюз приняла положения Распоряжений и Трактатов, где были предусмотрены переходные периоды для отдельных, вступающих к структурам сообщества, государств, касающееся выполнения малого каботажа.

Однако, право Евросоюза, прежде чем прийти к теперешней концепции открытия доступа к рынку для новых государств, прошло через значительные изменения, которые позволили на выработку существующей схемы действий.

Целью статьи является презентация юридических регулирований Евросоюза, которые непосредственно предопределили доступ Польши к рынку каботажных перевозок, и истории создания свободного доступа к транспортному рынку.

1. Процесс либерализации транспортных рынков Евросоюза

Еще в Римских Трактатах, в части посвященной транспорту[1], заложено введение принципов, касающихся международных перевозок товаров. Введение принципов беспрепятственного обмена товарами, лицами, услугами и капиталом, имело важное значение при износе рестрикции хозяйственного обмена в транспорте. Либерализация транспортных услуг должна была служить радикальному введению доступа к международным рынкам.

Усовершенствованное право Евро сообщества относилось также к каботажным перевозкам[2]. Однако процесс либерализации в этой сфере

[1] Ст. 75 параграф 1 обязывает до очерчивания принципов в транспорте „до" или „от" пространства членского государства, а также атрибутивный условий на которых перевозчики, не имеющие постоянного отдела в членском государстве, могут выполнять транспортные услуги на пространстве членского государства.

[2] Каботаж это право на выполнение перевозок на пространстве данного государства ЕС, перевозчиками, которые имеют отделение и ведут хозяйственную деятельность, а также имеют зарегистрированные транспортные средства в другом членском государстве. Каботажная перевозка это своеобразного вида внутренняя, заработная перевозка, осуществляемая временно в принимающем государстве, согласно соответствующим положениям этого государства и положениям Евросоюза.

встретился с большим сопротивлением членских государств Сообщества, действующих для защиты дел собственных перевозчиков. В начале шестидесятых годов, либерализации поддались всего лишь принципы, касающиеся заработков дорожных перевозок товаров[3].

Только небольшая доля рынка международных дорожных перевозок была охвачена этими принципами, преимущественное большинство международных перевозок регулировались билатеральными договорами, заключенными членскими государствами. Потребностью реализации записей Трактата было, однако, замещение двусторонних разрешений квотой общих разрешений.

С 1963 года государства члены Европейского Хозяйственного Сообщества начали первый проект в этой сфере, принимая основания, которые должны были привести к исключению двусторонних квот.

От 1992 международный дорожный транспорт товаров, регулируется новым распоряжением, Директивой 881/92/EXC[4], Ст. 3 которого говорит, что международный транспорт подлежит лицензии Сообщества. Такая лицензия выдана предприятию членским государством, на территории которого он ведет свою хозяйственную деятельность[5] и уполномочивает его к неограниченному доступу к международным рынкам членских государств.

От 1993 года в Европейском союзе в полной мере обязывают либеральные принципы, согласно которыми каждый транспортный союз, который владеет европейской лицензией, выданной одним из членских государств, может выполнять перевозки на этом рынке.

2. Изменения в положениях ЕС в сфере каботажных перевозок

В первой половине девяностых годов, участие каботажных перевозок на территории государств Сообщества было незначительно, обнаруживалась однако растущая тенденция. В 1990 году средняя ценность участия каботажа в государственных рынках выносила 0,07% и выросла к 0,26% в 1995 году (касается перевозок по принципу найма или за плату).

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[3] Директива Совета EXC 62/806/EWG со дня 23.07.1962 года по делу общих принципов дорожного транспорта.

[4] Директива Совета EXC 881/92/EWG со дня 26.03.1993 года по делу доступа к рынку дорожного транспорта товаров в Сообществе, для фрахта „с" или „к" одному из членских государств или через одно из членских государств.

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Выполнение дорожных каботажных перевозок было гарантировано распоряжением Совета 3118/93[6], которое определяло условия выполнения этого вида транспорта.

В каботажных перевозках наиболее активными были перевозчики из малых стран, которые не распоряжаются большим государственным рынком товарных перевозок, касалось это особенно государств Бенилюкса, которые распоряжаясь едва 25% участия каботажных разрешений, из общего количества выполнили 60% всех каботажных перевозок.

От 1 июля 1998 года прекратили обязывать квоты на каботажные перевозки в государствах Европейского союза. Отменены были все рестриктивные положения, которые обязывали. Либерализация права в сфере выполнения дорожных перевозок в сфере каботажных перевозок не выявила существенных изменений в участии перевозчиков членских государств, не наступило также резкое развитие каботажных перевозок. Перевозочная работа, выполненная при каботажных перевозках, выросла в 1999 году едва ли на 2%.

3. Доступ Польши к рынку каботажных перевозок стран Европейского союза после присоединения десяти новых членов

Польские перевозочные предприятия, по вступлению нашей страны в европейские структуры, были допущены, без каких либо ограничений, всего лишь к выполнению большого каботажа, следовательно, между отдельными членскими странами. Достаточным условием было владение лицензией на выполнение международного дорожного транспорта. Потому что с момента входа Польши в Европейский союз, польские транспортные лицензии стали лицензиями сообщества, равноправными с выданными другими членскими странами.

Условия выполнения в членском государстве услуг внутреннего дорожного транспорта вещей перевозчиками, регулирует Распоряжение 3118/92 Совета ЕХС[7]. Согласно Статье 1 этого Распоряжения, каждый перевозчик, который занимается заработной дорожной перевозкой

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[6] Распоряжение Совета ЕХС 3118/93 со дня 25.10.1993 года устанавливающие условия выполнения в членском государстве услуг внутреннего дорожного транспорта вещей перевозчиками, не имеющим своего отдела в этом государстве.

[7] Ст. 75 параграф 1 обязывает до очерчивания принципов в транспорте „до" или „от" пространства членского государства, а также атрибутивный условий на которых перевозчики, не имеющие постоянного отдела в членском государстве, могут выполнять транспортные услуги на пространстве членского государства.

вещей, владеет лицензией сообщества, имеет полномочия к временному выполнению дорожного транспорта вещей в другом членском государстве.

Согласно Акцессорному Трактату, в порядке отступления от вышеупомянутой статьи, предусмотрены переходные периоды для отдельных, вступающих к структурам сообщества государствам, касающееся выполнения малого каботажа. В результате ведения переговоров установлено, что в этом периоде польский рынок дорожного транспорта будет недоступен для перевозчиков Евросоюза, как также для перевозчиков других государств, новозачисленных в Европейский союз.

Принятие переходного периода вызвало определенные пертурбации в интерпретации закона о дорожном транспорте8, который допускал выполнение каботажных перевозок перевозчиками из других членских государств на территории нашей страны. Эту запись исключили регулирования, внесенные в Акцессорном Трактате, – закон высшего ряда международного значения.

Во время ведения переговоров, Польша представляла позицию, что с момента акцессии, должен быть введенным полный и немедленный доступ к рынку дорожных перевозок вещей. Статья 107 Трактата выражала готовность нашей страны к полной либерализации доступа к выполнению каботажных перевозок вещей перевозчиками членских стран Европейского союза на своей территории с момента вступления Польши в европейские структуры, по принципу взаимности.

Однако, оговоренный Польшей переходной период, создавал наихудшие условия из возможных. Потому что он предусматривал пятилетний запрет проведения автомобильных дорожных перевозок на территории другого членского государства. Положения, что правда, допускали возможность сокращения этого периода до трех лет, но ставили в зависимость проведение этих перевозок от общих ведений переговоров между отдельными членскими государствами.

Окончания трехлетнего переходного периода с нетерпеливостью ожидали польские перевозчики, учитывая, что любой из важных рынков Евросоюза для них откроется. Уже в марте 2007 года, перед окончанием этого периода, появились тревожные сигналы вытекающие из Европейской Комиссии, что такие страны как Великобритания, Италия, Бельгия и Германия уже продлили переходный период на следующие два года.

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[8] Каботаж это право на выполнение перевозок на пространстве данного государства ЕС, перевозчиками, которые имеют отделение и ведут хозяйственную деятельность, а также имеют зарегистрированные транспортные средства в другом членском государстве. Каботажная перевозка это своеобразного вида внутренняя, заработная перевозка, осуществляемая временно в принимающем государстве, согласно соответствующим положениям этого государства и положениям Евросоюза.

Польское правительство смогло получить открытие транспортных рынков, по принципу взаимности, в сфере внутреннего каботажа всего лишь в Португалии, Ирландии, а также Швеции. Можно изложить взгляд, что эту проблему пробовали решить очень мало интенсивно, и отечественные перевозчики в дальнейшем были отсечены от наибольших внутренних рынков государств Европейского союза, что не содействовало развитию этой отрасли в стране.

Существовала, однако, возможность выполнения польскими перевозчиками каботажных перевозок в других странах Евросоюза, которые владеют соответственно большими внутренними рынками. Необходимо, однако, для этого было формальное основание хозяйственной деятельности в данном государстве Евросоюза, где перевозки должны были быть осуществляемыми. Такое действие требовало немалых средств и формальностей, а также преодоления многих затруднений.

От 1 мая 2009 года, когда прошел пятилетний переходный период, польские перевозчики должны были получить полную доступность к внутренним транспортным рынкам других государств Евросоюза. При этом следовало иметь надежду, что ни одно из государств ЕС, не решится на применение клаузулы безопасности.

Такие государства как Франция, Италия, Великобритания, а прежде всего Австрия, выражали мнение, что еще слишком рано, чтобы каботажные перевозки стали повсеместным явлением на европейских дорогах.

4. Юридические регулирования каботажа

Перед введением в жизнь директивы ЕС 1072/2009/WE каботажные перевозки регулировались следующими юридическими актами:

1. распоряжениями: (EXC) номер 881/92 и (EXC) номер 3118/93,
2. директивой 2006/94/WE.

Они не давали настолько больших прав перевозчикам, как теперь, главное со взгляда на временный характер возможности каботажных перевозок. Теперь перевозчики постоянно могут выполнять услуги этого типа.

Установка общей транспортной политики охватывает, между прочим, определение общих правил, имеющих применение к доступу к рынку международных дорожных перевозок вещей на территории Сообщества, как также установление условий, на которых перевозчики, не имеющие отдела в членском государстве, могут оказывать перевозочные услуги на территории данного членского государства. Эти правила следовало определить таким способом, чтобы они способствовали исправному функционированию внутреннего транспортного рынка.

С целью уверения связанных юридических рамок для международных дорожных перевозок вещей, внедряемо в Сообществе право должно было иметь применение ко всем международным перевозкам на территории Сообщества. Перевозка с членских государств к третьим государствам, по-прежнему, в широкой сфере регулируют двусторонние договоры между членскими государствами и отдельными третьими государствами. Это распоряжение не должно иметь применения к части проезда на территории государства члена загрузки или разгрузки, так долго как необходимые договоры между Сообществом и данными третьими государствами не были составлены. Оно должно, однако, иметь применение на территории членского государства, через которое происходит транзит.

Распоряжение ЕС 1072/2009/ WE имеет применение в международных заработных дорожных перевозках вещей в проездках на территории Сообщества. В случае перевозки с членского государства до третьего государства и в обратном направлении, данное распоряжение имеет применение к части проезда на территории произвольного членского государства, через которое происходит транзит. Распоряжение не имеет применения к той части проезда на территории государства членской загрузки или разгрузки, если не был составлен необходимый договор между Сообществом и данным третьим государством.

Распоряжение 1072/2009/WE имеет применение к государственной дорожной перевозке вещей, реализованной на основании временного разрешения перевозчика, не имеющего отдела в данном членском государстве

Условия на которых может происходить каботаж:

1. каботажные перевозки могут выполняться перевозчиком после первой разгрузки в рамках международной перевозки, что автоматически исключает догрузки на территории членского государства (другого чем местопребывание Перевозчика) перед первой разгрузкой вещей, ввезенных на территорию принимающего государства.
2. каботажная перевозка может предоставляться только и исключительно этим самим транспортным средством, которым осуществляется международная перевозка и с помощью, которого доставлено вещи в международном движении, которое приходит.
3. Количество каботажных перевозок на территории членского государства, в котором Перевозчик не имеет своего отдела, – было ограничено к 3 перевозкам. Но особенное внимание следует обратить на термин, в котором могут реализоваться каботажные перевозки – ошибочно некоторые подают, что допущены 3 перевозки на протяжении 7 дней. Указано пограничный термин для последнего из каботажных перевозок. Согласно представляемы законом – последняя разгрузка вещей из 3 возможных каботажных перевозок, должна иметь место позже

всего в седьмой день по разгрузке выплывающей из международного транспорта, который реализовывается. То есть, в случае перевозочного задания в международном транспорте (которое реализовывается через несколько разгрузок на территории данного членского государства) лишь термин последней разгрузки автоматически определяет дату последней разгрузки в рамках каботажа, перед выездом из принимающего государства. Следует также подчеркнуть, что каждая разгрузка товара в процессе каботажной перевозки трактуется как отдельная каботажная перевозка.

4. Кроме того, в случае въезда без груза на территорию членского государства, Перевозчик имеет право выполнить одну каботажную перевозку на протяжении трех дней от дня въезда в членское государство. По мнению второго абзаца ст. 8 параграфа 2 Распоряжения 1072/2006 на одно членское государство может приходиться исключительно одна перевозка. Это необыкновенно существенное регулирование для перевозчиков, которые возвращаются пустыми в трансграничном движении.
5. Документация. Подчеркнуто также необходимость владения всевозможными доказательствами, подтверждающими согласие каботажных Определение предложения, которое следует тогда применять: «серьезное нарушение на государственном транспортном рынке на данном географическом пространстве» помечает возникновение специфических для этого рынка проблем, которые влекут серьезный и потенциально прочный излишек предложения над спросом, с которым связывается угроза для финансового равновесия и для выживания многочисленных предприятий, выполняющих дорожные перевозки вещей.

В случае серьезных нарушений государственного транспортного рынка на данном географическом пространстве, вызванных или усиленных через каботаж, каждое членское государство может обратиться к Комиссии с целью применения охранных средств и передает ее необходимую информацию, а также извещает ее, какие намеревается предпринять действия на своей территории по отношению к имеющим отделы на его территории перевозчикам. Комиссия исследует ситуацию, в частности на основании соответствующих данных и (после консультации с комитетом, о котором речь в ст. 15 параграфов 1) в срок месяца от поступления предложения членского государства принимает решение, или необходимы охранные средства и в случае необходимости принимает их. Эти средства могут охватывать временное выключение данного пространства из области применения данного распоряжения. Средства, начатые согласно данной статье, остаются в силе на протяжении периода не более чем шести месяцев,

который может быть одноразово продлен, на такой же период. Комиссия безотлагательно извещает членские государства и Совет о всевозможных решениях, начатых на основании данного параграфа.

Распоряжение ЕС 1072/2009/WE, которое регулирует каботажные перевозки на территории Европейского союза обязывает в полной мере от 4 декабря 2011 года.

Выводы

Создание общей транспортной политики Евросоюза, влечет за собой ликвидацию всевозможных ограничений по отношению к предоставляющим услуги, на основании их государственной принадлежности или факта, что имеют отделение в другом членском государстве, чем то, в котором услуга должна предоставляться.

Постепенное внедрение целостного европейского рынка, должно вести к ликвидации ограничений в доступе к внутренним рынкам членских государств. Следует, однако, взять к сведению, при этом действенность контроля, а также развитие условий трудоустройства в этой профессии, гармонизацию положений, между прочим, в отрасли внедрения, оплат, наложенных на пользователей дорог, а также положений, касающихся социальных вопросов и безопасности. Комиссия должна точно контролировать рыночную ситуацию, а также ход упомянутой выше гармонизации, а также – если это будет соответствующим – предлагать дальнейшее открытие государственных рынков дорожного транспорта, в этом каботажных перевозок.

Целью регулирования каботажных перевозок, является охрана местного рынка государственных перевозчиков. В высокоразвитых странах, ставки за транспорт более высоки и существует опасение, что если бы позволить более дешевым перевозчикам ездить, оказывая внутренние услуги, предприниматели этого государства могли бы понести из этого заглавия колоссальные потери. Поэтому страна, которая отметит негативное влияние на собственный транспортный сектор, вызванный каботажными перевозками, может обратиться к европейской комиссии с просьбой, о временном запрете каботажных перевозок на территории собственной страны.

Библиография

Распоряжение Совета ЕХС 3118/93 со дня 25.10.1993 года устанавливающие условия выполнения в членском государстве услуг внутреннего дорожного транспорта вещей перевозчиками, не имеющими своего отдела в этом государстве.

Директива Совета ЕХС 62/806/EWG со дня 23.07.1962 года по делу общих принципов дорожного транспорта.

Директива Совета ЕХС 881/92/EWG со дня 26.03.1993 года по делу доступа к рынку дорожного транспорта товаров в Сообществе, для фрахта „с" или „к" одному из членских государств или через одно из членских государств.

Распоряжение Совета ЕХС 3118/93 со дня 25.10.1993 года устанавливающие условия выполнения в членском государстве услуг внутреннего дорожного транспорта вещей перевозчиками, не имеющим своего отдела в этом государстве.

Закон о дорожном транспорте с дня 6.09.2001 года.

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Adjustment of Polish banks to international standards as a factor of globalization of the national financial system

Приспособление банков в польше к международным стандартам как существенный фактор глобализации государственной финансовой системы

Summary

Banking system currently operating in Poland is one of the most adapted to EU standards sector of the economy. An important date was a year 2004, when Poland became a part of the market structures of the European Union. Currently, it is assumed that the processes of globalization of financial markets and the banking system in Poland have substantially accelerated since 2004 due to Polish accession to the EU. The unification of the provisions of legal regulations relating to banking entities operating in different countries was a key factor in these adjustment processes.

Аннотация

Банковская система, действующая в настоящее время в Польше, является одной из наиболее адаптированных к стандартам ЕС сектора экономики. Важной датой стал 2004 год, когда Польша стала частью рыночных структур Европейского Союза. В настоящее время предполагается, что процессы глобализации финансовых рынков и банковской системы в Польше значительно ускорились с 2004 года из-за вступления Польши в ЕС. Унификация положений правовых норм, касающихся банковских организаций, действующих в разных странах, является ключевым фактором в этих процессах корректировки.

Keywords: banking law, information systems, cybercrime, globalization, internationalization, unification, standardization, financial system, banking system, European Union

Ключевые слова: банковское право., информационные системы, киберпреступность, глобализация, интерперсонализация, унификация, стандартизация, финансовая система, банковская система, Европейский союз, банковское право.

Introduction

Globalization processes taking place in Poland were determined mainly by specific economic factors as well as socio-economic and cultural unification of the community. Due to the process of marketization and the transformation of the Polish economy which began in the 90s, this process was also determined by increasing integration of financial markets and the development of ICT. Social and economic determinants, including patterns and standards transferred from Western Europe to Poland, play also an important role in these globalization processes. However, these processes may involve the negative aspects for many countries and local communities. Transactions carried out electronically through the Internet increase the risk of cyber attacks on systems, electronic banking and domination of the domestic banking system by foreign financial institutions[1]. In the 90s, direct investment, involving the acquisition of banking entities in Poland by foreign financial institutions, were considered positively due to lack of a national financial and technological capital. This process were related to consolidation and concentration of capital in the banking sector what is considered as important determinants of economic globalization processes affecting the economic development of the banking system in Poland.

1. Determinants of financial systems globalization

Since the 70s of the last century, business process management has changed significantly. The development of ICT becomes an additional source of technological progress. The oil crisis caused by a significant increase in the price of a barrel contributed significantly to the development and dissemination of energy efficient technologies consuming smaller amounts of this valuable raw material. A derivative of these cyclical changes is processes that modified financial systems and institutions. In connection with the aforementioned economic slowdown of the 70s of the last century, governments of developed countries implemented neo-liberal programs in the economic policy based on the monetarist theory of Milton Freedman. This theory was underpinned by neo-classical interpretation of the role and growing importance of new categories of factors of production including technology and information. Neo-classical monetarist ideas have been also implemented in the financial system. Applied on a larger scale they have obtained attributes of state intervention, which main instruments are money and leaving the gold standard in the US in the 70s. Neo-classical school stressed the need to increase

[1] W. Rydzewski, A. Banach, *Bezpieczeństwo i niezawodność,* [in] „Bank. Miesięcznik Finansowy", Bezpieczeństwo, raport specjalny, No. 4 (276), Centrum Prawa Bankowego i Informacji, Warszawa, April 2016, p. 41.

the degree of marketization and the elimination of barriers to the creation of new types of stock exchange transactions and the creation of new financial derivatives[2]. Therefore, processes of deregulation, computerization and internationalization of financial systems seen in many countries have intensified.

Similar deregulation processes have begun also in Poland only since 1989, because the process of marketization of Polish economy has started then after half a century of a centrally planned economy, commonly called the economy of real socialism. The begining of the process of system and economic transformation in 1989 was followed by successively marketization of the economy, including commercialization, privatization, restructuring of many state companies. The next stage of social and economic changes that were started in the 90s was a gradual adaptation of the various aspects of the economy, businesses and the society to the standards set in the countries of Western Europe as well as technological standards and the legal basis of the European Union. The adjustment process of the Polish economy to the EU standards was determined by the plan of future accession to the European Union market structures. This plan, formulated by the central bank, Narodowy Bank Polski, in the early 90s, was finalized in the spring of 2004, when Poland became an integral and significant economically and financially part of the EU[3].

Since the 70s these global processes have been integral components of economic globalization, which has increasingly concerned the Polish economy and the economic entities since 1989. Since the early 90s of the last century a growing importance of globalization processes in the field of socio-economic and cultural unification of the community in Poland has been noticed. Due to the ongoing process of the transformation of the Polish economy, this process was also determined by successively increasing integration of financial markets and the development of information and communication technologies. A key role is played by the social and economic determinants, formed on the basis of standards transferred from the countries of Western Europe to Poland. These mentioned social aspects have influenced the functioning of various spheres of Polish society and sectors of the economy, including the financial system.

Financial system in Poland, including the banking sector is considered to be almost fully adapted to the standards the European Union what also means a high level of globalization in this segment of the economy. This process has intensified since the Polish accession to the European Union in 2004 when social and economic determinants of globalization processes have been activated. A few years later, the scale of the globalization of the Polish economy is beginning to match that of Western Europe. The key determinants of this process include direct in-

[2] M. Wiatr, *Bankowość korporacyjna*, Wydawnictwo Difin, Warszawa 2015, p. 85.

[3] E. Czarny, K. Śledziewska, *Międzynarodowa współpraca gospodarcza w warunkach kryzysu*, Wydawnictwo PWE, Warszawa 2013, p. 57.

vestments made by foreign corporations in Poland. As part of these investments, more modern technology and business standards developed in the previous, long-term functioning of the leading foreign company in the so-formed capital group were introduced in economic entity taken over by a foreign company or a financial institution. This kind of investment processes, which was often linked with privatization and restructuring of acquired Polish companies, have also concerned institutions in the banking sector. The first such direct investment in the banking sector in Poland were made already at the beginning of the 90s, ie. almost immediately after the start of social changes, activation of the society in the field of entrepreneurship, that is, the processes associated with the socio-economic transformation since 1989[4].

Aforementioned adaptation processes have also related to the financial system, including the banking sector in Poland, reconstructed in the market conditions. Arbitrarily determined and coordinated by the central bank adaptation processes of the banking system in Poland to the EU standards were significant determinants of globalization processes. A broad scope of globalization of financial markets in Poland was exposed in the context of the course of the last financial crisis of 2008[5].

2. Adjustment of Polish banks to international standards

The foregoing analysis confirmed the theory that level of adaptation of the Polish banking sector to the standards of developed countries, mainly in relation to banking systems in the countries of Western Europe and guidelines formulated by the European Union authorities, has been gradually increasing since the 90s[6]. Therefore, the main directions of development of the banking system in Poland are determined through the prism of integration of Poland with structures of the European financial system. The need for this integration and its character to a large extent determined the consolidation processes taking place in the Polish financial sector. The process of bringing the national banking system, various internal procedures of banking operations and the quality of services to interna-

[4] S. Gwoździewicz, D. Prokopowicz, *Globalization and the process of the system and normative adaptation of the financial system in Poland to the European Union standards* [in] "Globalization, the State and the Individual. International Scientific Journal" No 1 (9) 2016. University of Varna. ISSN 2367-4555. Varna, Bulgaria 2016, p. 68.

[5] B. Domańska-Szaruga, *Common banking supervision within the financial safety net*, [in] *The Economic Security of Business Transactions. Management in business*, Chartridge Books Oxford 2013, p. 264.

[6] S. Gwoździewicz, *The European Union Towards the Threats in Cyberspace,* [in] Internatonal Scientific Journal "Verejna Sprava a Spolocnost", Vol. XV, No. 2/2014, ISSN 1335-7182, Košice, Slovakia 2014, p. 78.

tional standards, ie. mainly those of the European Union and the OECD, is the result of top-down requirements of Polish accession to the European Community on the one hand and on the other hand bottom-up objective process of improving the quality of financial products to similar instruments offered by foreign banks, some of which have already operated in Poland. In this second approach, pace and effectiveness of the adjustment process was determined to a large extent by opportunity for foreign financial institutions to take over banks operating in Poland. Entering of foreign capital in the Polish financial services market was one of the forms of the consolidation[7].

This adjustment process occurring since the 90s is analyzed mainly from the positive aspects, especially with regard to improving the effectiveness of banking supervision and offers provided by domestic banks. Efforts to adjust Polish banking legislation to the EU standards focused on prudential regulation mainly in terms of the whole system. Since 1999, the interest of the banking community and the government has been directed towards the protection of the interests of bank customers and the decisions relating to consumer credit.

Macroeconomic changes in the domestic banking system, concerning the adoption of specific models developed in Western countries, are not directly related to the mentioned process of adjustment in such a way as improvement of the quality of the offer of individual banks. This thesis is related to the specificity of EU regulations concerning operation of commercial banks in the EU member states. These regulations are published as mandatory legal norms or recommendations containing only recommendations for alternative use. Mandatory legal norms are shaped by the bodies of the European Commission, central banking institutions and national supervisory bodies. While recommendations are issued by the Basel Committee on Banking Supervision, acting as the EU supervisor for commercial banking in the European Union. The specificity of European Union regulations is that they do not contain, however, decisions whether to develop a special purpose banking, as well as whether to allow the creation of financial conglomerates.

The answer to the question: how the process of adjustment of Polish banking to EU standards has reduced the level of specific types of banking risks – is the basis of the assessment of the process of improving credit risk in domestic banks. The answer to this question must take into account the new categories of risks that currently arise as a result of the spreading of information technology in credit services[8]. It is assumed that improvement of control, credit and cyber risk management schemes in the Polish banking system is determined by the same process that occurs in the rapidly changing European banking. Comparison of Polish and foreign banks in 1995 pointed to a low efficiency of the former in terms of e.g. risk

[7] D. Prokopowicz, A. Dmowski, J. Sarnowski, *Finanse i bankowość. Teoria i praktyka*, Wydawnictwo Centrum Doradztwa i Informacji Difin sp. z o.o., Warszawa 2008, p. 137.

[8] S. Gwoździewicz, D. Prokopowicz, *op. cit.*, p. 69.

management and controlling. The observed disparities have been reduced in subsequent years. The primary obstacle for adjustment process is that Polish banks belong to small financial institutions in the context of foreign banking.

The main prerequisite for continuation of the described adjustment process of the Polish banking sector to EU standards is a vivid predominance of defined aspects which are interpreted in positive terms for these processes. Central institutions, including the central bank, assume that ultimately the process of formation of the national banking system, the formation of a particular banking model and adjustment of procedures and offer to EU standards should lead to a market friendly banking system in Poland within a few years.

Polish accession to the European Union market structure in 2004 was determined by the fulfillment of a number of formal and institutional conditions. They concerned also the financial services sector, mainly through appropriate changes in the banking law and other legal regulations of the credit market in Poland. The adjustment process was formally initiated on 16 December 1991 in Brussels by signing of the Europe Agreement which committed our country to unify legislation with the European Union standards. The banking system in Poland by approaching its shape and image to the EU on the one hand increases the safety level of the national banking reducing the risk of the collapse of individual banks, on the other hand improves the quality of banking services in the long term. Improvement of the quality of services offered by national banks also includes better management of credit risk. It will increase the level of security deposits and credibility of national financial institutions which offer also credit products. The said adjustment process which includes standardizing of regulations defining tools for credit risk management is mainly based on the so-called Second Banking Directive adopted on 15 December 1989. It is the constitution of European banking supervision law. The unification of standards in banking is not possible through mechanical transposition of Western models through appropriate modification of legal norms[9]. Banks in the EU member states have much higher capital and they construct their services offer in such a way that they pursue the interests of customers first of all. Recapitalization of domestic banks and change of management culture cannot be achieved by modifying the legislation.

At the end of the twentieth century it was generally assumed that the banking system in Poland was one of the sectors of economy which were best prepared for integration with the financial system of the European Community. On the other hand, there are still unresolved issues that need further works on legal rules as well as bank's internal procedures. Consolidation processes have several positive consequences, e.g. increase in standardization of procedures, banking operations,

[9] J. Świderska, *Współczesny system bankowy. Ujęcie instytucjonalne*, Wydawnictwo Difin, Warszawa 2013, p. 81.

ICT systems and products and services targeted to customers in the traditional form or via the Internet[10].

Tab. 1. Increase in standardization of bank's internal procedures and ICT systems

	Increase in standardization of bank's internal procedures	Increase in standardization of ICT systems in Polish banking system
Prerequisites of standarization	Unification of financial operations procedures and methodological classification of borrowers and credit risk as well as customer segmentation implemented by the criterion of standardization of the bank's offer.	Progressive standardization of techniques and data transmission equipment leads to increased efficiency of operations, including the time of their execution It determines also improvement in the quality of services offered to customers.
Limitations of standardization	The unification of procedures to ensure efficient customer service, realized traditionally or through electronic banking. Internal procedures to maintain an appropriate level of security of the transactions cannot be fully standardized, because every bank improves them by itself.	Services of electronic data exchange, archiving and system security tools already have the appropriate legal basis for their operation and use in the field of bank activity[11]. On the other hand, uniform standards are still not widespread because of the cost of equipment used to generate and read the electronic signature.
An example of the lack of full standardization	In the process of assessing the financial situation of the applicant's banks use different databases on borrowers, mainly the database developed independently.	Banks use various ICT systems, systems for electronic banking and automated procedures of credit – credit scoring.

Source: own work

Changes in the national banking system in the macro scale concerning the adoption of specific standards developed in the banking systems of Western countries are not directly related to the mentioned process of adjustment in such a way as improvement of the quality of the offer of individual banks. This thesis is concerned with the dilemma that EU regulations do not, however, contain clear guidelines, whether to develop a special purpose banking, as well as whether to allow the creation of financial conglomerates[12].

The main directions of the transformation of the banking system in Poland and the adjustment of the domestic banking to EU standards were set in the early 90s and the central bank was the main coordinator of the adjustment process. Ultimately the process of formation of the national banking system, the formation of a particular banking model and adjustment of procedures and offer to EU standards should lead to a market friendly banking system in Poland within a few years. The main problem is a domination of foreign banking capital from the old European Union with relation to low penetration of the Polish banking services

[10] M. Białas, Z. Mazur, *Bankowość wczoraj i dziś*, Wydawnictwo Difin, Warszawa 2013, p. 38.
[11] W. Rydzewski, A. Banach, *op. cit.*, p. 41.
[12] M. Kalinowski, M. Pronobis, *Rynki finansowe a gospodarka realna. Aktualne wyzwania*, Wydawnictwo CeDeWu, Warszawa 2015, p. 62.

market by US financial institutions. Theory that the Anglo-Saxon financial markets and entities are more efficient has gained more and more supporters since the 90s[13].

Conclusions

Commercial banks in Poland are almost fully adjusted to technological, procedural and normative standards of the European Union what resulted in a high level of globalization of this segment of the economy at the beginning of this century. The process of globalization has intensified since Polish accession to the European Union in 2004.

The processes of economic globalization taking place in Poland have been continued in recent years. Globalization concerns, inter alia, increasingly international financial systems, including banking in Poland. The nature of these global processes has been changing. They have gone beyond the mere improvement of information technology and e-banking. Current globalization processes have been determined by the process of liberalization of capital flows, deregulation of currency markets and the increasing investments in the capital market instruments, including the use of derivatives what has progressed since the 70s of the last century. Analogous processes are also observed in the banking system in Poland and in financial instruments and organizational structures of the capital market. Capital markets in Poland are also highly globalized, what was confirmed by rapidly changing situation on the Warsaw Stock Exchange, Forex currency markets, commodities exchanges etc. in the context of the financial crisis in 2008[14].

Investment banking in the banking system in Poland is developed in a much narrower range than in developed countries, so there were no sources of financial crisis in Poland. However, this crisis spread across borders by globalized financial markets and hence appeared also in Poland. Currently in post-crisis economic conditions it is widely accepted that the process of globalization of financial markets and the banking system in Poland is determined mainly by factors such as administrative and supervisory functions of central banking and supervisory bodies in the financial system and adaptation of legal norms to the standards of Western developed countries.

[13] D. Prokopowicz, A. Dmowski, *Rynki finansowe*, Wydawnictwo Centrum Doradztwa i Informacji Difin sp. z o.o., Warszawa 2010, p. 137.

[14] W. Patrzałek, *Zachowania podmiotów w warunkach globalizacji rynków*, Wydawnictwo Scholar, Warszawa 2011, p. 62.

Bibliography

Białas M., Mazur Z., *Bankowość wczoraj i dziś*, Wydawnictwo Difin, Warszawa 2013.

Czarny E., Śledziewska K., *Międzynarodowa współpraca gospodarcza w warunkach kryzysu*, Wydawnictwo PWE, Warszawa 2013.

Domańska-Szaruga B., *Common banking supervision within the financial safety net*, [in] *The Economic Security of Business Transactions. Management in business*, Chartridge Books Oxford, Oxford 2013.

Gwoździewicz S., Prokopowicz D., *Globalization and the process of the system and normative adaptation of the financial system in Poland to the European Union standards* [in] "Globalization, the State and the Individual. International Scientific Journal" No 1 (9) 2016. University of Varna. ISSN 2367-4555. Varna, Bulgaria 2016.

Gwoździewicz S., *The European Union Towards the Threats in Cyberspace* [in] Internatonal Scientific Journal "Verejna Sprava a Spolocnost", Vol. XV, No. 2/2014, ISSN 1335-7182, Košice, Slovakia 2014.

Kalinowski M., Pronobis M., *Rynki finansowe a gospodarka realna. Aktualne wyzwania*, Wydawnictwo CeDeWu, Warszawa 2015.

Patrzałek W., *Zachowania podmiotów w warunkach globalizacji rynków*, Wydawnictwo Scholar, Warszawa 2011.

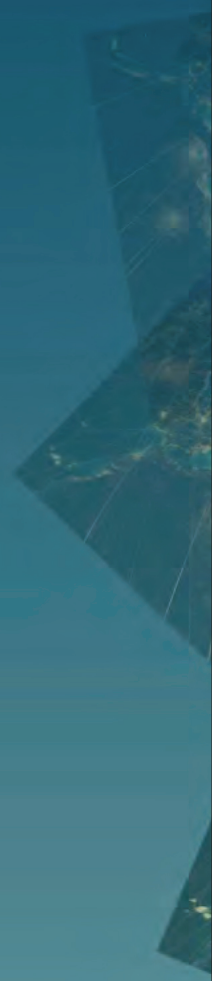
Prokopowicz D., Dmowski A., *Rynki finansowe*, Wydawnictwo Centrum Doradztwa i Informacji Difin sp. z o.o., Warszawa 2010.

Prokopowicz D., Dmowski A., Sarnowski J., *Finanse i bankowość. Teoria i praktyka*, Wydawnictwo Centrum Doradztwa i Informacji Difin sp. z o.o., Warszawa 2008.

Rydzewski W., Banach A., *Bezpieczeństwo i niezawodność,* [in:] "Bank. Miesięcznik Finansowy", Bezpieczeństwo, raport specjalny, No. 4 (276), Centrum Prawa Bankowego i Informacji, Warszawa, April 2016.

Świderska J., *Współczesny system bankowy. Ujęcie instytucjonalne*, Wydawnictwo Difin, Warszawa 2013.

Wiatr M., *Bankowość korporacyjna*, Wydawnictwo Difin, Warszawa 2015.



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