European Journal of Law and Political Sciences

№ 3 2015

«East West» Association for Advanced Studies and Higher Education GmbH

Vienna
2015

European Journal of Law and Political Sciences

Scientific journal

№ 3 2015

ISSN 2310-5712

European Journal of Law and Political Sciences is an international, German/English/Russian language, peer-reviewed journal. It is published bimonthly with circulation of 1000 copies.

The decisive criterion for accepting a manuscript for publication is scientific quality. All research articles published in this journal have undergone a rigorous peer review. Based on initial screening by the editors, each paper is anonymized and reviewed by at least two anonymous referees. Recommending the articles for publishing, the reviewers confirm that in their opinion the submitted article contains important or new scientific results.

Instructions for authors

Full instructions for manuscript preparation and submission can be found through the "East West" Association GmbH home page at: http://www.ew-a.org.

Material disclaimer

The opinions expressed in the conference proceedings do not necessarily reflect those of the «East West» Association for Advanced Studies and Higher Education GmbH, the editor, the editorial board, or the organization to which the authors are affiliated.

Typeset in Berling by Ziegler Buchdruckerei, Linz, Austria.
Printed by «East West» Association for Advanced Studies and Higher Education GmbH, Vienna, Austria on acid-free paper.

Section 1. Public Administration

Irna Dobi (Peshkepia),
PhD.cand at European University of Tirana, in International Law
E-mail: peshkepiairna@yahoo.com

The impact of the EU through public administration democratization in Albania; a comparison with the Croatian model

Abstrakt: The European Union (EU) has helped accelerate Western Balkan countries' efforts to deepen their democracies [16; 17; 27]. No other region of the world has a vibrant regional organization willing to promote democratization through its willingness to open itself up to new, neighboring members who meet certain democratic and market conditions and to provide aid to assist democratization and marketization. Has the EU extended its success in promoting democratic statebuilding from Central Europe to the Western Balkans?

Keywords: Democratization, public administration, candidate countries, state-building etc.

Introduction

This paper investigates the impact of the EU's approach to democratic statebuilding on political reform in Albania comparing with Croatian democratic process in public administration. It does so by focusing on the logic behind and outcome of reforms of political institutions that the EU model claims to spur. In particular, it explores reforms in two interrelated areas: public administration, which is at the centre of EU statebuilding efforts, and local (municipal) democratic government, which is considered a key European standard and one of the main foundations of democracy.

According to Fukuyama [15] describes the relations between Europe and Western actors to promote statebuilding process as "the creation of new institutions and the strengthening of existing ones" that are democratic. All internationally supported approaches to statebuilding assume that domestic actors lack the capacity and/or political will to build democratic states on their own, and that they require help from international actors [13].

However, the Central Europe experiences as Knaus and Cox [18] argue that caracterized by three existing state-building models — the authoritarian, where internationals are vested with executive authority; the traditional, development; and the EU-member state — only the latter's voluntary process that promises the concrete political and economic prize of EU membership has been successful. Democratic requirements; rigorous and objective evaluation of aspiring members fulfillment of these requirements during theprocess; EU aid for reforming institutions; and the strong desire of East European states to join the EU club supposedly work together to transform administrations that deepen democracy in credible candidate countries [18].

Still, it is not clear that the EU accession process that worked effectively in Central Europe is well suited to help Western Balkan states address the significant challenges they confront to their state building processes [44]. These challenges include not just the transformation of formerly statesocialist institutions, but also the reconstruction and the cultivation of internal consensus about the nature and configuration of new states.

A review of literature on democratization approaches produces three hypotheses on the impact of the EU state-building model on both coutries. It gauges the progress spurred by EU leverage over public administration and local governance reforms and then evaluates the impact of EU aid. An assessment of the nature of EU demands and domestic political dynamics in these policy areas is found to

help determine the effect of EU leverage over these reforms.

The impact of the EU state-building model in Albania and Croatia is by the EU's less than clear or prioritized demands and aid that is not well formulated to build capacity, as well as middling political will to implement democratic reforms required by the EU.

Recognizing that the Albania and Croatia faced more daunting reforms than the Central European states, the EU developed a stabilisation and association process, which aims to help the Western Balkan countries build their capacity to adopt and implement EU law, as well as European and international standards. The EU offers a mixture of: trade concessions; economic and financial assistance; assistance for reconstruction, development and stabilisation; and stabilisation and association agreements (SAAs).

The EU encourage a process of change among countries, within its conditionality They view this process as a key aspect of the EU member state-building model that addresses problems associated with the authoritarian state-building model in which international actors play a highly interventionary role in domestic governance [45].

Based on the above mentions, the papers emphasize concrete issues that could be synthesized in some large categories:

– both states public administrations between tradition and modernity;

– National experiences on the impact of the administrative reforms in both states;

– Myth or reality in considering "Croatian model of public administration";

– Administrative convergence and dynamics as support of the evolution towards a certain model;

1. Croatian public administrations between tradition and modernity from weberian bureaucracy to new public management

The public administration has been undergoing profound transformation from the dissolution of the regime in both coutries. The incorporation of information and communication technologies (ICT) in all aspects of work in public administration has been a crucial element in triggering this transformation. Fortunately, public administration work today has little to do with inefficient bureaucratic machineries of the past; however, there is still room for improvement in order to make public services more efficient, cost-effective, burden-less and friendly for citizens and businesses.

The concept that better describes the transformations in the public administration process is the concept of "Transformational Government". This concept originated in 2003 with the

work of European organizations such as Belgium's FEDICT [47], and borrows the name from the 2005 British initiative "Transformational Government enabled by technology" [48].

Furthermore, one needs to bear in mind that in order to move public administration towards the transformational government concept, one of the most important points is to ensure that the majority of the citizenry is actively included in the benefits of information society. For this matter, infrastructural modernisation was not sufficient, since skills and awareness of the existing possibilities were equally necessary.

For these reasons, the majority of European requirements for post-comunist governments and the European institutions assistance have actively start on the promotion of Inclusion policies, including the promotion of national skills.

The European Commission sees Inclusion policy as a key enabler of the goals of economic and social progress set in the Lisbon agenda and will continue to be in the post-2010 agenda.

Departing from the idea of transforming the risk of digital divide into "digital cohesion" and opportunities for every citizen to benefit from technology, Inclusion focuses on bringing the advantage of the internet to all citizens, putting special emphasis on the risk groups. The main activities covered under Inclusion policies are divided into Accessibility and Competences. The first, Accessibility, deals with promoting assistive technology and universally accessible software, websites, etc. focusing on the "Design for all" principle. This includes websites or applications designed to be friendly to users with disabilities, for instance enabling colour contrasts, text-to-voice technology, etc. The latter — Competences — makes reference to skills, knowledge and attitudes relevant to education in the context of

an inclusive information society. Moreover, as Government is being implemented in European public administration, it transforms the way citizens interact with the administration and it modifies the working settings of public employees, requiring them to gain new competences. Therefore, ensuring that all employees have at least a solid command of the basic skills, was an excellent way to guarantee the success of a knowledge-centred modernisation strategy and actual preparedness of employees to cope with the renewed demands of their jobs.

The most necessary changes in public service delivery to accomplish such goals are promoting Inclusion policy and Skills in order to allow the maximum number of citizens to benefit from the information society, and for public administration and governments, to incorporate ICT in their working processes as a valuable tool for efficiently gaining and offering better services to the citizens and businesses. For public administration, these challenges will have to be met by combining the best strategy of incorporating ICT in its areas of work, and bringing its benefits to the citizens.

2. Croatian Public adminsitration reforms

Public administration reforms were very broad and complex. In order to perceive the complexity of the functioning of the Croatian public administration the institutional framework of Croatian public sector and the basic components of the state administration and local self-government will be presented during the analysis.

During the reforms in the Croatian public sector have been a constant issue on the agenda of politician, public servants and the broader public. However, often the reforms were seen as mild, inconsistent and even unsuccessful, despite of the high level of attention dedicated, and money and time consumed. According to Koprić (2009), even though reforms aimed at increasing administrative capacity, they failed because of a too narrow understanding of the political, organizational, functional, personal issues involved.

Croatia has a two-tier system of government administration: central and local government administrations. Institutionally, the public sector consists of different entities that carry out the fundamental functions of the State, including central and local government, their agencies and bodies and other legal entities established and financed predominantly by the State. In wider terms, the public sector includes not just specific institutional executors but also activities or services of common interest, proprietary relations between the government and local authorities, public finance, public goods and state legislative. Consequently, the system is highly complex, as can be seen from the paper, which definitely makes it complex to manage. Second, functions performed by different entities differ and there was the problem of observing immediate long-term consequences of public sector reforms.

The Weberian nature of civil service was enforced partly due to legislation regulating Employment in Civil Service. The employment of civil servants was regulated by the Law on civil servants and employees. Professional activities were performed by civil servants, while the activities of technical support in bodies of the state administration were performed by employees (Ministers, state secretaries and assistants, directors of state administrative organizations, and state secretaries and assistants are officials of the Republic of Croatia). The internal organization of personnel was hierarchical, civil servants were appointed to their positions according to qualification criteria prescribed by law or other regulation, promotion was often subject to legally defined criteria and implies and advancement to a higher level of salary.

Another issue stressed in the progress report was the lack of coordination "political and technical levels". Even though initiatives and reform programs would probably stand a chance of being better coordinated if administered from one center (supposedly The Ministry of Administration), important projects influenced process design and performance quality such as the Croatia was administered by a special body established and under direct supervision of the Government, Central State Administrative Office for Croatia. The public sector in Croatia has been developed to satisfy the public needs, as well as to perform the fundamental functions of the State. The field of activity of public administration, and thus of the administration of convergence is very broad and complex.

In order to perceive the complexity of the functioning of the Croatian public administration

the institutional framework of Croatian public sector and the basic components of the state administration and local self-government were presented.

International and Croatian legislative definitions of the public sector were not defined uniformly.

The first step needed in order to evaluate public sector reforms undertaken in the past two decades would be to devise a system for sorting out different types of government bodies and quasy-autonomous entities that would differentiate entities first by function and secondly, by appropriate governance modes.

2.1 Professionalization of the public administration

The establishment of a modern administration meets a lot of challenges: on one side, creating a contemporary professional civil service with responsible civil servants, who possess the needed competences and potential, and on the other — the requirements, coming from the membership of the Republic of Croatia in the European Union.

The reform of the public administration aims at creating an atmosphere, which actively encourages the innovations, introducing good practices and EU achievements. The process of modernization of the administration requires through and improved knowledge of the employees, considered with the EU acquis, mastering skills for applying new style in work, initiative and will for achieving good results in servicing the citizens and businesses. The public assessment for providing high quality, transparent, competent and timely service to a great extend depends on the professionalism, the wish and responsibility of the staff to develop and improve their knowledge and skills.

The European dimension of the professional skills and employees' qualification in the administration consists in assuming contemporary models for organization and functioning of the administration according to the best practices in the EU Member States. The dynamics in the development of the public administration leads to opening of strategic planning at the level of organization; development of public-private partnership; outsourcing; coordination of the efforts between the municipalities for development of joint projects, development and management of projects for absorption of means from the EU funds.

The Strategy focuses on the application of contemporary models and techniques for governing the potential of the employees, on creating anti-corruption environment with clear control rules, encouragement and motivation of the employees for disclosure and prevention of conflict of interests.

Key element of the effective and modern policy in the area of the human resources in the administration is the improvement of the system for permanent development of employees' competencies, professional skills and qualification.The European Union was an actor that during the accession trials, assists Croatia in democratizing the organization and functioning of its public administrations, just as it did in the case of the CEE countries.

2.2 Croatia through europeanisation achieved democratization reform

Europeanisation generally implies a product "of the European Union" or "generated by the European Union". Scholars active in the field however, find it rather hard to simply draw causality lines between European stimuli and national changes. If to consider that Europeanisation names the impact of European integration on Member (and Candidate) countries, then national changes in the latter might be linked to the presence of the Union in the region. It is this very situation which generates methodological complications; still, finding a (some) subject (s) where European Union and the changes associated to it lack in presence might just do the trick. However, as studying Europeanisation so far, mainly concentrated on units of analysis where the European stimuli were present (be it inside Member or Candidate countries), the pretended independent variable (the impact of theEuropean Union), remained a constant. For relevant discussions on the topics above, please see inter alia, Ladrech (1994); Knill and Lehmkuhl (1999); Bomberg and Peterson (2000); Börzel and Risse (2000); Laegreid (2000); Radaelli (2000); Olsen (2002); Featherstone (2003); Falkner (2003); Grabbe (2003); Haverland (2003); Töller (2004); or Howell (2004).

The European Union grew from 6 to 27 members. The last and most serious enlargement (in terms of number of acceding countries) raised different and interesting concerns for the national administrative capacities of both Members and Candidates

to the European Union. What was the exact nature of the European administrative requirements; and how can they be integrated in an Europeanisation logic and were they used so far in the case of the Croatian accession to the European Union, are the three questions to be addressed below.

Europeanisation defines the impact of the accession criteria upon the national orders of Central and Eastern Europe. Three possible types of Europeanisation for candidate countries are envisaged here: the "top-down" approach (the Union gives, while the candidate countries take — type **Ec (Europeanization candidates1**), "bottom-up" approach (the Union gives what was previously influenced by the candidates, the taking being thus facilitated — type **Ec2**) and an approach dealing with the policy transfer between Members and Candidates (type **Ec3**)

The first approach refers to the Ec1 to the top-down europeanisation reform which means "top" are european level standards and "down" are public administration reforms in Croatia.

Ec (**Europeanization candidates)**2 means that Croatian Europeanization need for institutional and enlargement framework reform, becoming a Member State has influenced the European Union's policy of enlargement to the Western Balkans.

Ec (Europeanization candidates)3: Croatia interact amongst them and with Member States (at the administration level). In this case, Europeanisation names exclusively the policy transfer dimension, without the direct intervention of the European Union.

The study of democratization exceds the endogen level of the state, and develops the possibility to analyze the contribution of external actors to generating, nurture or consolidate the democratization. In the CEEC case, the European Union appears as a assistance donor for democratization minimum democratic public administration in the European acquis as well as in the content of the national responses of the CEEC to the accession requirements.

In addition, linking Croatian Europeanisation to Democratization was a possible way of escaping the "causality puzzle", still offering perspectives for the study of the national impact of European stimuli.

3. Albania public administration reforms

In post-socialist countries, development has been pursued at the outset of transition mainly through downsizing measures aimed at achieving fiscal stabilization. These measures benefited of the full support from the international community. Many earlier reforms, often under pressure from structural adjustment and fiscal stabilization, were concerned with administrative efficiency and involved retrenchment of civil service. The most basic transformation was moving resources from the State to the private sector, which in 1999 produced more than half of GDP in the central eastern European region [49].

A distinguishing feature of development in Albania during the first years of transition has been its capacity for a quick economic progress. For many years, Albania was held up as an example for other transitional countries to follow because of its apparently favourable macroeconomic indicators. Nonetheless, during 1996–1997, Albania was convulsed by the fall of several huge financial pyramid schemes with about two-thirds of the population investing in them and nominal liabilities amounting at almost half of the country's [20]. the Albanian government recognized PA reform as fundamental for the attainment of the medium-term objectives for growth and poverty reduction.

The Government strategy for State administrative and institutional reform included strengthening the coordination of public policies; improving policy and program implementation; transparency, effectiveness and accountability in resources management; and government-citizens relationships and public accountability. However, reforms were addressed mainly by drafting laws and formally establishing new agencies, revealing donor pressure more than a serious commitment of the Albanian government, still unable of implementing much of the reforms.

The process towards distributed public governance has not been accompanied by a parallel reduction in the number and functions of ministries while public agencies and independent authorities have increased. In this scenario, the protection of the public interest becomes increasingly difficult and priorities move away from the need to create new separate bodies to the challenge of finding the right balance between accountability and autonomy, openness, performance management, as well as strengthening the steering capacity of central ministries [30,

p. 9, 21]. Furthermore, steering these central non-ministerial bodies through contract-based public management is beyond reach, which poses crucial whole-of government issues such as policy coherence and clarity of the administrative organizational system at the central level [46].

In the first years of transition, the focus was mainly on reforms at the central level to build key democratic institutions, as well as on basic economic reforms, while less attention was paid to local government reforms. Sub-national administrations were formally re-created in the early 1990 s, with a number of laws approved which govern their competencies and authorities. Much of that legal framework has yet to be implemented and local governments in Albania have very limited administrative and fiscal autonomy [8].

Sub-national governments include communes (komuna), municipalities (bashki) and regions (qarqe). Communes and municipalities are the lowest level of local PA, while the 12 regions represent the upper level. The EU requrements in the lasts years demands Albanian governments to improve these system and in the last elections for muncipalities on June 2015 organized with the new system but still remain to analyzed if these change will be a sucesful proces or not.

The law on the organization and functioning of the local self-government established that the relationship between levels of government will be based on the principle of subsidiarity, which states that public functions should be assigned to the lowest level of government, whenever no compelling reason would suggest otherwise. The decentralization strategy has included reforms in local financing, a package of laws on physical assets and on local public enterprises, aimed at improving allocative efficiency, governance and accountability, the institutional status of local government, the development of managerial capacities at the local level, etc. [1].

Despite some initial fundamental regulatory and institutional achievements, key challenges that threaten the successful implementation of the government's decentralization strategy are the following:

The impact of external assistance in decentralisation reforms 2003;

(b) Weak administrative capacity (both local and central);

(c) High fragmentation and small size of local units;

(d) A still undefined role of the regions and the interactions between levels of government, which create conflicting authorities, duplications, and inefficiencies;

(e) The poor coordination of decentralization implementation;

(f) The absence of clear service standards and measurement criteria of performance in local service delivery;

(g) An inadequate degree of revenue autonomy and predictability.

The Albanian reform strategy included a first phase addressing only the higher civil service aimed at developing a professional and managerial core. It was done by legally defining their status and by specifically regulating recruitment and progression. A second phase addressed the whole-of civil service, aimed at introducing a results-orientation and emphasis on effectiveness of public programmes and policies. The main objective behind reform is the establishment of a professional and sustainable civil service, mainly through stability and security for civil servants and staff professionalism [33, p. 67]. In conclusion, capacity to implement reforms has been weak and political interferences have been a threat for their successful implementation.

Strengthening the administration's stability and increasing the performance of PAs and civil servants remain central areas of concern [33, p. 5]. However, the current implementation of PA reforms continues to focus on mechanical and formal. alterations of the structure of the civil service rather than procedural operations and effectiveness and a change in behaviour within the civil service and its citizens-orientation.

The Albanian PA continues to be characterized by rigid hierarchies and a custodial attitude, which government-led reforms have not yet begun to address.

Summing up, macroeconomic stabilization pursued in Albania at the outset of transition, mainly through the support of international institutions, achieved substantial results in terms of GDP growth,

employment and inflation. However, as the 1997 crisis made clear, it was more a recovery than a sustainable process of development. PA reform was neglected, bringing about a weak governance system and widespread corruption. This called for a thorough public management reform, which drivers came from international institutions operating in Albania.

The Albanian PA continues to be characterized by rigid hierarchies and a custodial attitude, which government-led reforms have not yet begun to address. Only a core set of international institutions and foreign governments have contributed to public management modernization initiatives in Albania. Problems of coordination are exacerbated because of several donors involved in the same field, during the same period.

Conclusion

The paper analysed public sector reforms in transition countries, through the case studies of Albania and Croatia, with the aim of addressing a relevant literature gap in terms of a widely-accepted model of PA reform agendas in transition countries In particular, the experience of these two countries could be compared with the different theoretical models.

Undoubtedly, the specificity of the case studies as context and topic sensitive does not allow for comprehensive generalizations, though providing useful insights for other transition countries. The two case studies bring about interesting results on the extent to which New Public M style reforms fit the context conditions in transition countries and on the potentiallities of the New Weberianism as an interpretative model. Both countries have generally started civil service reform before a structural overhaul of the PA. This condition is common to other postcommunist countries [35]. A neo Weberian approach. «A NWS became the requirement without having a completed Weberian state, because it is the only solution for providing a synthesis between legalism and managerialism. […] A NWS, in which governmental actions are based on the rule of law, in which private enterprises are involved for competing quality in the service delivery, and in which civil society organizations have a full range involvement in public policy making, from decision making to service provision, strengthening of civil sector and its organisations". Key elements are the emphasis on the professionalization of the public servants, their depoliticisation and transparency.

It is of fundamental relevance to develop a PA modernisation model based on the key characteristics and needs of transition countries and, subsequently, to use this model — instead of the NPM — for intepreting and assessing the results.

PA reforms have two ways to influence development: Downsizing public sector, which frees up resources and provides new opportunities for private actors, and making public sector more responsive, which, although requiring some investments in the beginning, contributes to better public policies and more integrated economic and social development.

The Albanian and Croatia experiences provide evidence that downsizing measures can help achieve fiscal stability in the short term, while prove to be ineffective in setting the conditions for a longer term sustainable development and also give rise to some unexpected problems of their own.

In retrospect, the case studies seem to confirm the position found in the literature which recommends that matters of constitutional governance should be dealt with before matters of administration; that legal frameworks should be in place before dealing with administrative arrangements; that a functioning core civil service is a pre-condition of more distributed public governance arrangements; and that rationalising rules and enforcing compliance should come before starting to reform the rules [29; 32].

References:

1. Alderman, H., „Do local official know something we don't? Decentralization of targeted transfers in Albania", 2002, Journal of Public Economics, 82. P. 375–404.
2. Allen, R., 'New Public Management: Pitfalls for Central and Eastern Europe', 1999, SIGMA Public Management Forum, V:1.
3. Bekke, H., Kickert W. and Kooiman J., „Public Management and Governance" in Kickert and F.A. van Vught, eds., Public Policy and Administrative Sciences in the Netherlands, London: Harvester-Wheatsheaf, 1995.

4. Bomberg, E., Peterson, J. (2000), Policy Transfer and Europeanization: Passing the Heineken Test?, paper for the 50th Annual Conference of Political Studies Association – UK, aprilie 2000.
5. Börzel, T.A. (2001), „Pace-Setting, Foot-Dragging, and Fence-Sitting. Member State Responses to Europeanization", Queen's Papers on Europeanization, no. 4/2001.
6. Börzel, T.A., Risse, Thomas (2000), „When Europe Hits Home: Europeanization and Domestic Change", European Integration online Papers, vol. 4, no. 15; http://eiop.or.at/eiop/texte/2000–015a.htm
7. Cepiku, D., „Public governance: Overcoming the ambiguity", in Ken Coghill (ed.), Integrated Governance: Linking up Government, Business & Civil Society, Monash Governance Research Unit, Monash University, Caulfield East, Melbourne, Australia, 2005.
8. Cepiku, D., „La riforma della pubblica amministrazione in Albania", 2002, Azienda Pubblica, 1, pp. 155–178.
9. Drechsler, W., "The Re-Emergence of 'Weberian' Public Administration after the Fall of New Public Management: The Central and Eastern European Perspective", 2005, Halduskultuur, 6, P. 94–108.
10. European Commission, "2007 Economic and Fiscal Programmes of potential candidate countries: EU Commission's assessments", Occasional Papers 38, June 2008.
11. Hood, C., „A Public Management for All Seasons", 1991, Public Administration, Vol. 69, P. 3–19.
12. European Commission, Croatia 2009 Progress Report; Commission Staff Working Document, Brussels, 14.10.1009.; SEC (2009) 1333.
13. Fawn, R., Richmond, O.P., 2009. De Facto States in the Balkans: Shared Governance versus Ethnic Sovereignty in Republika Srpska and Kosovo.
14. Journal of Intervention and Statebuilding, 3 (2), 205–238.
15. Fukuyama, F., State-Building. Governance and World Order in the 21st Century, Ed. Antet XX Press, Bucuresti, 2004.
16. Frank Schimmelfennig, Ulrich Sedelmeier The Europeanization of Central and Eastern Europe Edited by Cornell University Press | Cornell Studies in Political Economy 2005.
17. Geoffrey Pridham 16 DEC 2002 EU enlargement and consolidating democracy in post–communist states – formality and reality.
18. Knaus, G. & Cox, M. 2005. The 'Helsinki Moment' in Southeastern Europe, Journal of Democracy, 11 (January), 39–53.
19. Hughes, O., "What is, or was, the New Public Management?", in IRSPM XII Conference, QUT, Brisbane, 2008.
20. Jarvis, C., „The Rise and Fall of the Pyramid Schemes in Albania", 1999, IMF Working Paper 99/98.
21. Lynn, L.E., Jr., "What is a Neo-Weberian State? Reflections on a Concept and its Implications", online at http://fsv.cuni.cz/ISS-50-version1–080227_TED1_Lynn_Whats_neoweberian_state.pdf,
22. Management Report, National Agency of Civil Servants, 2007.
23. Manning, N., „The legacy of the New Public Management in developing countries", 2001, International Review of Administrative Sciences, 67. P. 296–310.
24. Matheson, A., and Know, H-S., "Public Sector modernisation: A new agenda", 2003, OECD Journal on Budgeting, Vol. 3, No. 1, Paris: OECD
25. Mussari, R., Cepiku, D., "Public administration reform in transition", 2007, Public Management Review, 9:3. P. 353–375.
26. Ministry of Public Administration: State Administration Reform Strategy 2008–2011, http://www.uprava.hr/strat-en.pdf
27. Milada Anna Vachudova, Europe Undivided Democracy, Leverage, andIntegration after communism published by Oxford University Press; 2005.
28. Nunberg, B. (1999), The State after Communism: Administrative Transitions in Central and Eastern Europe, Washington D.C: World Bank, 1999.

29. OECD, "Governance in transition. Public management reforms in Oecd countries", Paris, 1995.
30. OECD, "Economic Surveys: Romania", online at on: http://docstore.ingenta.com/cgibin, 2002.
31. OECD/DAC, "Development Assistance Report 2002", Paris, 2003.
32. OECD/PUMA, "Public sector modernisation: A new agenda", Oecd Journal on Budgeting, 2003, 3, p. 1.
33. Republic of Albania, Progress report on implementation of the national strategy for socio-economic development during 2003, Tirana: Ministry of finance, 2004.
34. Republika e Shqiperise, Strategjia per rritjen ekonomike dhe reduktimin e varferise, Tirana: Keshilli i Ministrave, 2001.
35. Verheijen, A. J.G., "Public administration in post-communist states", in B. G. Peters, J. Pierre (eds.), Handbook of public administration, UK: Sage, 2002.
36. Weber, M., Economy and Society: an outline of interpretive Sociology, Berkely, University of California Press, 1922.
37. Vesna Barić Punda, Branko Grčić, Mario Pečarić, Croatia and the EU, Integration challenges, Faculty of Economics – the University of Split, Students' Association of the University of Split, European movement Split, 2006.
38. World Bank, Country Report: Romania available online at www.worldbank.org.ro, 2007.
39. World Bank, World Development Report 1996: From Plan to Market, 1996, Washington D. C., World Bank, Reforming Public Institutions and Strengthening Governance, 2000b Washington D. C.
40. World Bank, Croatia – Restructuring public finance in order to support and improve public services, Public Finance Analysis, February 2008.
41. SIGMA, Models of Public Budgeting and Accounting Reform, OECD Journal on Budgeting, 2002.
42. SIGMA, Effects of European Union Accession, Budgeting and Financial Control, Sigma papers No. 19, 1997.
43. SIGMA, Preparing Public Administrations for the European Union Space, Sigma papers No. 23, 1998.
44. Bieber, Florian., 2011. "Building Impossible States? State – Building Strategies and EU Membership in the Western Balkans", Europe – Asia Studies, Vol. 63, No 10, December, pp. TBD.
45. Duffield M. 2001. Global governance and the new wars. London: Zed books.
46. Schick, Allen. 1998. A contemporary approach to public expenditure management. Washington, DC: World Bank. http://documents.worldbank.org/curated/en/1998/05/6573357/contemporary-approach-public-expenditure-management
47. Federale Overheidsdienst voor Informatie- en Communicatietechnologie (Federal Administrations' Service for Information and Communication Technologies), http://www.fedict.belgium.be
48. UK Government (2005). Transformational Government Enabled by Technology, C. Office, London, http://www.cabinetoffice.gov.uk/media/141734/transgov-strategy.pdf
49. World Bank, World Development Report 1996: From Plan to Market, 1996, Washington D. C., World Bank, Reforming Public Institutions and Strengthening Governance, 2000b Washington D. C. P. 6.

Section 2. Political regionalism. Ethnic policies

Havrylyuk Viktoriya,
University of Silesia,
Doctoral student, the Faculty of of Social Science
E-mail: vikig88@mail.ru

Socio-political image of the Ukrainian regional mass media

Abstract: the article is devoted to the characterization of the state, the key features and trends of modern domestic regional mass media. There are determined and specified informational, social, ideological, political and economic objectives of current regional mass media also revealed specific features of regional mass communication.

Keywords: regional mass media, regional mass communication, civil society actors.

Modern society is characterized by a rapid process of «mediatization» [1, 32] of social relations and increase the value of the media. Regional mass media is able to gather the needs of local communities, act as a key institution in formation of a democratic society, open dialogue between all social actors.

Mixed impact of the phenomenon of globalization on of transformation processes in Ukrainian society, complex nature of the national information space, the presence of difficulties in implementing the processes of mass communication generate conflicting estimates of the mass media operation at regional level of social interactions.

The key functions of the regional mass media today is information, formation of public opinion and creation of an image of the region. But media of every region is not sufficiently focused on the functions of consolidation, transfer of knowledge or culture and socialization. There are some visible important dysfunction of the regional media: imposing certain points of view, withholding information, provocation of conflicts. Thus this media that are privately owned (except for the state) is much more dysfunctional and even uncontrolled. And of course the agenda of this type of regional mass media is carried out with primary regard to the interests of owners and authorities. At the same time territorial coverage of the problems of the community's life in media is built next way: first line are facts that are important for media owners, and only then — for the region.

For a more comprehensive understanding of the social purpose of the regional media we can analyze their role in the context of political communication. Today domestic regional mass media is a channel for information for citizens, which is important for maintaining social awareness and civic engagement of people. Instead, for the government mass media are largely an instrumental value, and only then it acts as intermediaries in contacts with citizens. Regional media are suspended from interests of citizens and tend to defend the authorities' and corporate's goals. This is a trend of regional mass media in Ukrainian society today.

As for the economical trends of regional media in Ukraine, so the aspiration of regional media to combine responsibility towards society and business objectives are implemented only partially. Most people underlines the priority of regional business interests of the media in the region over the social. This indicates mainly economical character of direction of the media in today's difficult market conditions and demonstrates awareness of the media needs to build new social and economic strategy.

Evolution of the economics system on the background of global social changes transformed the mass media to an important subject of socio-

economic relations. Strengthening of principles of market and free competition implies that the mass media should be directed at the obtaining financial profit through maximizing its customer satisfaction. The environment of the regional mass media is filled with numerous subjects, which include state, socio-economic organizations, owners, investors, consumers and others. In particular, the state regulates the "rules of the game" in the media, controls the observance of the principles of mass media, provides equal opportunities for all participants in the media market and the necessary basis for economic reforms in the media sector [2, 285].

We emphasize that for the development of regional mass media is extremely important role on the state, which balances economic, politic and informational policies to support and transform the media into a profitable business and maintain their social role.

Based on the results expert survey author describes the key features of the image of domestic regional media. Regional mass media today are characterized primarily as politicized, informative, accessible, substantial but technologically underdeveloped, biased, irresponsible, conflict, unprofitable dependent.

As for estimates of the basic features of regional media, so for the audience it is more important secondary features of regional mass media (presence in the area of access, periodicity, etc.). The image of the modern national mass media in regions is formed according to their focus on socio-economic organizations, civil society actors, the subject of political communication and ideological influence. So regional mass media may be considered as an measure of social relations in the region and society in general.

The carriers of the greatest potential of conflict today is an online media and non-governmental channels, the least potential have the state regional newspapers. Most often regional mass media are the main implementing environment and best tools for intensification of conflicts and practically do not act as a means of solving social conflicts.

Regional media are under the growing influence of globalization. However, they are «verifiers» of information about the environment for citizens. The audience tends to be informed the local news, but of its global context, that's why regional mass media broadcast primarily local and regional news, while international news are reported in view of the importance for the region. So during the construction of images of foreign countries, the media in the region «serve» only the amount of information that is necessary to «dilution» of the general flow of information, for entertainment the audience, it's based on the principle of «mosaic.»

Therefore, there is an urgency to implement in practice of regional mass media of Ukraine the principle «social — local — mobile» or «sociality — locality — mobility», which combines social responsibility, attention to local interests and increase the mobility of the media.

There is also a need for further research focusing on the development of domestic regional mass communication under the influence of new information and communication technologies for media, socio-economic, political and socio-cultural vectors.

References:

1. Безносов М. А. «Медиатизация» политики и ее опасность для демократии/М. А. Безносов//Вестник Харьковского национального университета им В. Н. Каразина. – 2010. – № 891. – С. 32–36.
2. Каррингтон Т. СМИ в условиях экономики: приоритет экономических факторов/Т. Каррингтон, М. Нельсон//Право на свободу слова. Роль СМИ в экономическом развитии/Всемирный банк. – М., 2005. – С. 285–311.

Section 3. Political institutes, processes and technologies

Gavrilyuk Gennadiy Ivanovich,
Kharkiv State Academy of Culture,
Ph. D. in History, associate Professor of Department of Philosophy and Political Science
E-mail: gengavrilyuk@ukr.net

"Imperfect democracies" in view of democratic transition concept

Abstract: The author of the article discusses the understanding of "imperfect democracies" as one of possible results of democratic transitions. Several variants of the use of modernization and transitology paradigms were suggested for further research themes.

Keywords: liberal democracy, imperfect democracy, modernization, transition to democracy.

Difficult state of democracy in the world in general, and in Ukraine in particular, was a reason of the problem definition as necessity to study origin, dynamics, modern situation and perspectives of existence of imperfect democracies [1, 68] in relation to a scientific task to improve the global democracy concept and a practical requirement to comprehend political phenomena and processes that take place in present-day Ukraine.

Goal of this article is to analyze availability of scientific tools and rationale concerning selection of a theoretical paradigm that allows adequate understanding the essence of imperfect democracies phenomenon and forecasting variants of further democratic development of the mankind.

Current political science has developed two perspective lines of thinking that might be useful for fulfillment of the set task. The first line was formed within sociology of development and is well known as modernization theory.

However, it turned out very quickly that the modernization paradigm allowed only specifying the key concept of democracy and discovering potential historical and cultural sources and causes of democracy imperfections formation which proves its limited and secondary value for the study of imperfect democracies.

Limitation of the modernization approach opportunities forces to address the alternative line of thinking named transitology.

Democratic transition theory was formed in 1970's by D. Rustow (through the example of Sweden and Turkey) and was expanded in 80's-90's, 20th century, by G. O'Donnell, Ph. Schmitter, T. L. Karl, A. Przeworski, S. Huntington and some other researches (based on empirical materials of the Third Wave of Democratization).

Identification of phases, forms (ways), models and initial points of democratic transition have a methodological value for analysis of imperfect democracies.

Nowadays, the political science has formed a certain consensus concerning a number of phases for democratic transition (they should be three) [2, 5] and has established an idea that the phases should change in a predetermined order of priorities [3, 13].

In the first case (the priority is adhered to, transition to the next phase does take place), imperfect democracies appear with relatively short duration of existence fairly named by O. I. Romanyuk as *transitive* [4, 23]. Thus, normal ending of liberalization generates *tutelary democracy* (G. O'Donnell, Ph. Schmitter). During the phase of democratization, *electoral democracies* (L. Diamond), if newly established

democratic institutes rely on a minimum set of public freedoms, *illiberal democracies* (W. Merkel, A. Croissant) that are formed in the context of the state's attempt to thread down citizens' political rights, or *delegative democracies* (G. O'Donnell), in the event the democratization is not accompanied by consistent institutionalization, may form.

In the second case (priority is not adhered to, or the transition to the next phase doesn't take place but is only limited), *dictablandas, democraduras, facade democracies, phantom democracies, false democracies, guided democracies, limited democracies, partial democracies, formal democracies* with indefinite time of existence appear, successfully generalized by T. L. Karl under the name of *hybrid regimes.*

So, using a notion of democratic transition phase helps determine, describe and classify imperfect democracies.

Forms of democratic transition were suggested and described by J. Linz, D. Cher, S. Mainwaring, Ph. Schmitter, T. L. Karl, S. Huntington, and were adjusted to post-communist conditions by J. Munk and C. Leff) [5, 140–141; 6, 125–127; 7, 13].

Identification of the form allows, with a certain degree of conventionality, predicting probability of formation and duration of existence of an imperfect democracy in the course of and after accomplishment of the democratic transition.

For this purpose, forms (transformation, reforma, democratization by imposition) where the "ruling elite takes the initiative in democracy establishment" [6, 127], or where there is "a leading group of the regime that forces all other actors to acknowledge its own rules of the political game" [7, 13] are potentially the most dangerous ones. The danger lies in the fact that the initiators of transition eventually lose control over it, however, have a long time to establish imperfect political institutes to guarantee their own survival

The rate of danger of those forms based on a joint activity of commanding and oppositional elites with or without involvement of the public (transplacement, ruptforma, pacted or reformist transition) is determined by the level of trust/distrust of political elites negotiating with each other. For this purpose a pacted transition where a role of guarantee is played by the agreement of elites itself rather than establishment of political institutes, is the safest one. The most unsafe is a reformist approach where the public forces the elites towards transition though the elites themselves do not aim for it and do not trust each other.

Forms that involve establishment of democracy by oppositional groups and/or revolutionary initiative of the public aimed at destruction of dictatorship (replacement, ruptura, revolutionary transition) at first sight do not carry a threat of establishing an imperfect democracy (they rather carry a treat of new authoritarianism), however the political practice proves that indeed any form of a democratic transition may both cause and not cause formation of the imperfect democracy.

Models of democratic transitions are developed by S. Huntington [6, 53–55], specified and adjusted to post-communist societies by O. I. Romanyuk [8]. For characterizing imperfect democracies, models of democratic transitions are important in a view of determination of their results.

S. Huntington constructs five models and places them based on the result on the **"success" — "delayed success"** axis ("direct transition", "decolonization" on one side, "second attempt", "democracy interrupted" — on the other one), and postulates existence of a cyclic model where "constant replacement of democracy with authoritarianism, and of authoritarianism with democracy is indeed a political system of that country", and "change of the regime in those countries does the same job as the change of parties in a stable democratic system" [6, 53].

O. I. Romanyuk simplifies S. Huntington as he places results of transitions to democracy from authoritarian regimes on the **"success" — "failure"** scale where the first parameter corresponds to "transition to the quality of liberal democracy", and the second one — to "return to the authoritarian state". The above simplification prescribes a corresponding structure of models of post-communist transition placed on **"success" — "delayed success" — "failure"** axis ("direct transition" — "two-phase transition" — "regression" according to O. I. Romanyuk).

So, both S. Huntington's and O. I. Romanyuk's models need to be specified and supplemented as they do not show the full range of results of democratic transitions available in the political practice.

Alternative approaches that do not identify the only possible positive result of democratic transition with transition to liberal democracy are stated by G. I. Vainstein, A.Yu. Melvil, V. Bunce.

G. I. Vainstein declares that outcome of the democratic transition cannot be identified with achievement of "one preset reference form" and therefore is limited to "exit of one or another society from the authoritarian state" [9, 430].

A.Yu. Melvil denies that democratic transition has even a potential orientation at transition to the liberal democracy and thinks that the democratic transition shows "multivariance of end forms of social transformations and guarantees no transition to democracy" [10, 18].

V. Bunce treats the democratic transition as an unstable transitional period characterized by uncertainty of results and procedures which generates various outcomes, namely: liberal democracy, regime "freezing", dictatorship or restoration of state socialism [11, 788–789]. Accordingly, V. Bunce's position may be interpreted as placement of democratic transition models on **"success" — "partial failure" — "failure" — "complete failure"** scale.

Our position is support, in general, of S. Huntington's and O. I. Romanyuk's approaches, adjustment of V. Bunce's position with a remark that results of the transition, different from democratic and authoritarian ones, are not limited to conservation of the transitional state, partial agreement with G. I. Vainstein's opinion and complete rejection of A.Yu. Melvil's thesis as such which modifies and distorts the concept of the democratic transition itself.

We believe that the total result of the democratic transition is a switch to non-autocratic regime that lacks strong tendencies to inversion, but possesses (has achieved) potentials for transformation into the liberal democracy. We pose variants of the total result on the **"success" — "partial success" — "partial failure"** scale (liberal democracy, relatively stable imperfect democracy, conserved transitive democracy, accordingly).

Peculiarities of Eastern European and Post-Soviet transitions refreshed the problem of initial points of transitions to democracy, created a *dilemma of simultaneity* and encouraged C. Offe, A. Przeworski, A. Kubichek, V. Bunce, T. Kuzio and other scholars to base their respective achievements on concepts of triple or quadrotransitions with due regard to simultaneity of democratization, marketization, and creation of sovereignties/nations [12, 311–312].

However, for the purpose of analysis of imperfect democracies, a binary concept of democratic transition in D. Hall's (democratization/modernization, national-state building) [12, 301] and O. I. Romanyuk's (social-political and national-political transformation) [2, 12] version is more convenient. The convenience lies in availability of only two initial points of transition: authoritarianism/totalitarianism, availability/absence of a state-nation. Existence of the first point explains creation of political foundations of imperfect political institutes' activity, and existence of the other one indicates the activity of additional factors that facilitate establishment of democracy imperfections such as absence of national unity, external pressure of the former mother country, authoritarian speculation on needs of state formation etc.

Thus, a theory of democratic transition gives an opportunity to identify and classify imperfect democracies, predict probability and regularity of their formation, to understand this phenomenon as one of the results of transition to democracy and study non-political foundations and additional factors that support its existence. However, this theory is not able to help adequately solve the problem of existence and evolution of imperfect democracies as it treats them either as temporary formations that will disappear on their own, or as a manifestation of failure of the democratic transition that is overcome by means of the second attempt model implemented by the same rules as the first one.

References:

1. Sakwa R. Democratic Change in Russia and Ukraine//Democratization. – 1994. – Vol. 1. – No.1.
2. Романюк О. „Кінець транзитології" чи криза її первинної парадигми?//Політичний менеджмент. – 2007. – № 2.
3. Растоу Д. А. Переходы к демократии: попытка динамической модели//Полис. – 1996. – № 5.

4. Романюк О. Транзитивні демократії (про визначення характеру політичних режимів перехідних суспільств)//Людина і політика. – 2004. – № 2.
5. Фисун А. А. Демократия, неопатримониализм и глобальные трансформации. – Х.: Константа, 2006.
6. Хантингтон С. Третья волна. Демократизация в конце XX века: Пер. с англ. – М.: РОССПЭН, 2003.
7. Карл Т. Л., Шмиттер Ф. Демократизация: концепты, постулаты, гипотезы (размышления по поводу применимости транзитологичной парадигмы при изучении посткоммунистических трансформаций)//Полис. – 2004. – № 4.
8. Романюк О. Моделі посткомуністичних трансформацій//Політичний менеджмент. – 2006. – № 3.
9. Вайнштейн Г. И. Российский іі транзит и проблема типологического разнообразия „глобальной демократизации"//Политические институты на рубеже тысячелетий. XX–XXI вв. – Дубна: Феникс+, 2001.
10. Мельвиль А. Ю. Демократические транзиты (теоретико-методологические и прикладные аспекты). – М.: МОНФ, 1999.
11. Bunce V. The Political Economy of Postsocialism//Slavic Review. – 1999. – Vol. 58. – No.4.
12. Кузьо Т. Посткоммунистические транзиты: три измерения или четыре?//Фисун А. А. Демократия, неопатримониализм и глобальные трансформации. – Х.: Константа, 2006.

Mishina Daria, Webster University Vienna,
Master in international relations,
the Faculty of the International Relations
E-mail: d. o.mishina@gmail.com

The similarities in causes of two Ukrainian Revolutions (2004, 2014)

Abstract: Analyses of the causes of two Ukrainian Revolutions in 2004 and in 2014. Identification of their similarities.

Keywords: Revolution; "Orange Revolution"; Ukrainian political crises; "EuroMaidan Revolution".

The methodological basis of this research is the principle of historicism and objective comparison. One of the major themes of this research is defining and analyzing causes of two Ukrainian revolutions (2004, 2014). We will then briefly attribute the reasons to define these two Ukrainian political crises as revolutions and explain the features of their names: the "Orange Revolution" and the "EuroMaidan Revolution". Finally, we will compare causes of these two Ukrainian Revolutions and find the similar reasons of considered events.

According to the theory of historical cycles, we can see common reasons, scenarios and consequences of internal conflicts Toynbee [34]. During long periods of time and today as well, many theorists, scholars and researchers have been trying to predict and understand how one conflict could be connected with another, how causes of previous conflicts are related to current events, what can be learned from the past and how can we apply lessons from the history in current practice? According to the Will & Ariel Durant [7] the causes of significant historical events based on a gap between rich and poor: "Only those who are below average really want equality". This inequality generates internal conflicts, which can escalate into political crises.

Considering the history of the Ukraine, we can see many civil conflicts, especially in the post-soviet era, such as political crises in 2004 (the "Orange Revolution"), in 2006, 2007, 2008 and the current political crisis, which began in November 2013. Nowadays the term "Orange Revolution" is well-known and widespread. As for current political events, many observers also use the term "revolution". Why are the two Ukrainian political crises (2004, 2014) called as "revolutions"? These crises

have common basic causes and consequences, but why do they happen from time to time? What are the main causes of the "Orange Revolution"? What does the term "EuroMaidan Revolution" ("The February revolution", 2014) mean? What are the main causes of the last political crisis in the Ukraine? Are there any common causes between the two considered revolutions? Was it possible to prevent the current "EuroMaidan Revolution"?

Both Ukrainian political crises (2004, 2014) are called "revolutions", which factors are affected for such differentiation? In order to understand the real causes of the two main revolutions in the Ukraine: the orange and the current one, we should make the definitions clear between political crisis and revolution.

What is "revolution"?

Although there is a known definition of the term "revolution", it still leaves space for speculation. According to Dale Yoder [37] there are three types of "revolution": 1) "a political phenomenon, a change in the location of sovereignty"; 2) "revolution as abrupt social change" and 3) "revolution as change in the entire social order". According to the Webster's New World College Dictionary [40] 1) "Revolution — is a complete or radical change of any kind"; 2) "Revolution is an overthrow of a government, form of government, or social system by those governed and usually by forceful means, with another government or system taking its place…". Summarizing all these definitions we can see, that "revolution" is "change", but in political way it is "governmental change". In the case of "revolution" forced actions, violence, active social mood for subsequent governmental changes and radical consequences are commonly seen. Considering all these elements, we can argue that the political crises in 2004 and 2014 may rightly be called revolutions, but why the former was called the "Orange Revolution"?

Most of the revolutions in post-Soviet countries had symbols, which united protesters. In most of these revolutions, the symbol of the opposition became the color of revolutions.Thus, the term "Color revolution" is well-known [10]. In the case of the Ukraine, the political crisis in 2004 is known as the "Orange Revolution" O Beachain & Polese [24]. There are many explanations of the term "Orange Revolution" from an "accident" to "external influence". But the most reasonable definition is the fact that color of the V. Yushchenko's party was orange. When he came to express his disagreements about a previous election, he had the orange flag. Orange became a distinctive sign of pro-Yushchenko citizens. Supporters of V. Yanukovich had blue or blue-and-white colors.Blue signs were based on the color of the official Ukrainian flag — blue and yellow Polese, [26]. The Ukrainian political crisis in 2004 was one of the "Color Revolutions", but what is the name of the current revolution in the Ukraine?

There are many opinions about the "name" of current events in the Ukraine: "political crisis- 2014"; "civil war"; the "Revolution of dignity" Zhalko-Tytarenko [39], or the "EuroMaidan Revolution". According to the definition, "Revolution — is a complete or radical change of any kind" [40] and the fact that the main place of the protests at the end of 2013 and 2014 was "Maidan" (from Ukrainian language means "Square") and the first official demand of some Ukrainians was membership of the EU, it makes sense to use the term "EuroMaidan Revolution" Shevtsova [31].

For the definition of crises as revolutions, there should be very strong causes.

What are the main causes of the "Orange Revolution"?

Along with a number of post-Soviet "Color revolutions", the "Orange Revolution" one is the most discussed.Informational recourses are full of different opinions and views on causes and results of the "Orange Revolution". Many authors of articles and periodicals agree on some basic causes of the "Orange Revolution", such as economic, social and political instability and influence of elites. The main operating force of the "Orange Revolution" was Ukrainian society. Citizens' dissatisfaction grew rapidly. Ukrainians demanded reforms in all spheres and declared the slogan "The Ukraine without Kuchma!". These revolutionary events are an attempt to follow democratic development McFall [21].

First of all, elites and oligarchs had large influences on Ukrainian's internal and external policy. Many spheres were under oligarchs' control: metallurgy, coal industryand sale of Russian gas. O Beachain & Polese [24]. Due to a "privatization" program, elites

got possibilities to monopolize most of the Ukrainian industries. "99 percent of small retail, trade, and service firms" were subject to oligarch's capture and due to the "privatization" program the amount of monopolists increased Radnitz [27].

Besides economic control, oligarchs were also important in politics, specially they influenced the President and Parliament. Few elite businessmen, for example R. Akhmetov, V. Pinchuk and H. Surkis had direct connections with former Ukrainian President Leonid Kuchma Åslund [2]. Most political and parliamentary decisions were made with businessmen's support. It should be noticed that elites were on "intimate terms" with government, which also supported oligarch's actions in business. Both public offices and businessmen, who were involved in elite groups followed their own interests, specially to increase their capital Åslund & McFaul [3]. Due to the fact that all elite groups were not united, it also influenced the governmental separation.At the beginning of the revolution, there was a chasm between two warring parties. Both were supported by Ukrainian elites. Moreover, L. Kuchma personally repressed a number of businessmen, such as P. Poroshenko and E. Chervonenko. Thus, the conflict of opposites gained never-ending character Katchanovski [13]. Therefore during the "Orange Revolution" some elites (J. Tymoshenko and V. Yushchenko) were with oppositions and others supported Kuchma (Y. Yekhanurov) Kuzio [17].

The elites' permissiveness was followed by corruption. In every political crisis, Ukrainians demanded to stop corruption. Society was against the government and oligarchies. Citizens tried to defend their democratic rights and build a new, honest and fair government, but most Ukrainians did not believe in a positive resolution of the conflicts [17].

However, at the beginning of the "Orange Revolution", an improvement the Ukrainian economy was observed. GDP increased by 12.1% ICPS [12]. Some economic spheres have also risen: steel-; food-; machine- and agriculture-industries. Unemployment rate had also decreased from 11.7% to 7.8% in 2000 and 2004 respectively Åslund [2]. Despite improvement of some economic indicators, the economy of the Ukraine needed to be reformed Alina-Pisano [1]. Even though budget deficit had decreased by 3.1%; external Ukrainian debt remained high — $ 8.0 billion and Ukrainian standard of living was also at a low level Åslund [2; 35].

Table 1. – Main Economic Indicators, 1999–2004

Indicator	1999	2000	2001	2002	2003	2004
Production and investment[a]						
GDP	–0.2	5.9	9.2	5.2	9.4	12.1
Industrial output	4	13.2	14.2	7	15.8	12.5
Agricultural output	–6.9	9.8	10.2	1.2	–9.9	19.1
Capital investment	0.4	11.2	17.2	8.9	31.3	28
Foreign trade[b]						
Export of goods. FOB	–8.4	25.8	11.6	10.4	28.5	41.6
Import of goods. CTF	–20.5	15.4	13	7.6	35.6	26
Macroeconomic stability						
Consolidated budget balance[c]	–1.5	0.6	–0.3	0.7	–0.2	–3.1
Consumer price index[d]	19.2	25.8	6.1	–0.6	8.2	12.3

[a] *Real cumulative change, expressed m percent of total.*

[b] *Change m percent.*

[c] *Consolidated budget indicators are calculated on the basis of methodology used by the Ministry of Finance of Ukraine. The balanceis expressed as a percentage of GDP.*

[d] *In percent.*

Source: Compiled from data of Derzhkomstat (State Statistics Committee of Ukraine) and ICPS. 2005.
Note: The data are adapted from "The Economic Policy of Ukraine after the Orange Revolution" Anders Åslund [2].

Economic factors had great influence on social sphere. As long as citizens suffer from governmental punishments and dishonesty the more they have revolutionary sentiment. After the collapse of the

USSR, the Ukraine started to build its own society Yushchenko [38]. The process of stabilizing the civil society needs time. The Ukraine is a quite young county. Therefore, currentpost-USSR Ukrainian generation does not have a developed centralized structure Salnikova [30]. The "Orange Revolution" shows the process of forming an independent Ukrainian civil society. Unfortunately this process is complicated by the division of the country into two parts by their backgrounds: eastern and western, which are oriented towards Russia and the western countries respectively Katchanovski [13].

First of all, the difference between the western and the eastern Ukraineis based on the historical perspective, the culture, mentality and traditions of the citizens.The eastern part of the Ukraine — the well industrialized and developedregion, where metallurgy play a big role for the whole Ukraine. Achieving this development was needed to invite workforces from outside of the region. Therefore, many people from the Russian Empire and then Soviet territory, who spokes only Russian, moved to the east part of the current Ukraine Åslund [2].

Historically, Western Ukraine, had never been a part of Russia. It belonged to Polish-Lithuanian Commonwealth, then Austria and Poland. Of all of these countries Russia was usually an opponent, even alien Stone [32].

The country was divided into two main opposing political camps.The first, a significant part of the population of western Ukraine, which accounted for the main basis for the revolutionary masses. This group supports the Western vector of development of the country and mostly believes that Russia will prevent the prosperity of the Ukraine. The second camp, the main part of the eastern Ukraine population, where the Russian-speaking Ukrainians live, defend close cooperation and friendship with Russia McFaul [21].

The tendency of Ukrainian division still exists. Most of the eastern population of the Ukraine speaks Russian. Therefore there are many conflicts, which are based on language preferences. Ukrainian policymakers used these languages preferences in their own favor and built their election programs on these preferences, which also heated revolutionary public sentiment in the Ukraine Åslund [2]. Thus, during the "Orange Revolution" there were many slogans, which were contra- and pro-alliance with Russia: "Russia, Good Bye!"; "Russia, help us" Wilson [36].

Considering social causes of the "Orange Revolution" it should be also noted that the impoverishment of a large part of the population pushed protests. Ukrainians associated this impoverishment with Kuchma's power. At the beginning of the presidential campaign of 2004 most of the population was under the poverty level — in particular, the minimum pension in 2004 was 14% of the minimum subsistence level; people bought clothes mainly in second-hand shops; there were a lot of homeless children. The population of the Ukraine for the period 1992–2004 decreased by 4 million people; the scholarship for university students was approximately $ 6 per month; the average pension in 2004 -$ 35; the average salary for the year 2004 — $ 114. These indicators were several times lower than in neighbor countries IECONOMICS [11].

The basic causes of the "Orange Revolution" in the Ukraine in 2004 was the massive distrust of official election results, which began of the protests, rallies and strikes O Beachain & Polese [24].

The beginning of the "Orange Revolution" was organized and conducted by the supporters of V. Yushchenko after the announcement of the Central Election Commission of the preliminary results, according to which V. Yanukovych defeated V. Yushchenko. Subsequently, the Supreme Court of the Ukraine stated the facts of falsification of the presidential elections and agreed on the need of a second round of voting, in which V. Yushchenko won. An Attempt by supporters of V. Yanukovych to challenge the results of re-election did not bring results, and before the end of the court session V. Yushchenko was officially recognized by the President of the Ukraine Åslund [2].

The first round of the Ukrainian presidential electionwas held on October 31, 2004. By the results, none candidates received 50% or more of the votes. Therefore it was decided to hold a second round of presidential elections, which was held on November 21, 2004. By the second round V. Yanukovych won. V. Yushchenko declared that second elections were falsified. V. Yanukovych achieved the repeat of

the second round of elections (December 26, 2004) and become President of the Ukraine with 52%t of votes McFaul [20].

Considering the 52% of votes, we should notice the interesting socio-geographical fact that west Ukraine supported V. Yushchenko and east Ukrainians gave their votes for V. Yanukovych Åslund [2].

This map confirms the social Ukrainian division in two parts.

Map 1.

Note: The data are adapted from "The Economic Policy of Ukraine after the Orange Revolution" Anders Åslund [2].

The "Orange Revolution" has only confirmed the existence in the Ukraine of two halves — east and west. Traditionally, the south-east pro-Russian half expressed support for presidential candidate V. Yanukovych, who was called up to replace the former of head of state L. Kuchma, who left his presidential post after his second term. The western Ukraine is almost entirely (except part of Transcarpathia, which is a part of pro-Russian regions, but which is located in the western part) expressed support for the opposition candidate, V. Yushchenko Åslund A. & McFaul [3].

Generally, the Ukraine changed international orientation from Russia to west countries Kuzio [16]. During candidates' election programs there were many different slogans for participation in the EU by V. Yushchenko or the EEC (Eurasian Economic Community) by V. Yanukovych. Russia, the EU and the USA followed their own interests and supported the relevant parties of the conflict. The negotiations about Ukrainian membership in the EU had been started. Also it should be mentioned that NATO offered the Ukraine its protection Kuzio [16].

The Ukraine would like to "sit on two chairs": first one is relation with western country and second one is alliance with the Russian Federation. The Ukrainian government support ideas of the EU membership and the EEC. On February 21, 2005 the Ukraine and the EU signed the Plan for Europeanization for three-years Melnykovska [23]. On April 21, 2005 at a meeting of "the Ukraine — NATO" in Vilnius, it was decided to start the "intensive dialogue" between the Ukraine and NATO Larrabee [18]. In the same year, The Ukraine received a new military doctrine, which defined the goal of joining NATO. Russia has repeatedly made statements that

the Ukraine should choose one way and integration into NATO could change the relation between Moscow and Kiev McFaul [21].

At the same time the Ukraine has changed its positioning in the post-Soviet territory. Kiev is actually delaying the creation of the Eurasian Economic Community (EEC). On April 7, 2005, during the first integration forum for EEC, the Minister of Ukrainian economy S. Terekhin declared that the Ukraine is fundamentally not satisfied with a basic agreement of the EEC, which assumes the creation of supranational bodies of economic management "EurAsEc Today" [8]. The Ukraine is ready to join the EEC only by the creation of a free trade zone, but not the community, which would be an alternative to integration with the European Union. On this EEC Summit, all members decided that for the Ukraine joining the EEC is not profitable.

Therefore, we can say that one of the most important causes of orange and current revolutions was external intervention Kuzio [16]; Polese [26]. External influences were based on pro- or contra-Ukrainian regime in western and eastern parts of the Ukraine. Western countries supported Kiev and the West part of the Ukraine. During Kuchma's government period relations between the Ukraine and West have changed. Although, the US and the EU criticized the authoritarian Ukrainian regime, Kuchma has always oriented on western countries. Due to the goal to be a member of the EU and be an alien for the US, the Ukraine tried to do its best to be involved in western policy. Despite the negotiations about the participation in the EU and signing the Plan for Europeanization it should be noted that the EU was not ready to accept the Ukraine, which had many internal problems McFaul [21]. Relations with the US were more effective. To achieve the friendship with the USA and get western support, Kuchma sent 1,600 troops to Iraq Kristof [14]. During the "Orange Revolution" the Ukraine has also received the external support. The US financially supported the election process — $18 million. Serbia, Georgia and Slovakia provided nonfinancial support. They sent to Ukraine intellectual forces. West-Canada had big interest in democratization of the Ukraine, because of large Ukrainian community in Canada McFaul [21].

Summarizing all mentioned causes of the "Orange Revolution" we can see that many factors played a big role at the beginning of the political crisis-2004 in the Ukraine. Social and economic instability have pushed Ukrainians to go out and demand reforms. Population's division into West and East and governmental inability to reunite both societies increased a chasm between two parts of the Ukraine. The misunderstanding between the Ukrainian government and businessmen provoked the growth of oppositional moods in the Ukraine.

If all causes of the "Orange Revolution" are clear, why in ten years the Ukraine experiences political crisis again? It is noticeable that the beginning of the "EuroMaidan Revolution" almost matches the day of the beginning of the "Orange Revolution" — November 22. Are there any differences between the two revolutions that have occurred in 10 years? What are the main causes of the "EuroMaidan Revolution"?

Since November 2013 the hottest topic in media from the entire World are events in Ukraine. Ukraine was again involved in political crisis. Unfortunately, these revolutionary protests led to military actions. It is now very premature to discuss about results and consequences of these events, but we already can analyze the causes, which led to political crisis in 2014.

First of the reasons of the situation is the decision of the Ukrainian government to suspend the process of signing an Association Agreement with the EU in November 2013. This decision led to massive protests in Kiev and in other cities of the Ukraine (Shevtsova et al. [31]. Second wave of protest happened in December 2013 when Kiev asked the EU for $27.54 billion in forms of loans and aid. For the EU it was hard to lend out requested amount, but the EU has offered $838 million in loans for Ukrainian social development, legislative and executive reforms [5]. The EU demanded a report on the expenditure of funds. Russia was ready to offer $15 billion in loans and cheaper gas prices for the Ukraine [6]. For Moscow, it would be profitable to have good relations with neighbor country, because Russia has close economic, social and historical connections with the Ukraine. Thereby the Ukrainian government showed its preferences to be aliens with Russia, but Ukrainians expected to be involved in

the EU Chapman [4]. During the "Orange Revolution" the slogan "against cooperation with Russia for cooperation with Europe" was popular, but in ten years it became perhaps the key demand: "Ukraine needs Europe!"; "Ukraine and Europe one love!"; "UkrainEUkraine" Chapman [4]; Lutsevych [19]. Therefore the division of Ukraine into West and East was intensified. According to some experts' opinion, oppositionists were usually western Ukrainians. It could be explained that majority of the Ukrainian industries locate in the south-east part of Ukraine, therefore eastern citizens were not involved enough in current policy. Western Ukrainians were more active Kuzio [16].

Unfortunately in 10 years western and eastern parts of the Ukraine were not unified. The confrontation between them continued. West and Center expected Euro-integration and East and South expressed support for cooperation with Russia "How relation" [15].

Table 2.

	West	Centre	South	East	Ukraine in general
Relations should be the same as with other states-with closed borders, visas and customs houses	24.0	20.9	10.5	2.0	14.7
Ukraine and Russia must be independent, but friendly states — with open borders, without visas and customs houses	66.7	69.7	63.8	72.2	68.0
Ukraine and Russia must unite into a single state	0.7	5.4	19.4	25.8	12.5
Difficult to say/No answer	8.6	3.9	6.3	0.0	4.7

Note: The data are adapted from Kiev's international institute of sociology; report: "How relations between Ukraine and Russia should look like?" 2014, March, 3.

This table 2 confirms the continued division and preferences of western and eastern part of the Ukraine. During these 10 years (2004–2014) the question of the recognition of Russian language as the second official language of the Ukraine was also a debated issue. The problem of division to parts and the status of language are successfully exploited by Ukrainian politicians. Governmental view based on western preferences, and opponents are pro-eastern. After the annexation of Crimea to Russia the Ukrainian internal confrontation increased Mearsheimer [22].

The main reason for revolutionary recurrence was again social injustice. There were an enormous polarization of incomes and low living standards of the Ukrainian population and the widespread of corruption in the executive, the legislature and the judiciary branches of power. Oligarchs still had the most influencing power in Ukraine Pardo [25]. Economically Ukraine was dismembered in the territory of oligarchic influence. According to the Forbes' list of World's billionaires, R. Akhmedov was № 88 in 2014 and "number one" in the Ukraine ("Forbes", 2015) In the beginning 2014 R. Akhmedov was the owner of 31% of all states tenders Lutsevych [19]. In 2014 P. Poroshenko was in the Forbes' list of billionaires ($1.3 billion). For ten years their privileged position in the Ukrainian government did not change.

Another common background of the current revolutionary events was the general economic backwardness of the Ukraine. Comparing with the beginning of the "Orange Revolution", economic situation has developed slightly. The Ukrainian GDP increased as much as 3 times (from 64 to $176 billion); the average salary in 2014 was approximately $600, compared to $114 in 2004. But other economic indicators mostly decreased: unemployment rate increased from 7.8% till 9% in 2004 and 2014 respectively; inflation rate was doubled from about 11% to about 22%; the most decreased indicators are Ukrainian Government Budget: –0.9% (2004), —4.48 (2014) and the external debt, which has grown 7 times from more than $20 billion (2004) to approximately $140 billion (2014) IECONOMICS [11].

Analyzing the "EuroMaidan Revolution" we can see that during 10 years between two significant Ukrainian revolutions the fundamental reforms were not carried out. The main cause of political crisis in

2014 was a misunderstanding between government and Ukrainian society. Population asked for internal stability, eliminating elites 'influence and integration in Europe, but the Ukrainian government probably was not ready for such changes.

During 10 years, 2004–2014, many Ukrainian issues have been changed and Ukraine itself has also changed. We can see the huge increase in wages and GDP. Ukraine began to declare and defend openly the interests on the international scene. Due to the causes and consequences of the "Orange Revolution", it should be noted, that generally the political crisis in 2004 was the Ukrainian attempt to build the civil society in their country Yushchenko [38].According I. Katchanovski [13] in 2004 Ukraine had "Orange Evolution", rather than "revolution", because events in 2004 gave start for Ukrainians to develop their country by themselves. As for "EuroMaidan Revolution" and current events, we can see, that civil society already exists and now it is trying to build an honest and fair government.

Are there any common causes between two considered revolutions?

Analyzing the two quite similar Ukrainian Revolutions is not so easy, as at first sight. There are many different and specific features, but as for the causes of these revolutions there were many similarities. Paradoxically, the main causes of the two Revolutions have been not changed even after 10 years:

The first similarity is social instability. High unemployment rate, low living costs, chasm between rich and poor citizens forced Ukrainians to organize protests against their government.

The second similarity is economical instability. Big external debt, decreasing the Ukrainian Governmental Budget and high rate of inflation prompted the Ukrainians to demand economic reforms.

The third similarity is distrust to the government. Falsification of elections, centralization of power, corruption and huge elites' influences on the governmental decisions widened the gap between government and society.

The forth similarity is Ukrainians' division. Opposing preferences of allies, opposing views on national identity and opposing ideas about Ukrainian future development are even more stirred up hatred between conflicting parties.

The fifth similarity is external influence. External support opponents, realization external goals due to political crises, inability of Ukraine express international views and desire to keep on two chairs (The EU and Russia) have allowed foreign countries to control internal politics in the Ukraine.

The sixth similarity is same political actors. Oligarchs and opponents, whom we can observe in 2004, also played a role in 2014 (V. Yanukovich — in 2014 came already in status of the Ukrainian president; P. Poroshenko is current Ukrainian president, R. Akhmedov — continues to play important role in the Ukraine as businessman).

Meanwhile sometimes, the solution of the problem can be found in the historical experience, unfortunately, lessons from history are not always taken into account. Due to the causes and consequences of the "Orange Revolution", we can make a decision that the "EuroMaidan Revolution" could probably be prevented. Such Revolutions will occur in the World until governments and citizens will not learn from their mistakes.

References:

1. Alina-Pisano J. (2004). Sub rosa resistance and the politics of economic reform: land redistribution in post-soviet Ukraine. World Politics, 56 (4), 554–581. doi: 10.1353/WP.2005.0001
2. Åslund A. (2005). The economic policy of Ukraine after the orange revolution. Eurasian Geography and Economics, 46 (5), 327–353.
3. Åslund A. & McFaul M. (2006). Revolution in orange: the origins of ukraine's democratic breakthrough, carnegie endowment for international peace, ISBN 0–87003–221–6
4. Chapman A. (2013, November 28), Ukrainians are protesting in the street for a European future. Just a platform. Retrieved from: http://www.justaplatform.com/ukraine-news
5. CNBC (2013, December 11). Ukraine seeks $27.5 billion in aid from eu, pm says. Retrieved from: http://www.cnbc.com/id/101263666

6. CNBC (2013, December 17). Ukraine leader seeks cash at Kremlin to fend off crisis. Retrieved from: http://www.cnbc.com/id/101277705
7. Durant Will & Arial (2010) The lessons from history, Michigan University,110–116.
8. Eurasian Economic Community (2010), EurAsEc Today-2011. Retrieved from: http://evrazes.com/i/other/EurAsEC-today_eng.pdf
9. Forbes (2015), The World's Billionaires, Rinat Akhmetov, online Retrieved from: http://www.forbes.com/profile/rinat-akhmetov
10. Hale H. E. (2005). Regime cycles: democracy, autocracy, anarchy in post-soviet Eurasia.World Politics, 58 (1), 133–165. doi: 10.1353/wp.2006.0019
11. IECONOMICS online. Retrieved from: http://ieconomics.com/ukraine
12. ICPS (international center for Policy Studies), Economist Statistics, June 2005.
13. Katchanovski I. (2006). The orange evolution? the political realignment and regional divisions in Ukraine. Canadian Political Science Association in Toronto.
14. Kristof N. D. (2004, December 8). A call to arms, The New York Times. Retrieved from: http://www.nytimes.com/2004/12/08/opinion/08kristof.html?pagewanted=print&position=&_r=0
15. Kiev international institute of sociology (2014, March, 3) "How relations between Ukraine and Russia should look like?" Retrieved from: http://www.kiis.com.ua/?lang=eng&cat=reports&id=236&page=1
16. Kuzio T. (2006). Is Ukraine part of europe's future? The Washington Quarterly, 29 (3),89–108. Retrieved from: http://muse.jhu.edu/journals/wq/summary/v029/29.3kuzio.html
17. Kuzio T. (2008) Ukrainian politics, energy and corruption under kuchma and yushchenko, Harvard University Retrieved from: http://www.taraskuzio.net
18. Larrabee F. S. (2007) Ukraine at the crossroads. The Washington Quarterly,30 (4), 45–61.
19. Lutsevych O. (2014 February 20). Ukraine crisis: oligarchs are yanukovych's weakest link.BBC NEWS EUROPA. Retrieved from: http://www.bbc.com/news/world-europe-26277970
20. McFaul M. (2006).Transition from postcommunism. Journal of Democracy, 16 (3), 5–19. Doi: 10.1353/jod.2005.0049
21. McFaul M. (2007). Ukraine imports democracy; external influences on the orange revolution. International Security, 32 (2),45–83. Retrieved from: http://muse.jhu.edu/journals/ins/summary/v032/32.2mcfaul.html
22. Mearsheimer J. J. (2014). Why the ukraine crisis is the west's fault. Foreign affairs, online. Retrieved from: http://www.foreignaffairs.com/articles/141769/john-j-mearsheimer/why-the-ukraine-crisis-is-the-wests-fault
23. Melnykovska I. (2008), Ukraine: europeanization from abroad or inside? chance and challenge for the European Union, Kiel Institute for the World Economy
24. Beachain D., Polese A. (2010). The colour revolution in the former soviet republics.
25. Pardo E. (2011). Yanukovich's Ukraine after the orange revolution; mere parenthesis or on its way back to normalcy? UNISCI Discussion papers, 27. 265–278.
26. Polese A. (2008). Russia, the US, "the others" and the "101" things to do to win a (color) revolution": reflections on Georgia and Ukraine. Retrieved from: https://scholar.google.co.uk/citations?user=epgQo-0AAAAJ&hl=en
27. Radnitz S. (2010).The color of Money. Privatization, economic dispersion, and the post-soviet "revolutions". Comparative Politics, 42 (2),127–146.
28. Revolution (2010) In webster's new world college dictionary online. Retrieved from http://websters.yourdictionary.com
29. Revolution. (2012) In collins english dictionary online. Retrieved from: http://dictionary.reference.com/browse/revolution

30. Salnykova A. (2006). The orange revolution a case study of democratic transition in Ukraine. Simonfraser university library.
31. Shevtsova L., Åslund A., Way L., Kudelia S., Diuk N., … Shekhovtsov A. &Umland A. (2014). The maidan and beyond. Journal of Democracy 25 (3), 17–89.
32. Stone D. (2001), The Polish-Lithuanian State, 1386–1795 (history of east central Europe), University of Washington Press.
33. "The Economist" (2014, March 01), The february revolution. Retrieved from: http://www.economist.com/news/
34. Toynbee A.J (1934) A study of history. Oxford University Press 12 (3).
35. United Nation report (2004), World Economic situation and prospects 2004. UN online, Retrieved from: www.un.org/en/development/desa/policy/wesp/wesp… /2004wesp.pdf
36. Wilson J. L. (2009). Colour revolutions: the view from Moscow and Beijing. Journal of Communist Studies and Transition Politics, 25 (1–2).
37. Yoder D. (1926). Current Definitions of Revolution. American Journal of Sociology, 32 (3), 433–441, Retrieved from: http://www.jstor.org/stable/2765544
38. Yushchenko K. (2008) the orange revolution and beyond. Journal of Democracy 19 (3). 158–161. doi:10.1353/JOD.0.0013
39. Zhalko-Tytarenko A. (2013, December 27). Ukraine's revolution of dignity, The Diplomatic Courier. Retrieved from: http://www.diplomaticourier.com/news/regions/eurozone/1969-ukraine-s-revolution-of-dignity
40. Webster's New World College Dictionary, Fifth Edition Hardcover — August 26, 2014.

Gorbachev Mikhail Valerevich,
Saratov State Academy of Law, the Institute Of Justice
E-mail: ussr-86@mail.ru
Cherniavskiy Alexander Igorevich,
Graduate student of Chair of Political Science, The Russian
Presidential Academy of National Economyand
Public Administration
E-mail: Sawa1999@yandex.ru

Projects of the «color revolutions» in the post-Soviet space through the prism of regional political competition (Discourse analysis of the Guardian and the Associated Press 2004–2005)

Abstract: The «color revolutions» have become an integral part of political life in the post-Soviet region. In modern scientific literature this phenomenon is studied from different methodological positions. In this article the study of «color revolutions» carried out, based on the theory of political competition and political methodology design.

Keywords: political project, political design, comparative research, political process, political leadership, discourse analysis, political competition.

Горбачев Михаил Валерьевич,
Кандидат политических наук, доцент кафедры
теоретической и прикладной политологии Института Юстиции
Саратовской государственной юридической академии
E-mail: usss-86@mail.ru

Чернявский Александр Игоревич,
аспирант кафедры политических наук,
Поволжский институт управления имени П.А. Столыпина–
филиал РАНХиГС при Президенте Российской Федерации
E-mail: sawa1999@yandex.ru

Проекты «цветных революций» на постсовестком пространстве сквозь призму региональной политической конкуренции (Дискурс анализ Guardian и Associated Press 2004–2005)

Аннотация: «Цветные революции» стали неотъемлемой частью современного постсоветского пространства. В научной литературе этот феномен изучается с помощью различных методологических позиций. В настоящей статье анализ «цветных революций» основывается на теории политической конкуренции и теории «политических проектов».

Ключевые слова: политический проект, политический дизайн, сравнительные политические исследования, политический процесс, политическое лидерство, дискурс-анализ, политическая конкуренция.

«Цветные революции» в странах постсоветского пространства интерпретируются в контексте двух основных трендов. Одни исследователи считают, что они выступают закономерным итогом усиления региональной политической конкуренции, вызванной дезинтеграционными процессами после распада СССР. При этом сами революции позиционируются как вполне естественные процессы, имеющие внутренние источники и причины. Другие полагают, что феномен «цветных революций» связан с глобальными и региональными политическими проектами, субъекты которых имеют определенные геополитические интересы в постсовестком регионе. В связи с этим независимость «цветных революций» от внешних источников ставится под сомнение. Задача настоящей статьи состоит в сравнительном изучении указанных двух подходов с помощью дискурс анализа отдельных западных изданий за период 2004–2005 гг. Дискурс анализ подразумевает лингвистическую интерпретацию политических текстов изданий «The Guardian» и «The Associated Press».

«Цветные революции» в постсовестком регионе имеют оправленную политическую специфику. Несмотря на ряд уникальных аспектов, одна из ключевых особенностей цветных революций, отделяющих их от классических революций, заключается в том, что так называемый момент «Х» связан либо с выборами, либо с требованиями их досрочного проведения. Выборы представляют собой, именно то событие, которое позволяет оппозиции вывести максимально возможное количество протестного электората на «уличные формы» борьбы. Причем подготовка к этому начинается задолго до самих выборов и осуществляется, как правило, по двум сценариям. Первый состоит в том, что если выборы еще не объявлены, существующий режим объявляется нелегитимным и диктаторским. В случае проявления им слабости, следует требование отставки руководства страны, происходит формирование переходного правительства и объявление внеочередных выборов (Тунис, Египет). Если же режим, поддерживаемый большинством населения, не сдается, то на авансцену выступают вооруженные

бандформирования, активно поддерживаемые из-за рубежа (Ливия, Сирия).

Второй сценарий используется в ходе очередной предвыборной кампании. В этом случае задолго до выборов «революционеры» заранее обвиняют власти в фальсификации ее итогов и заявляют о своей победе. Развитие этого сценария предусматривает как минимум два способа смены режима: мирный и относительно мирный. Мирный проект, предусматривает отмену Конституционным судом итогов выборов и переголосование (Украина) [1, 49]. «Относительно мирный», заключается в переходе полицейских сил на сторону оппозиции в ситуации, когда армия и другие силовые структуры занимают нейтрально-выжидательную позицию. Он позволяет через определенный промежуток времени осуществлять захват и даже поджог зданий парламента или ЦИКа и, наконец, изоляцию или арест прежних руководителей страны (Сербия, Грузия, Киргизия) [2].

В современных процессах у участников протестных акций преобладает мотивация, исходящая из неверия в то, что правящие силы вообще способны организовать честные выборы. Если нет сомнений в чистоте подсчета голосов, то может быть сомнение в чистоте, отсутствии коррумпированности кандидатов. Еще один мотив, с вариациями повторяющийся в каждом революционном движении, относится к задаче расширения области прав человека. Иногда для этого требуется избрать новый орган власти, а порой сами итоги голосования указывают на изменение границ этого поля. Характерная черта взаимосвязи выборов и революций последних лет состоит в том, что эта взаимосвязь все больше проявляется не в волновой форме, когда после подъема социальной активности наступает время откатной волны, а в форме афтершоков [3, 19], следующих за крупным землетрясением. В контексте такого сравнения выборы и взлет массового недовольства их итогами могут быть сравнены с форшоком, землетрясением, происшедшим до более сильного и связанным с ним общим временем и местом [4, 24].

Протестная волна, связанная с итогами выборов, прокатилась по постсоветскому пространству, на котором большинство выборов было отмечено «цветными революциями». Следует обратить внимание на то, что за последние два десятилетия на постсоветском пространстве выросло новое поколение, которому не столь важно, кто победит на выборах, главное, чтобы они проходили честно. И этот аргумент приводится многими участниками оппозиционных выступлений в разных частях постсоветского пространства, он же сплачивает сторонников оппозиции и за его пределами [4, 23].

Анализируя события на Украине в ходе «оранжевой революции», можно увидеть сам механизм приведения в действие оппозиционно настроенного электората. Так 24 ноября 2004 В. Янукович был избран президентом Украины, однако вступить в должность он не смог по причине активизации контрэлиты. «Оранжевые революционеры» блокировали правительственное здание, находящееся в центре Киева. Использовать силу для разгона революционно настроенной толпы В. Янукович не мог, не удалось применить грамотно на практике и тактику оппозиционеров. «Шахтерский поход» стал анти акцией действующего главы государства. По центральным каналам транслировались сюжеты, где Ю. Тимошенко вместе со своими коллегами раздавала теплые пледы и горячий чай мерзнувшим шахтерам, о которых не смог позаботиться В. Янукович.

Одновременно, на «Майдане» оглашались декреты, в которых прописывалась информация о создании новых органов, в том числе, комендатур, национальной гвардии и судов. Однако не создаются новые управленческие органы, так как старые переходят во власть революционеров. Воссоздается двоевластие, которое подпитывается кадрами с Майдана, постоянными выступлениями контрэлиты, а также невозможностью государственными органами власти оказывать необходимое психологическое воздействие на электорат. В результате 27 ноября 2004 года Верховная Рада аннулировала результаты второго тура президентских выборов, под угрозой расправы революционных масс над депутатами. Один за одним представители государственной власти переходили на сторону оранжевых, тем самым голосуя за отмену результатов президентских выборов [5].

В последствие 3 декабря 2004 Верховный суд Украины подтвердил законность решения Рады и назначил новую дату президентских выборов. А уже 26 декабря 2004 г. по подсчетам избирательной комиссии выборы выиграл Ющенко, причем с отрывом в 8% голосов. В 2004 году, после спорных выборов (характерная черта каждой «цветной революции»), политические обозреватели издания Guardian писали: «На счету активистов украинского молодежного движения «Пора» уже есть одна значительная победа — независимо от результата опасного противостояния в Киеве», но «оппозиционная кампания — дело рук Америки, это сложный и блестящий экзерсис в брендинге Запада и массовом маркетинге, который за четыре года использовался в четырех странах для спасения фальсифицированных выборов и свержения сомнительного режима» [6].

Автор статьи Я. Трейнор пояснил, что «эта кампания, финансированная и организованная американским правительством, использующая американских консультантов, социологов, дипломатов, две крупные американские партии и неправительственные организации, была впервые использована в Европе в Белграде в 2000 году для того, чтобы обеспечить поражение Слободана Милошевича на президентских выборах» [7]. В ходе осуществления стратегии «демократической смены режима» «разрозненные и малочисленные оппозиционные силы объединяются вокруг одного кандидата, если есть хотя бы малейший шанс свержения режима. Этот лидер выбирается из прагматичных и объективных соображений, даже если он или она не поддерживает Америку» [7].

Также Я. Трейнор отмечает, что: «Freedom House и НДИ помогли оплатить и организовать «крупнейшую региональную систему гражданского мониторинга выборов» в Украине с участием более чем 1000 подготовленных наблюдателей. Они также организовали экзит-полы. Эти экзит-полы показали, что В. Ющенко опережает своего оппонента на 11 пунктов, что послужило основанием для дальнейших событий. Экзит-полы очень важны, потому что они берут на себя инициативу в пропагандистской войне с режимом; они неизменно появляются первыми, получают широкий резонанс в СМИ и вынуждают власть делать ответный ход. Заключительный этап в схеме «демократической смены режима» — это реакция на действия власти, у которой пытаются украсть результаты выборов [7].

Еще один аналитик, исследующий страны постсоветского пространства, Д. Стил своей статье в Guardian объяснил, что лидер оппозиции В. Ющенко, который оспаривает результаты выборов, «занимал пост премьер-министра при президенте Л. Кучме, и некоторые его сторонники также связаны с промышленными кланами, которые стояли у приватизации в Украине после распада Советского Союза» [8, 128].Он также пояснил, что неважно, имела ли место фальсификация выборов, или нет: «Создается впечатление, что решение о выводе протестующих на улицы зависит главным образом от политики и от того, насколько претендент на пост президента считается «прозападным» или «прорыночным» [8, 143]. Иными словами, те, кто поддерживает неолиберальную экономику, получат поддержку США, поскольку неолиберализм является установленной международной экономической политикой и способствует продвижению их интересов. Кроме того, «В. Ющенко получил одобрение Запада, и группы, которые его поддерживают, получили огромное финансирование, начиная молодежной организацией «Пора» и заканчивая различными оппозиционными веб-сайтами.

Кроме того, «многочисленные митинги прошли в Киеве в поддержку премьер-министра В. Януковича, но журналисты о них умалчивают: если существование сторонников Януковича и признается, их считают «купленными» или «запуганными». На демонстрациях в поддержку Виктора Ющенко есть лазерные проекторы, огромные плазменные экраны, современные звуковые системы, рок-звезды, палаточные лагери и огромное количество оранжевой одежды. Но мы продолжаем упорно обманывать себя, что все это возникло совершенно спонтанно» [8, 122]. В 2004 году агентство Associated Press сообщило, что «администрация Д. Буша потратила более 65 млн. долларов в течение последних двух лет на помощь политическим организациям

в Украине. В частности, была оплачена поездка лидера оппозиции В. Ющенко в США, где он встретился с американскими лидерами» [9, 45]. По оценкам экспертов финансирование «направлялось через такие организации, как Фонд «Евразия», или через группы, имеющие связи с республиканцами и демократами, которые участвовали в организации тренингов по выборам и форумов по правам человека» [9, 52].

Таким образом, электоральные процессы являются основополагающими моментами активизации психологически подготовленных масс, которые нуждались лишь в резком толчке. Именно подобным импульсом выступают заявления контрэлиты о незаконности и не легитимности проводимых выборов в государстве. При этом, конфликтная ситуация развивается стремительно за счет «искусственного накаливания» политической атмосферы, за счет конфронтаций, что было зафиксировано на Украине. В связи с этим, проектное измерение «цветных революций» имеет больший эвристический потенциал для понимания процессов происходящих в постсовестком регионе. Политическая конкуренция различных сил в данном контексте выглядит как деятельность, направленная на создание определенного результата, обладающего заданными свойствами и качествами, в соответствие с субъективно выстроенным пониманием непублично заявленного результата или цели. При этом как в конкурентном понимании «цветных революций», так и в проектной интерпретации их смысла, существуют ограничения по ресурсам и срокам, по количественным и качественным параметрам, по уровню допустимого и недопустимого политического риска.

References:

1. Литвиненко А. Оранжевая революция — украинская версия. М.: Европа, 2005.
2. Секретариат Ющенко: Революции во время выборов не будет [Электронный ресурс]//Корреспондент. Нет –2009.09.29. URL: http://korrespondent.net/ukraine/politics/982243-sekretariat-yushchenko-revolyucii-vo-vremya-vyborov-ne-budet Дата обращения: 16.03.2015.
3. Шумилов В. Н. Главные движущие силы землетрясений, дрейфа континентов и горообразования. Киев.: Знание, 2005.
4. Цит. по Байханов И. Б. Конфликтный инструментарий «цветных революций» и электронная демократия//Власть. 2012. № 11.
5. Фальсификация выборов в Украине: взгляд изнутри [Электронный ресурс]//Электронное СМИ Лента.ру. –2004.11.27. URL: http://lenta.ru/articles/2004/11/26/letter/. Дата обращения: 19.03.2015.
6. Цит. По: Ян Трейнор. За беспорядками в Киеве стоят американцы [Электронный ресурс]//ИНОСМИ.ру – 2004.11.26. URL: http://inosmi.ru/stories/01/06/22/3006/215052.html. Дата обращения: 20.03.2015.
7. Jonathan Steele. Ukraine's postmodern coup d'etat [Электронный ресурс]//theguardian.com 2004.11.26. URL: http://www.theguardian.com/wo-rld/2004/nov/26/ukraine.comment. Дата обращения: 21.03.2015.
8. Цит. по. Gorbachev M. V. Anti-crisis project in civilization discourses in modern russian political leader/M. V. Gorbachev; Saratov State Law Academy. – Saratov: FSBEI of HPE «Saratov State Law Academy», 2015.
9. Доннер С. Постсоветские режимы. Кравов.: Весь мир, 2009.

Rybalka Serghey Viktorovich,
Oles Honchar Dnipropetrovsk National University Doctoral Student,
Faculty of Social Sciences and International Relations
Candidate of Political Sciences
E-mail: rybalkaserghiy@i.ua

Local and regional elites: grounds of interaction in society political transformation

Abstract: Based on the institutional approach is considered modern meaning of «local and regional political elites». Using structural and functional analysis examined ways of contacts, coordination and management links between regional and local level in the modern postsoviet societies.

Keywords: local elites, regional elites, regional development, local political regimes, elit-creating.

Рыбалка Сергей Викторович,
Днепропетровский национальный университет имени Олеся Гончара,
Докторант, Факультет общественных наук
и международных отношений, кандидат политических наук
E-mail: rybalkaserghiy@i.ua

Местные и региональные элиты: основы взаимодействия в обществе политических трансформаций

Аннотация: На основе институционального подхода рассматривается современное содержание понятий «местные и региональные политические элиты». С использованием структурно-функционального анализа изучаются способы контактов, координации и управленческих связей между региональным и местным уровнем в современных постсоветских обществах.

Ключевые слова: местные элиты, региональные элиты, региональное развитие, местные политические режимы, элитообразование.

Постановка проблемы в общем виде

Проблема развития местных политических элит становится актуальной вследствие неопределенности ее состава и функциональной нагрузки в системе регионального политического управления. Социальное наполнение и экономическая ориентация местных политических элит становится проблемой политологического научного поиска из-за распределения ответственности между региональным и местным уровнем, а также из-за приобретения последним статуса ведущего фактора представительства населения местных общин в условиях децентрализации. Именно на основе взаимодействия местных элит, как формирующихся на демократических началах, и региональных, которые формируются в рамках государственной бюрократической системы, возникает ряд коллизий. Они связаны, прежде всего с формированием планов местного и регионального развития, внедрением технологий субсидиарности и децентрализации в управлении региональными и местными процессами.

Проблема местных политических элит в Украине также требует исследования из-за необходимости установки их идеологических ориентиров, способов рекрутирования и ориентации в рамках общегосударственной политики. Способ иерархического подчинения местных и региональных элит центральным органам власти, руководству политических партий, который был имел место начиная с 2010 года и превратил местные элиты в партийные ячейки, потерял силу после событий 2013–2014 года. На современном

этапе этот принцип постепенно меняется в пользу прагматизма и потребностей местных общин.

Целью статьи является установление содержания отношений региональных и местных элит в современном переходном обществе. Задачами статьи являются: изучение механизма влияния региональных элит на местные элиты на постсоветском пространстве, а также изучение взаимоотношений между местными и региональными элитами в современной Украине.

Среди последних исследований и публикаций, в которых начато решение проблемы данной статьи доминируют разработки ученых в пределах наук государственного управления. В частности, украинский исследователь Т. Ткач [8] разработал качественные характеристики элиты как условие реализации элитарной демократии. Специфику отечественного местного самоуправления изучала И. Кресина [2]. Концептуальные основы элитообразования современной Украины определяли Ф. Рудич [7], А. Пахарев [4]. Зарубежные исследователи А. Виви, А. Банарджи, Р. Ханна (и др.) изучали влияние местных элит на экономическое развитие Индонезии [10]. Л. Анджелес и К. Неанидис рассматривали причинно-следственные связи между интересами элит и эффективностью финансовой помощи территориям [11]. Не смотря на это, проблема взаимодействия местных и региональных элит в трансформационном обществе требует дальнейшего изучения.

Основное содержание статьи

Уровень местного самоуправления выступает одним из наименее изученных с точки зрения современного элитообразования в Украине и других постсоциалистических государствах. Между тем, на этом уровне разворачиваются процессы передачи властных полномочий от территориальных общин представительным институтам. Таким образом, местная демократия и местная политическая элита — это два взаимосвязанных звена, которые определяют процесс преобразования управления на локальном уровне политической системы.

Согласно статье В. Мохова, появление понятия «местной элиты» было вызвано, с одной стороны, потребностями анализа социально-политической ситуации на уровне муниципальных образований, с другой стороны, бурным развитием элитологии, в том числе и региональной. При этом, дело заключалось даже не в том, что возникала необходимость в объективном анализе несколько непривычных процессов, которые происходили на низовом уровне власти на рубеже 2000-х и 2010-х годов XXI века» [3].

Региональная и местная элиты на этапе перехода к демократии, вступают между собой в разновекторные взаимодействия, которые не ограничиваются отношениями вертикального подчинения. Кроме того, принадлежность к местным элитам не ограничивается органами представительной и исполнительной власти. Ведущую роль в функционировании местных элит играют не локальные, а макрополитические факторы. Как указывает политолог В. Ковалевский, «отсутствие системных реформ, разветвленная коррупция, продуцирование недемократических стандартов политической культуры сохранили основные риски для украинского общества. Они остаются такими и сегодня. Ключевыми из них являются непрозрачность и непубличность принятия политических решений, информационная закрытость власти, авторитарная партийная система, которую не удалось до конца преодолеть даже на парламентских выборах 2014, до сих пор не урегулирован статус оппозиции, а также достаточно прочное влияние неинституциональных структур (финансово-промышленных групп) на политический процесс» [1, 138].

Ключевым фактором функционирования местных элитарных образований является их решающая роль в решении местных проблем. Местная политика как совокупность взаимодействий местных политических субъектов, расширяет круг участников локальных элит за счет представителей политических и общественных организаций, которые могут оказывать влияние на местную ситуацию. Как считает В. Мохов, «локальная элита — это разновидность местных элит, это элитарные группы, которые возникают на основе межмуниципального, или внутримуниципального взаимодействия» [3].

Украинский пример свидетельствует о том, что воспроизведение управляемости процессами государственного строительства означает

превращение местной элиты в звено общенационального политико-управленческого процесса, также возлагает на нее определенные функции и значительную ответственность. Однако общая иерархизация местных и региональных элит, которая все еще имеет место в Украине, не может не опираться на соответствующее социальную среду. «Украинское государство играет роль патрона относительно своего коллективного клиента — населения: патрон одаривает и защищает своих клиентов в обмен на лояльность и поддержку», считает украинский эксперт [1, 139]. Реализация интересов территориальных общин выступает критерием оценки эффективности и направления эволюции местных элит в обществах политических трансформаций.

Местная элита, в отличие от региональной, является квазиинституциональным образованием, и не всегда имеет внешние проявления. Однако его функции четко определены объемам территориальной общины и структурой имеющихся институтов управления. Кроме того, внутренняя элитарная динамика и процессы конкуренции связаны с уровнем развития территориального сообщества и экономическими возможностями общества. Чем более развитой является инфраструктура местной демократии, тем более профессиональной и сплоченной является местная политическая элита. В таком случае она выступает полномочным субъектом взаимодействий с элитой на региональном уровне. К сожалению, на современном этапе «украинская политическая элита эгоистично ограничивает возможности политического участия граждан… Однако это выигрышно только ситуативно и является стратегическим проигрышем, что продемонстрировали события конца 2013 — начале 2014 годах», считает В. Ковалевский [1, 140–141].

Процесс формирования местных политических элит в постсоветских и посткоммунистических государствах прошел несколько стадий. Первая была связана с «механическим» преобразованием управленческих кадров местных организаций компартий в политических субъектов. Вторая стадия была связана с дифференциацией управленческого процесса и выработкой функций для различных звеньев местной власти — представительной, исполнительной и др. Третья стадия была связана с консолидацией местных элит на основе имеющихся секторов управления местной общиной. Вектором взаимодействия местных и региональных в условиях демократизации стали профессиональные контакты и реализация проектов развития территорий. В то же время, дала о себе знать и конкуренция в полномочиях между региональным и локальным уровнем. Эти вопросы не являются окончательно решенными во многих государствах Центральной и Восточной Европы, а также в Украине, Молдове и Казахстане.

Механическое зачисление в местные политические элиты представителей управленческого корпуса несколько сужает понятие политической элиты на местном уровне. Однако, оно и формализует явление местной политической элиты. Этот процесс крайне необходим для Украины, поскольку в предыдущий период развития политическое управление опиралось исключительно на неформальные практики. Согласно В. Ковалевскому, «новая институциональная структура — «смотрящие» — строилась на условиях доверия … На горизонтальном уровне система основывалась на принципах политической коррупции. Для того, чтобы минимизировать возможные риски, применялись две ее формы — публичная (внешняя) и теневая (внутренняя)» [1, 145]. Однако, независимо от состава и взглядов на формирование местной политической элиты, ее миссия и значение для функционирования местных общин постоянно расширяется.

Взаимодействие региональных и центральных элит в трансформационных обществах характеризуется изменением кадрового состава региональных, в то время, как местные элиты остаются сравнительно стабильными. Именно на них возлагается основная тяжесть в решении местных вопросов и ответственность за общую социально-политическую ситуацию в стране. Именно на местные элиты в лице мэров городов (например, мэра г. Киева), украинская центральная власть возлагает ответственность за должностные преступления, которые являются типичными в масштабах всей страны. При этом уровень ответственности представителей мест-

ных представительных ассамблей значительно ниже и требует коррекции. «В целом, депутат местного совета, переходя в элитарный слой путем своего избрания, получает ряд новых статусов и ролей: депутат в качестве официального лица, формирует политику самоуправления; депутат в качестве личности, способствует коллективному процесса принятия решений; депутат в качестве личности, принимает решения; депутат в качестве представителя власти; депутат в роли лидера; депутат в роли «коммуникационного центра»», отмечает украинский политолог [1, 142–143]. Таким образом, значение местных политических элит как гарантов социальной и политической стабильности на местном уровне растет из-за возобновления потребительских настроений в среде населения.

Подходами к стабилизации элит на местном уровне в условиях, которые являются альтернативой для демократических трансформаций, могут стать этнические и национальные особенности отдельных регионов и общин. Государственные формы взаимодействия между этническими группами и внутри общин в отдельных постсоветских странах обеспечивают более тесную связь между местными элитами и населением. Также они обеспечивают стабильность рекрутирования местных элит из одних и тех же родовых и клановых образований. В статье Д. Пеньковского указывается, что на деятельность местных элит республик Северного Кавказа оказывает огромное влияние выстроенная за последние двадцать лет клановая система организации власти, экономики и управления. Практически во всех республиках ключевые должности занимают представители 5–6-ти самых мощных кланов. Эта система строится не только по национальному, но и по кровнородственному признаку» [5]. Клановая конфигурация отдельных политических элит в регионах с выразительной национальной и этнической спецификой порождает ряд проблем, касающихся модернизации местных политических элит.

За годы независимости Украины в формировании местных политических элит наметилась тенденция доминирования местных бизнес-групп в представительных и исполнительных органах. Однако, период существования пропорциональной избирательной системы с 2006 по 2012 годы, обусловил значительную степень контроля над местными советами со стороны центральных политических партий. Некоторые исследователи видят в этом канал для олигархического контроля над местными общинами. В любом случае местные политические элиты все еще остаются недостаточно выраженными субъектами политической деятельности на местном уровне. Они не в полной мере решают задачи контроля и жизнеобеспечения в территориальных общинах. «Учитывая низкий уровень приверженности и доверия к политическим партиям в украинском обществе, недостаточную ориентированность украинского населения в их идеологическом многообразии, есть основания утверждать, что политические партии практически утратили свое свойство конструировать гражданскую идентичность», указывают аналитики академического Института политических и этнонациональных исследований им. И. Кураса [6, 93].

Попытки установления контроля на всех уровнях политического управления со стороны определенных политических сил в современной Украине имели временный характер, поскольку принципы государственного контроля за местными элитами оставался неизменным. Конституционная структура политических отношений в современной Украине определяет влияние центральной власти как доминирующей даже несмотря на выборный характер местных органов власти. В результате, местные политические элиты Украины ориентируются на доминирующие политические силы на центральном уровне и выбирают своего политического партнера в зависимости от того политического центра силы, который преобладает на данный момент. Согласно Е. Цыплаковой, «в 2004 году в Украине была осуществлена попытка решить существующий конфликт элит в одностороннем порядке, в результате привело к «оранжевой» революции» [7, 341].

Таким образом, местные политические элиты на постсоветском пространстве реализуют несколько вариаций и проектов построения систем местного управления. Первой является моноцентрическая, которая ориентируется

на контроль из центра. Второй является полицентрическая, которая предусматривает объединении местных кадровых ресурсов на основе кровно-родственных связей. Третьей является децентрализованная система, которая означает выборочный контроль со стороны центральной власти в наиболее ключевых регионах и договоренность с политическими элитами в регионах, занимающих стратегическое значение. Перед современной Украины стоит задача выработки собственной демократической модели регионально-локальных межэлитных отношений.

Выводы

Подходы к взаимодействиям между региональными и местными политическими элитами на постсоветском пространстве варьируются в зависимости от моделей жесткого иерархического контроля к моделям горизонтальной сотрудничества и координации действий. Основным выводом по взаимодействию местных и региональных является неустойчивость общих практик и зависимость способов управленческого взаимодействия от ситуативных факторов в каждой из стран. Ведущей тенденцией в современных странах СНГ является обеспечение централизованного контроля над местными элитами путем управления процессами рекрутирования и обеспечения единой партийной политики. В современной Украине местные элиты находятся под влиянием правящих и оппозиционных партий, однако в последние годы (особенно, в «постмайданный» период) наметилась тенденция к формированию местных политических режимов. В них под внешней партизацией скрывается баланс экономических интересов местных бизнес-групп. Это усиливает вариативность подходов к формированию местных элит в Украине.

Ведущими задачами развития региональных и местных политических элит в Украине является увеличение прозрачности в процессах рекрутирования, формирование элит на соревновательной основе, повышение качества кадрового потенциала за счет новых образовательных технологий и обеспечения общественного контроля. Направлением дальнейшей разработки данной статьи является изучение идеологических приоритетов местных и региональных элит постсоветского пространства.

Список литературы:

1. Інституційні зміни політичної системи сучасної України: оцінка стану та напрями оптимізації: аналітична доповідь/За ред. д. політ. н., професора Г. І. Зеленько. К.: ІПіЕНД ім. І. Ф. Кураса НАН України, 2014.
2. Кресіна, І. О. Політична відповідальність: суть, ознаки, особливості/І. О. Кресіна, С. В. Балан; Нац. акад. наук України, Ін-т держави і права ім. В. М. Корецького. – К.: Ін-т держави і права, 2009.
3. Мохов, В. П. Местная политическая элита в России: понятие, структура, численность. PolitBook. 2012. №. URL: Режим доступа: http://cyberleninka.ru/article/n/mestnaya-politicheskaya-elita-v-rossii-ponyatie-struktura-chislennost.
4. Пахарєв, А. Д. Політичне лідерство: історико-політологічний контекст і сучасне становище: автореф. дис … д-ра політ. наук: 23.00.02.Нац. акад. наук України, Ін-т політ. і етнонац. дослідж. К., 2003.
5. Пеньковский, Д. Д. Современные политические элиты республик Северного Кавказа. Знание. Понимание. Умение. 2012. № 2.
6. Політичні механізми формування громадянської ідентичності в сучасному українському суспільстві.Аналітична доповідь. К.: ІПіЕНД ім. І. Ф. Кураса НАН України, 2014.
7. Рудич, Ф. Правляча еліта: її місце і роль в утвердженні української держави.Політ. менеджмент. 2008. № 2 (29).
8. Ткач, Т. П. Якісні характеристики еліти як умова реалізації елітарної демократії. Вісник Академії адвокатури України. 2011. Вип. 3. Режим доступу: http://nbuv.gov.ua/j-pdf/vaau_2011_3_4.pdf
9. Цыплакова, Е. П. Особенности украинской и российской политической элиты/Е. П. Цыплакова //Известия РГПУ им. А. И. Герцена. 2009. № 97. Режим доступа: URL: http://cyberleninka.ru/article/n/osobennosti-ukrainskoy-i-rossiyskoy-politicheskoy-elity

10. Vivi A., Banerjee A., Hanna R., Olken A. B., Purnamasari R., Wai-Poi M. Does Elite Capture Matter? Local Elites And Targeted Welfare Programs In Indonesia/Working Paper 18798. Access regime: http://www.nber.org/papers/w18798
11. Angeles L., Neanidis K. C. Aid Effectiveness: The Role of the Local Elite. The Univeristy of Manchester Centre for Growth and Business Cycle Research Discussion Paper Series.2006.№ 80. 36 p.

Trynkin Vadim Vladimirovich,
The Nizhny Novgorod State Pedagogical University K. Minin,
Associate Professor of sub-faculty philosophy and u theology
E-mail: lazorevoenebo@outlook.com

Technology of revolutions

Abstract: В статье рассмотрена технология организации революций. Показано, что технология эта изначально создаётся ради возвышения небольшой группы лиц над всеми остальными. Рассмотрено главное условие изменения ситуации.

Keyword: Технологии революций, захват полномочий, способ изменения.

Трынкин Вадим Владимирович,
Нижегородский государственный педагогический
университет им. К. Минина,
доцент кафедры философии и теологии
E-mail: lazorevoenebo@outlook.com

Технологии революций

Аннотация: В статье рассмотрена технология организации революций. Показано, что технология эта изначально создаётся ради возвышения небольшой группы лиц над всеми остальными. Рассмотрено главное условие изменения ситуации.

Ключевые слова: Технологии революций, захват полномочий, способ изменения.

Современный мир, вступивший в XXI век вполне развитой цивилизации, совершенно неожиданно столкнулся с разрастающимися революционными процессами. Сами революции — симптом скрытого социального заболевания. С этой целью будет рассмотрена модель зарождения и возникновения революции, чтобы на её примере выявить главную причину её зарождения.

Внешне одной из причин любой революции считается увеличение бед народа из-за нарастанием бедности или с нарастанием национальной вражды. При наличии любой беды народа почти сразу появляется когорта борцов за народное благосостояние. Главный лозунг квалифицирует главную причину преступлений и несчастий в мире фактором «забвения естественных прав человека и пренебрежения ими» [2, 97]. Любому человеку, испытывающему тот или иной вид нужды или притеснения, такой лозунг несомненно привлекателен. Вокруг борющейся группы людей собираются явные и неявные сторонники. Сама структура лозунгов направлена на максимальное заострение крайности: у огромной цивилизации, мол, всего два полюса, раскрывающие, суть жизни общества: государство да революция [1, 64]. Полюсная трактовка событий — удобное средство манипуляции сознанием людей. В XIX веке такая трактовку была использовали для превознесения над обществом только одной категории людей, пролетариата, который, вроде бы «освобождая себя от абсолютного бесправия, создаст правовую свободу для целого мира» [6, 427–428]. Уже

в те времена данную концепцию критиковали за то, что какой бы универсальной ни была категория людей, она, получив максимум полномочий, неминуемо будет притеснять все другие категории людей, например, крестьянство [1, 233]. Но не только крестьянство — под правовым прессом категории-повелительницы «предстоит оказаться также: прокурорам, адвокатам, банкирам, врачам, учёным» и т. д. [2, 90], то есть категориям, умами и руками которых, как и пролетариатом, созидается целостная социальная жизнь.

Ещё одно свойство полюсной логики мышления и действия заключено в выращивании состояния агрессии по отношению ко всем иным категориям населения, не примкнувшим к народившемуся движению. Скажем, любая элита протестного движения на первых порах провозглашает принцип безоговорочного равенства. И если группы населения не поверят данным лозунгам, или просто не будут их поддерживать по ряду причин, их приструнят грозным предупреждением: «Равенство или смерть!». А тех, кто попытается тех же людей убедить в обратном, ждёт реальная угроза: «Горе тем, кто встанет между нами!» [3, 134–135].

Но лозунг равенства обманчив. Парадоксальный Ницше точно подмечал: «Справедливость в неравных правах, в притязании на «равные» права — несправедливость» [7, 686]. И объяснял, что не равны между собой «добрый и злой, богатый и бедный, высокий и низкий» [7, 72]. А я добавлю, что также не равны: ребёнок и взрослый, здоровый и больной, ученик, профессионал, мастер и творец. В этой связи, идея равенства самого по себе объективно не соответствует реалиям жизни.

Основываясь на стремлении к равенству, элита протестного движения выстраивает программу действий, которая технологически типична в мировой истории. Программа представляет собой замысловатую цепочку аргументов, так как в числе лидеров протеста часто бывает немало юристов, примыкающих к набравшим силу амбициозным группам. Исходный аргумент не может не затронуть сердца притесняемых людей: «когда налицо тирания, то каждый гражданин имеет право и обязанность к ее уничтожению» [2, 220]. Далее возникает дополняющее условие: всем людям большой страны невозможно обрушиться на власть, подлежащую свержению. Потому миссию протестного движения нужно передать части народа (партии), находящейся вблизи власти [2, 220]. Партия стремится временно заменить старую власть правлением, соответствующим принципам народного суверенитета (Уточню понятие «суверенитет. Часто под ним подразумевают «независимость». Однако суверен — это король. Главная его особенность — полнота полномочий. Потому, когда встаёт вопрос о сути суверенитета, ею оказывается именно полнота полномочий) [2, 221]. Далее следует ещё одно условие: уважая суверенитет народа, нужно заменить процесс выборов, сразу передав власть «в руки разумных и стойких революционеров» [2, 217].

Сама элита протеста, словно получив мандат у народа, организуется структурно — создаёт высший управленческий орган. От невысказанного имени нарда, управленческий орган принимает на себя инициативу всех других социальных движений. Далее следует удивительная фраза: «После долгих колебаний наши заговорщики почти решились испросить у народа декрет, который вверял бы законодательную инициативу и исполнение законов исключительно им одним» [2, 290]. Присвоив высшую власть, управленческий орган мгновенно стремится себя защитить. Для этой цели, а также для цели свержения старого режима образуется повстанческая армия, из которой образуют отдельные дивизии. Далее создаётся практически армейская субординация чинов: командиры дивизий подчинены главнокомандующему, сам он «отчитывается перед повстанческим комитетом» [2, 280]. Если протестное движение поддержано внушительным количеством сограждан, следует революция. По окончанию революционных событий, управленческий орган, для видимости равноправия и равновесия ветвей власти, может даже создать парламент. Но, по замыслу, он обязательно должен находиться под надзором со стороны революционного правительства [2, 224].

Рассмотрим ближе структурно-содержательную суть программы действий организаторов

революции. Изначальные лозунги обещали: равенство, суверенитет народа, подразумеваемое народное самоуправление. Как они видоизменялись уже на стадии замысла? Перечислим их по пунктам:

1) К свержению правительства изначально призывают всех. 2) Свободолюбивые устремления людей ограничивают кругом интересов отдельной партии. 3) Партия готова как бы временно заменить старую власть для возрождения народного суверенитета. 4) Затем она сужает широкий протестный круг до размера высшего управленческого органа. 5) Он монополизирует власть над всеми другими, захватывая законодательную и исполнительную власть.

Тем самым логику программы можно представить себе в виде пирамиды, расположенной основанием вверх, вершиной вниз: от всеобщего протеста — к полновластию небольшой группы людей, партийной олигархии. После революции уже готовая пирамида переворачивается, приобретая обычный вид: основание (народ) внизу, пирамида (партийная олигархия) вверху. После данная конструкция превращается в обычную верховную власть со всеми её атрибутами И даже парламент, по замыслу, обязательно должен быть под надзором. Так происходит повторяющийся жизненный парадокс: партийные функционеры (любых окрасов и оттенков) вначале создают видимость борьбы во благо равенства и справедливости. А после революционных событий вырастает точная копия властной пирамиды, мощью которой ранее пользовалась свергнутая власть. Новоявленная пирамида полномочий склоняет в свою сторону войска, обычно, за повышенное вознаграждение, как это всегда делалось со времён римских императоров. Их тотчас направляют на уничтожение сторонников прежней власти, а также на подавление оппозиции, часто — той или ной значительной группы населения. Подавление нередко приобретает самые жёсткие формы. Например, «немедленно предаётся смерти присвоивший себе народный суверенитет» [5, 333]. — Кто присвоил? Как? Возможно ли мгновенно присвоить полномочия, принадлежащие всему народу? — Разбираться некогда. Важней право на убийство попавших под подозрение лиц.

В XIII веке Кант замечал: «Среди всех ужасов государственного переворота в результате восстания приводит в содрогание душу человека <…> казнь по форме» [4, 243]. Идеологи революционеров иногда признаются, что несогласных ждёт «нескончаемый ряд насилий, избиений, казней, актов ненависти и мщения» [2, 122]. Такие акты цинично считаются обоснованными «печальной необходимостью переходного периода» [2, 122]. На полях сражений солдат той и другой стороны заставляют убивать друг друга всем имеющимся военным оружием [2, 277]. Что остаётся в человеческих душах после развязанной бойни, когда в ослепленье сметают, «словно кучу карт,/Врага и друга, правых и неправых»? [8, 120].

Смертельные эксцессы, спровоцированные между массами людей, являются одновременно вернейшим способом организации механизма заложников с обеих сторон. В качестве заложников часто используются самые незащищённые люди — женщины, дети, пожилые люди, инвалиды. В итоге утверждается порочный круг убийств, мести за убийства, мести за месть… Ослеплённая смертоубийствами душа вполне способна «наступить ногой/На чрево матери, её родившей» [10, 498]. Наоборот, душа, сохраняющая высоту понимания событий мира, в принципе отодвигает от себя путь использования смерти: «Но это мать родная — и рукам/Я воли даже в ярости не дам» [8, 92]. В ход разросшегося конфликта вовлекаются и сталкиваются между собой непричастные к революции народы. Возникает роковая карусель взаимоуничтожений. И лишь опомнившиеся говорят: «Не выиграем мы, готово встать/Другое войско, а за ним и третье,/И так всё время будет без конца…» [9, 714].

Итог рассмотрения технологии революций таков — всякая революция зарождается из-за рвения честолюбивых групп к власти. Сама власть поддерживается пирамидой полномочий. Главнейшее средство предотвращения революций — постепенный переход мировых государственных систем от предельной концентрации полномочий — к их деконцентрации; от высоких лестниц иерархии — к максимально возможным горизонтальным структурам регуляции.

Список литературы:

1. Бакунин М. Государственность и анархия. П.-М., 1922.
2. Буонарроти Ф. Заговор во имя равенства. Соч. в 2 тт. Т. 1. М., 1958.
3. Буонарроти Ф. Заговор во имя равенства. Соч. в 2 тт. Т. 2. М., 1963.
4. Кант И. Соч. в 6 тт. Т. 1V. ч. 2. М., 1965.
5. Конституции и законодательные акты буржуазных государств ХУП-Х1Х вв. М., 1957.
6. Маркс К. К критике гегелевской философии права. Маркс К. и Энгельс Ф. Соч. Т. 1. М., 1956.
7. Ницше 31 Фридрих. Соч. в 2-х тт. Т. 2. М., 1990.
8. Шекспир 146 У. «Гамлет» в русских переводах XIX–XX веков. Собр. Соч. в 8 тт. Т. 8. М., 1997.
9. Шекспир 148 У. Король Генрих IV. Ч. 1 и 2. – Комедии. Хроники. Трагедии. Т. 1. М., 1989.
10. Шекспир 150 У. Ричард III. Юлий Цезарь. Макбет. – Собр. Соч. в 8 тт. Т. 2. М., 1997.

Section 4. Political problems of the international relations, global and regional development

Wang Wan, Beijing Normal University
PhD candidate in International Relations, the School of Government
Visiting student at Saint Petersburg State University in Russia
E-mail: wwhmj1988@gmail.com

Cheng Zhijie, Beijing Normal University
PhD candidate in International Relations, the School of Government
E-mail: chengzhijie1981@163.com

Sino-Russian transboundary water cooperation regarding Heilongjiang River under the background of Silk Road Economic Belt

This essay is phased achievement of project funded by China Scholarship Council, State Key Laboratory of Hydroscience and Engineering Tsinghua University (sklhse-2014-A-03), National Social Science Fund project (14BGJ039), project funded by Beijing Philosophy and Social Science Planning Office (13KDB039) and the Fundamental Research Funds for the Central Universities.

Abstract: The Sino-Russian transboundary water cooperation is on the fast track. However, there still exist several problems as obstacles to Sino-Russian transboundary water cooperation regarding Heilongjiang River. Nowadays, China is pushing forward the construction of Silk Road Economic Belt Initiative and it has received active response from Russia. Silk Road Economic Belt will promote Sino-Russian cooperation in economic development and infrastructure construction in eastern neighboring regions. This will be conducive to Sino-Russian cooperation in transboundary water regarding Heilongjiang River by providing financial support, increasing impetus on cooperation and removing misunderstanding between these two countries.

Keywords: Sino-Russian; transboundary water cooperation; Heilongjiang River; Silk Road Economic Belt

1 Introduction

In recent years, the transboundary water issue has become an important factor that affects China's relations with its neighboring countries. Russia is the largest neighbour of China, and almost 80% of its boundary with China is consisted of rivers and lake. The development of Sino-Russian border trade and the promotion of bilateral relations have made the transboundary water an important factor that increasingly affects Sino-Russian relations and should not be ignored. The transboundary water resources between China and Russia consist of the Heilongjiang River (In Russia, the river is called Amur River), Argun River, Ussuri River, and Xingkaihu Lake, of which Heilongjiang River is the primary water subject and is also the main area of the transboundary water cooperation between China and Russia (former Soviet Union). Therefore, in this article, the primary focus is the Heilongjiang River.

The total length of Heilongjiang River is 4440 km; the Sino-Russian border is 2854 km in length with a control drainage area of 1.452 million km2 [1, 52]. There are two origins of the Heilongjiang River. The southern origin, which contains the Argun River, originated from the confluence of the Hailar

River of Inner Mongolia and the Herlen River of Mongolia, and the north origin is the Shilka River, which is located in Russian territory. The confluence of Shilka and Argun near the Luoguhe Village in Russia, which is west of Mohe, is named the Heilongjiang River, whereas its east-bound part is called the Amur River. Along the river, it receives the Zeya River, Bureya River, and the Amgun River from the left bank (on the Russian side) and the Huma River, Hudson River, Songhua River, Ussuri River, and other tributaries from the right bank (on the Chinese side); the river finally enters the Tatar Strait at Nikolayevsk-on-Amur [2]. The watershed of the Sino-Russian that borders the Heilongjiang River includes cities in northeastern China, such as Mohe County, Heihe City, Tongjiang City, Xunke County, Jiayin County, Fuyuan City, Raohe County, and Suifenhe City. And the Heilongjiang-Amur river basin covers six Russian provinces: Primorsky, Khabarovsky, Amur, Chitinskaya, Aginsky-Buryatsky and Evreiskaya [3, 5].

The Sino-Russian cooperation regarding the border of the Heilongjiang River began in the 1950s. Sergei Vinogradov and Patricia Wouters divided the Sino-Russian transboundary water cooperation into three stages from the perspective of the impact of the political relations between China and Russia regarding the bilateral cooperation for the transboundary water resources. The three stages are as follows: forging the cooperation in 1950s, Forced to suspend in 1960s and 1970s, Re-initiation and development of the cooperation from 1980s until now [4, 14]. After entering the 21st century, the Sino-Russian water cooperation regarding Heilongjiang River has made substantial progress. Three factors has accelerated this progress, which are rising Sino-Russian relations, China and Russia adjusted their respective domestic development strategy, and serious transboundary water pollution.

However, there still exist several problems as obstacles to Sino-Russian transboundary water cooperation regarding Heilongjiang River (Amur River). For example, the relative backward development of eastern neighboring regions, different attitudes of China and Russia towards transboundary water resources cooperation, and misunderstandings between China and Russia.

Nowadays, China is pushing forward the construction of Silk Road Economic Belt Initiative, which was put forward by President Xi Jinping in September 2013. Under this circumstance, will the Silk Road Economic Belt bring opportunities and advantages to the further development of Sino-Russian transboundary water cooperation regarding Heilongjiang River?

2 Obstacles to Sino-Russian transboundary water cooperation

In author's another paper "Current status and existing problems of Sino-Russian transboundary water cooperation regarding Heilongjiang River in the 21st century" are detailedly analysized on the problems.

2.1 The relative backward development of eastern neighboring regions

The neighboring eastern areas of China and Russia are relatively backward regions in terms of economic development. Both China and Russia has realized it and respectively paid more attention to the northeastern Chian and the Russian Far East. Although promoted by the joint efforts of "revitalizing the northeast old industrial bases" in China and the development strategy of the Russian Far East, the Sino-Russian cooperation has not yet formed the growth zone of the regional economic development [5, 107]. Besides, in these areas, the survey equipments and infrastructures for exploitation of transboundary water are outdated and insufficient [6, 196].

Without adequate funds, equipment and infrastructures, both of China and Russia could not be able to implement development plans of transboundary water. Moreover, they would make inaccurate development plans, which could arouse misunderstanding on both sides [7, 32]. Therefore, the slow-down in the development of the neighboring eastern regions of China and Russia will slowly reduce the impetus on transboundary water cooperation regarding Heilongjiang River.

2.2 Different attitudes of China and Russia towards transboundary water resources cooperation

This incline to reduce impetus is more obvious in Russia for its different attitude on transboundary water cooperation from China. China is domestically in growing need of water resources, which results in more emphasis on exploitation and

utilization of transboundary water resources in order to meet various social economic demands, such as industrial water, agricultural irrigation, household water use, urban construction, etc. To the contrary, for Russia, quality rather than quantity of water is the most crucial transboundary issue regarding Heilongjiang River. In the foreseeable future, except the Upper Amur and Khanka areas in the Primorye region, the quantity of water would not be a problem to Russian territories in the Amur River basin [8, 86].

2.3 Misunderstanding between China and Russia towards transboundary water resources cooperation

Furthermore, different attitudes on transboundary water resources could lead to misunderstanding between China and Russia [9, 32]. Russia has raised doubts on China's behavior and motivation of actively seeking Sino-Russian transboundary water resources cooperation. Some Russian scholars hold the view that China has showed great enthusiasm for exploitation cooperation in transboundary water resources with Russia, which would aggravate the environmental pollution.

3 Silk Road Economic Belt

President Xi Jinping respectively put forward the initiative, "Silk Road Economic Belt", when he visited Kazakhstan in September 2013. One year later, in October 2014, China, India and other 19 countries signed a Memorandum of Understanding on establishing the Asian Infrastructure Investment Bank (AIIB). According to this memorandum, the AIIB has been established in order to provide financial support for construction of infrastructure in Asia. In November, the first Chief Negotiators Meeting (CNM) of AIIB was held in China. China announced to invest 40 billion dollars in establishing the Silk Road Fund, which aims to provide financial support for project related to interconnectivity, such as infrastructure construction, resources development, industrial cooperation, financial cooperation, in countries along the Belt and Road. In March 2015, China issued Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road. In April, 57 countries had been approved as perspective founding members of the AIIB. In June, the signing ceremony of the Articles of Agreement of the AIIB was held in Beijing. Representitives from these 57 countries attended this ceremony. It shows that the Silk Road Economic Belt has entered into implementation stage from initiative stage after a year of brewing.

Based on consideration of both the domestic and international situations, China proposed its Silk Road Economic Belt Initiative, which is China's great decision and has profound strategic significance. The Silk Road Economic Belt Initiative continues China's development strategy, which focuses on economic construction, and attaches importance to interconnectivity. It serves as a major measure for China to strengthen its peripheral diplomacy, including relationship with Russia.

4 Silk Road Economic Belt will promote Sino-Russian transboundary water cooperation regarding Heilongjiang River

4.1 The integration of Silk Road Economic Belt and Eurasian Union

China has actively sought Russia's response to the Silk Road Economic Belt Initiative, for Russia is a crucial country which is covered by the belt. At the same time, two members (Belarus and Kazakhstan) of Eurasian Union, which is lead by Russia, are also covered by the belt. Silk Road Economic Belt is mainly aimed at economic development, which provides great potentials for cooperation with Eurasian Union [10]. Therefore, the Silk Road Economic Belt has received active response from Russia [11, 75].

On May 8th, 2015, China and Russia issued Joint Statement on Cooperation of Connection Between the Silk Road Economic Belt and Eurasian Economic Union, which integrates development strategy of China with that of Russia. This Joint Statement also provides policy support to Sino-Russian transboundary cooperation and projects, which covers investment, trade, cooperation zone, infrastructure, company and finance, etc. It marks that Sino-Russian partnership has reached new hights [12].

4.2 It will promote Sino-Russian economic cooperation in eastern neighboring regions

Silk Road Economic Belt is mainly aimed at economic development and constructed based on economic corridors. One of these economic corridors is China-Mongolia-Russia economic corridor. It include two routes: one route is through Inner Mongolia and Mongolia from Beijing

and Tianjin to Russia, the other route is through Shenyang, Changchun, Haerbin and Manchuria from Dalian to Russia. China-Mongolia-Russia economic corridor will promote Sino-Russian economic cooperation, which could further create economic growth in eastern neighboring areas.

4.3 It will improve transportation infrastructure construction

As shown in both the plans of Silk Road Economic Belt Initiative and the joint statement on connection Between the Silk Road Economic Belt and Eurasian Economic Union, China emphasizes on infrastructure construction and it becomes one crucial field in which China and Russia strengthen cooperation. Undoubtedly, transportation infrastructure is essential to economic and trade development, especially transboundary cooperation. For Heilongjiang River consists the major part of the border between China and Russia, it is inevitably to involve the construction and development of border ports.

On May 8th, 2015, President Xi Jinping and President Putin held talks in Moscow. Two heads of state signed and issued the Joint Statement between the People's Republic of China and the Russian Federation on Deepening Comprehensive Strategic Partnership of Coordination and Advocating Win-win Cooperation [13]. This Joint Statement advocates to strengthen cooperation in development of Sino-Russian joint land-sea transport, which refers to Tongjiang-Nizhneleninskoye railway bridge and Heihe-Blagoveshchensk highway bridge.

The project of constructing a railway bridge across Heilongjiang River connecting Tongjiang in Heilongjiang with Nizhneleninskoye in JAO was first proposed in 2007 and was confirmed in signed international agreement in the next year. In February 2014, this project has officially entered the construction period. Now 65 percent of the main parts of the bridge in China has already been completed, but the construction in Russian side has been delayed [14]. In August 2015, Russian Deputy Prime Minister said that the construction in Russian side would start at the end of this year. According to Sino-Russian agreement signed in 1990s, bridges across Heilongjiang River between Heihe and Blagoveschensk were planned to be built, including a highway bridge (first stage) and a railway bridge (second stage). China and Russia have prepared a lot for the construction of highway bridge, including negotiation, design, etc. A Sino-Russian joint company has recently been formed to implementation the construction of this bridge, which will begin in 2016. The bridge would facilitate economic ties between the Amur region and Heilongjiang Province and would help to revive the economy in these regions [15]. These bridges will ramp up trade, transportation and tourism between China and Russia. It will further cement relations across the border, strengthening the underpinnings of the Sino-Russian strategic partnership [16, 3].

4.4 It will spur demand for water exploitation and protection

The development of the neighboring eastern regions of China and Russia will provide financial support for the cooperation in transboundary water regarding Heilongjiang River. Furthermore, it will increase the impetus on this cooperation.

On one hand, economic development and cooperation will spur demand for transboundary water exploitation as well as water protection, especially in Russia. As mentioned above, China and Russia are determined to jointly further promote the economic development in eastern neighboring areas. However, the demand for water resources is indispensable to rapid regional development. Besides, exploitation of transboundary water, construction of infrastructure, operation of production equipment and residential water uses would create negative effects on transboundary water. Therefore, protection of transboundary from pollution should not be ignored.

On the other hand, economic development and cooperation would be conducive to remove Russia's misunderstanding towards China's behavior of actively seeking Sino-Russian transboundary water resources cooperation. China tends to combine the Sino-Russian transboundary water cooperation regarding Heilongjiang River with regional development in neighboring eastern regions of China and Russia. By the construction of Silk Road Economic Belt and its integration with Eurasian Union, both China and Russia could gain economic development as well as impetus on transboundary water cooperation regarding Heilongjiang River.

References:

1. He Daming, Tang Qicheng. International rivers in China. Science Press. 2000.
2. Worldwide Rivers Database. Heilongjiang (Amur) River. http://www.chinawater.net.cn/riverdata/Search.asp?CWSNewsID=17812
3. Simonov E. A., Dahmer T. D. Amur-Heilong River Basin Reader. Power Digital Printing Co. Ltd. February 2008.
4. Sergei V., Patricia W.. Sino-Russian Tansboundary Waters: A Legal Perspective on Cooperation. Stockholm Paper. 2013.
5. Yin Hong. Necessity and feasibility analysis of Establishing coordination mechanism between Northeast China and Russia: Based on the experience of international cooperation and regional coordination mechanism of Russian Far East. Northeast Asia Forum. February 2012.
6. Feng Yan, He Daming. Transboundary water vulnerability and its drivers in China. Journal of Geographical Sciences. 19. 2009.
7. Li Zhifei. The issue of cross-border rivers and the relationship between China and the circumjacent countries. Academic Exploration. 1. 2011.
8. Vladimir P. K. Environmental Risks to Sino-Russian Transboundary Cooperation: from brown plans to a green strategy. WWF's Trade and Investment Programme Report. 2011.
9. Li Zhifei. The issue of cross-border rivers and the relationship between China and the circumjacent countries. Academic Exploration. 1. 2011.
10. Zhou Mi. Great potentials for cooperation in Belt and Road with Eurasian Union. China Economic Weekly. 2015.
11. Li Jingyu, Zhang Chenyao. China and Russia cooperate to implement the 21st-century Maritime Silk Road in the northeast. Northeast Asia Forum. 3. 2015.
12. RT. Russia, China agree to integrate the Eurasian Union, the Silk Road, sign deals. May 8th, 2015. http://rt.com/business/256877-russia-china-deals-cooperation
13. Ministry of Foreign Affairs of the People's Republic of China. Xi Jinping holds talks with President Vladimir Putin of Russia. May 2015. http://www.fmprc.gov.cn/mfa_eng/topics_665678/xjpcxelsjnwgzzsl70znqdbfelshskstbels/t1263258.shtml
14. The Siberian Times. China forges ahead with building bridge to join Russian Far East. May 19th, 2015. http://siberiantimes.com/business/others/news/n0224-china-forges-ahead-with-building-bridge-to-join-russian-far-east
15. Barabanov O. Three bridges and one road: Siberia, Far East and China. June 8th, 2011. http://valdaiclub.com/asia/26380.html
16. Rensselaer W. L. The Russian Far East and China; Thoughts on Cross-Border Integration. Foreign Policy Research Institute E-Notes. November 2013.

Mironova Margarita Anatolievna, PhD,
Associate professor of the Institute of International Relations of
Taras Shevchenko National University of Kyiv
E-mail: mironova_margarita@yahoo.com

The eastern dimension of the European Neighbourhood Policy: strategic challenges for the EU foreign policy

Abstract: The article examines the main achievements and shortcomings of the Eastern dimension of the European Neighbourhood Policy. Special attention is paid to the analysis of the

main approaches of reforming and strengthening the efficiency of the EU strategy towards the countries of the Eastern Partnership.

Keywords: European integration, association, the European Neighbourhood Policy, the Eastern Partnership.

As a result of institutional changes and deepening political union the enhanced EU has evolved considerably and has become more prepared for the transition to the global role in the post-bipolar international system. At the same time the recent geopolitical challenges led to the reconsideration of the EU foreign policy strategy and elaboration of a new approach in its relations with the neighbouring countries. The EU ability to reform its conceptual basis and to propose more effective frameworks of cooperation within the European Neighbourhood Policy will outline the future of the integration project as well as the perspectives of the European security system, in general.

The 2004–2007 historical enlargement eastwards has led to the search of adequate instruments and mechanisms of the EU policy towards its new neighbours. The main challenge for the EU in its Eastern policy is now the ability to combine the obvious refusal from the logic of enlargement (so called 'enlargement fatigue') with the EU positioning itself as a normative power with the ability to disseminate or even impose its norms and values on other actors.

The European Neighbourhood Policy and differentiation of the eastern dimension in the second half of 2000s (German project of 'ENP plus' and establishment of the Eastern Partnership in 2009) were elaborated, first of all, as alternatives to offering full membership. The idea of obtaining all advantages of cooperation with the EU including access to the EU internal market was envisaged while preparing the ENP and was first expressed by the former President of the European Commission R. Prodi in his statement 'sharing everything with the Union but institutions' [1].

The year of 2014 was a demonstration of positive movements in the EU Eastern policy. The signature of Association agreements with Georgia, Moldova and Ukraine in June 2014 and granting visa-free regime to Moldova in April 2014 led the ENP to a new stage. At the same time new challenges and threats such as Ukrainian crisis require the EU to be more cohesive and able to rapid response.

The EU High Representative for Foreign Affairs and Security Policy F. Mogherini and Commissioner for European Neighbourhood Policy and Enlargement J. Hahn presented a joint consultation paper 'Towards a New European Neighbourhood policy' in March 2015. The document is an attempt to undertake a fundamental review of the principles on which the policy is based as well as instruments to be used. The main topics raised in the document are inability of the ENP to response adequately to the recent challenges and threats, the rationality of preserving a single framework to cover both Eastern and Southern dimensions of the ENP. The joint consultations of the EU institutions, member-states and partners will be finalised in autumn in a Communication setting out proposals for the future direction of the ENP.

Taking into consideration the experience of operating the ENP we can outline the following problems and risks which can affect seriously successful implementation of the programme.

The first challenge is definition of the final goals of the programme. There is an obvious discrepancy of the defined goals and stimulus. The goal of accession is certainly the most powerful stimulus for reforms. At the same time one of the main obstacles for the EU Eastern policy is the absence of a membership perspective which decreases the motivation of partners. The lack of consensus as to the further enlargement eastwards gives no opportunity to set up the European perspective for the participants of the Eastern Partnership. There was no breakdown at the EaP summit in Riga (21–22 May 2015), the final declaration of which just stated that 'Summit participants acknowledge the European aspirations and European choice of the partners concerned as it is stated in the Association Agreements' [2].

Implementation of the principle 'everything but institutions' leads to a serious problem for the partner countries. The necessity to harmonise their legislation and to implement acquis communautaire without entering the EU leads to the creation of hi-

erarch asymmetric relations of 'centre-periphery' model [3, 44] where the agenda is set up by the EU while the partners are not able to influence the decision-making process and the proposed norms and principles are not discussible.

The second challenge is the necessity to correlate approaches actively used within the ENP and adopted from the strategy of enlargement. The principle of political conditionality which means the outline of frameworks and conditions for conducting reforms as well as the mechanism of incentives ('more for more' principle) was rather effective while implementing the EU enlargement strategy towards the countries of Central and Eastern Europe and Western Balkans. At the same time it demonstrated limited effect in the countries-participants of the ENP both in its Southern flank (absence of reforms, Arab revolutions as a result) as well as its Eastern flank (f. e. Armenian and Ukrainian case on the eve of the EaP Vilnius summit in autumn 2013). An opposition of political elites to the reforms which are regarded as a threat to their interests and power, as it was during the presidency of V. Yanukovych in Ukraine, leads to the necessity of adapting the EU policy instruments in the region. As a result the EU policy instruments were supplemented by the principle of socialization which means strengthening the dialogue with the specific target groups of national decision-makers and opinion formers (not only bureaucracy and politics but actors from civil society, scientific and expert communities). [4, 59] One of the examples of implementing the principle of socialization is introduction of the EaP multilateral platforms, mainly Platform 4 'People-to-people contacts'. The alternatives of stimulating the reforms can also be proposed by deepening cooperation in such specific spheres as sectoral integration within the Deep and Comprehensive Free Trade agreements (as incentives for the business circles) and visa liberalization regime. At the same time one doesn't need to overestimate the effects of such instruments, f. e. Belarus takes the 5 place within the overall amount of the C-type short-term Schengen visas issued to the third states and is a world leader in the per capita number of Schengen visas. [5] Though this case demonstrates the limits of the ENP's transformative power as widening people-to-people contacts doesn't lead to the expected effect of disseminating the European values and principles and further democratisation of the state.

The third challenge is the increasing divergence in the aspirations of partner countries as only three of six states (Georgia, Moldova and Ukraine) have proclaimed the EU membership as a strategic goal of their foreign policy, while two others (Armenia and Belarus) became the members of the Eurasian Economic Union (EEU). On one hand, the EU partly tried to take into account different motivations of the partners by introducing the principle of differentiation which was later widened by implementing de-facto the principle of 'regatta' (efficiently used within the enlargement process) and 'more for more' principle — more support for the partners in exchange of more progress in conducting reforms. On the other hand, different aspirations were not considered while elaborating the common standard approaches including evaluation mechanisms.

The EU is now actively discussing the possible revision of programme mechanisms. The Joint Consultation paper presented in March 2015 outlines such priorities of reforms as differentiation and flexibility: the doubts on the necessity of such formats of evaluation as annual reporting for those who do not choose to pursue closer political and economic integration; adaptation of the 'more for more' principle to a context in which certain partners do not choose closer integration, in order to create incentives for the respect of fundamental values and further key reforms; proposition of deeper format of relationship to satisfy the aspirations of those who do not consider the Association agreements as the final stage of political association and economic integration. [6] The main idea of such changes is an adequate response to the requirements of partners with different level of ambitions.

The fourth challenge is the necessity of strengthening multilateral approach aimed at stimulating horizontal integration between the partners. The combination of bilateral and regional approaches was rather effective in the EU policy towards the countries of CEE in the 90-ies and Western Balkans within the Stabilization and Association process. By launching the Eastern Partnership in 2009 the EU tried to promote regional cooperation, mainly

within the four thematic platforms (Democracy, good governance and stability; Economic integration and convergence with the EU policies; Energy security and People-to-people contacts) and flagship initiatives such as Integrated Border Management Programme or Regional Energy Markets and Energy Efficiency.

At the same time the internal regional factors (Armenia-Azerbaijan relations, Russian integration strategy) have weakened integration ties between the partner countries. For the last two years the EU was mainly concentrated on renewal of its bilateral ties with the partners. Though realisation of the concept of the EU normative power requires strengthening of the regional component with its further connection to the similar projects in the neighbouring regions, such as Western Balkans. The EU is partly trying to implement such approach by including Moldova into the Central European Free Trade Agreement and by integrating Ukraine and Moldova into the European Energy Community, while Georgia obtaining the status of the candidate country in this organisation.

The fifth challenge that needs to be tackled by the EU and its neighbours together is more flexible participation of the third states in the programme and the EU more active support of its partners in their interactions with their own neighbours (mainly, Russian Federation, Central Asia states and Turkey). Such strategy could be implemented within a 'variable geometry' model with different levels of engagement of each of the participant under the ENP umbrella.

One of the main problems that threaten seriously the EU policy in Eastern Europe is the recent crisis in the EU-Russian relations. The ENP was from the very beginning regarded by Russian Federation as the anti-Russian policy aimed at decreasing its influence in the region of its vital interests. The current crisis raised the debates in expert community as to the EU strategy towards Russia. War in Ukraine and transformation of Russia's strategy from the soft power terms (carrots and sticks, EU-style integration) to the tough power policy have marked not only the failure of Russian integration strategy in Eastern Europe but also the EU failure to use the ENP as an instrument of soft influence and changing Russia. Experts from the European Council on Foreign Relations consider that the EU now needs to find a European variant of 'co-evolution' (US-China model) in its relations with Russia that will allow both sides to co-exist with and set workable redlines. [7, 6] Such a strategy includes not only deterrence and providing the security guarantees for the EU members, first of all Baltic States and Central and Eastern Europe, but also efforts on consolidating the EU own political space and strengthening EU value-based institutions.

Besides the logic of containment the alternative approaches of overcoming the EU-Russian crisis are proposed, f. e. a block approach — the EU cooperation with the Eurasian Economic Union (EEU). [8, 4] On the one hand, it is a possibility to minimise Russian monopoly of the political agenda within the EEU and to develop EU relationship with the EEU members (Kazakhstan, Belarus, Armenia). On the other hand, it is a chance to set a positive agenda in bilateral relations and to shift the competition back onto the economic field rather than on military one. The EU ability and readiness to implement such an approach will be tested by the EU-Armenia negotiations on the provisions of a new agreement after Armenia's refusal to sign the Association agreement and its decision to become a member of the Eurasian Economic Union.

And finally, the EU needs to elaborate an adequate response to the conflicts and crisis in the neighbourhood. The ENP and EaP lacked a security dimension from the outset, there was an insufficient level of their integration into the EU common policies such as Common Foreign and Security Policy and Common Security and Defence Policy. The EU has already made some cautious attempts to engage the partners within the CFSP/CSDP initiatives (f. e. cooperation with CFSP/CSDP bodies such as the EU Military Committee or partners' participation in the EU operations). At the same time there is a vital need of the EU more active involvement into the security issues in Eastern Europe. By now the EU has limited experience of operations in the region conducting 3 civilian operations in EaP states: the EU Advisory Mission for Civilian Sector Reform in Ukraine, the EU Monitoring Mission in Georgia and the EU Border Assistance Mission to Ukraine and Moldova.

Over the past ten years the ENP has evolved from technocratic to a value-oriented programme which leads to the EU further identification as a normative power. Though a lot of efforts should be still taken towards its becoming a more coherent and better focused foreign policy instrument. The recent changes in the European geopolitical area require formalization of a new conceptual approach in the EU strategy towards its eastern neighbours which should be focused on the issues of further differentiation of its policy towards the partner states, more effective correlation of the EU aims and partners' demands, flexible mechanism of third countries' participation and, definitely, openness of the final goals of the programme.

References:

1. Romano Prodi. A Wider Europe — A Proximity Policy as the ley to stability/"Peace, Security and Stability International Dialogue and the Role of the EU". Sixth ECSA-World Conference. Jean Monnet Project. — Brussels, 5–6 December 2002. Available at: http://europa.eu/rapid/press-release_SPEECH-02–619_en.htm?locale=en
2. Joint Declaration of the Eastern Partnership Summit (Riga, 21–22 May 2015). Available at: http://www.consilium.europa.eu/en/meetings/international-summit/2015/05/Riga-Declaration-220515-Final_pdf/
3. Федорцев В. А. Восточное направление европейской политики соседства: особенности становления и развития//Проблемы национальной стратегии.-2012.-№ 2 (11). – С. 27–48.
4. Ulrike Stern. Socialization as a Solution to the Conditionality Deadlock in Ukraine?/DGAPanalyse: Crossing Borders: Rethinking the European Union's Neighborhood Policies/ed. by Almut Möller, August 2011, No 2. P. 59–63.
5. Entering the EU – Visas, Brussels, DG Home Affairs, 2013. Available at: http://ec.europa.eu/dgs/home-affairs/e-library/docs/infographics/schengen-visas/schengen_visas_infographic_en.pdf
6. Towards a New European Neighbourhood Policy. Joint consultation paper of the European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, Brussels, 4 March 2015. Available at: http://ec.europa.eu/enlargement/neighbourhood/consultation/consultation. pdf
7. Ivan Krastev, Mark Leonard. The New European Disorder. London: European Council on Foreign Relations, November 2014.
8. Rilka Dragneva-Lewers, Kataryna Wolczuk. Trade and Geopolitics: Should the EU Engage with the Eurasian Economic Union? Brussels: European Policy Centre, 2 April 2015.

Section 5. Administrative law

Bano Elona, Phd Candidate in Law
Marin Barleti University, Tirane
Phd Candidate in Law, Faculty of Law
E-mail: elona_bano@yahoo.com, student.dean@umb.edu.al

President`s of the Republic role in ensuring the rule of law

Abstract: usually in ex-communistic countries the issues as rule of law and democracy are frequently used by lawyers and not only. One of the most important point in these discussions is the democratic reformations of institutions, and the Institution of the President of Republic in Albania is one of those who had and will have after the judiciary reform a new dimension and new competences. On the European way of improvement it`s state Albania is making a lot of reforms and the most important one seems to be the complete decentralization, even the abolition of all the essential competences of the President of Republic dimensioning it more as an symbolic institution than as a guarantee of Constitution and balance between all the three powers.

Keywords: President of Republic, Rule of law, Constitution, Albania.

A historical overwiew of the role of the president in various state forms Since the creation of Albanian state on 28 Novemver 1912, Albania has witnessed different governing models, including the international protectorate, monarchy, party regime — state (communism) and parliamentary republic. During this period the function of the President and the Head of State is exercised in different forms.

In 1912 was estabilished the first government by Ismail Qemali at the top of the state, which had the powers of the Head of State. On February 6, 1914 the Conference of Ambassadors appointed Prince Wilhem Wied as Chairman of the Albanian State. In the period September 1914 January 1920, Albania became a battlefield by changing several governments, where the duty of the Head of State was covered by various government — appointed units. At that time in Albania the principle of balanced powers and independence between them was not applied usually by the Albanian legislation. On January 8, 1920 the Congress of Lushnja elected the High Council of 4 people, who will perform the functions of Head of State by restoring parliamentarism. In 1924, Fan Noli was elected head of government, exercising the functions of Head of State. After frequent changes in government, on January 31, 1925 the National Assembly approved the republican form of regime and voted Ahmet Zogu as the President of the Republic.

President of the Republic in the years 1925–1928 had very broad prerogatives, being recognized as the only executive power and at the same time President of the Republic [1]. In this period, we have a monopoly of power in the hands of a single individual, regardless of Article 1 of the Basic Statute defined the political form of the Albanian state and appointment as "parliamentary republic directed by a President". However, we are inclined to believe after a whole analysis of the Basic Statute of the powers of the head of state of turning the country into a "presidential parliamentary republic" after the Albanian government for three years worked like a presidential republic rather than a parliamentary republic. This presendencial mood evidenced the fact that unless the fact that the President was the head of state, he was both head of government, all these characteristics of presidential republics.

On September 1, 1928 Albania was proclaimed Monarchy and Ahmet Zog the King of Albanians.

After the occupation of Albania by Italy in April 1939 and the merger of the two countries, Victor Emmanuel III became King of Albania. 1943-'44 under German occupation the governance — regency returned [2].

End of World War II and the liberation of Albania in 1944 were associated with the first parliamentary elections in December 1945 and the function of Head of State was given to collegial body with the name the Presidium of the National Assembly.

The Presidium of the National Assembly was a collegial body, on loan from the Soviet Union with a purely formal significance for the practical exercise of power, although the sight de jure powers constitutionally recognized as the exercise of legislative power between the two sessions of the National Assembly, appointment and dismissal of ministers, control over government. This type of chairing the state was in the collegial form to ensure as much participation and democracy on the one side, but on the other hand only hide political commands and directives of the Party which come from a single individual, the dictator E. Hoxha. So even though the former collegial body, the decisions were taken by a dictatorship ego. Characteristic of this period was the principle of the unity of power upon which the entire state organization has concentrate the power in the hands of representative bodies such as the National Assembly and People's Councils. But in everyday practice, especially executive function performed under the administrative and technical bodies which implement laws passed by the National Assembly and the acts of government was rarely based on people's decisions.

The Constitution of 1976 proclaimed the principle of unity of power, instead of division of state powers and balance between them. The role of the state party was an essential one, and it's not only the executive and legislative control, but with the abolition of the Ministry of Justice in 1966 with the decision of the Political Bureau, made the judiciary power to totally depend on politics. The role of the First Secretary of the Central Committee of the Labour Party was greatly strengthened, having already passed the powers of any head of state, whether president or king. Given the fact that the army was strengthed by one side, and by the other existed the desire to centralize everything in the hands of a single individual, the Constitution of 1976 stipulated that "First Secretary of the Party Committee of Labor of Albania is General Commander of the Armed Forces and Chairman of the Defence Council" [3].

Albanian Constitution in its Article 1 paragraph 1 states that Albania is a parliamentary republic. This stipulation agrees that the head of state will be just the president of the republic and in accordance with the coming article 86, section IV, dedicated to the President of the Republic where the sovereign (populations) confirmes that the President of the Republic is the Head of State and represents the unity of the people. So unless a constitutional role of president of the republic has a symbolic significance in terms of a country's population, since the notion of people in international public law includes not only the citizens of a particular state but Residents, migrants, asylum seekers, not just nationals Albanians but also minorities.

Beginning from a comparative analysis the Albanian constitution is much more concise in presenting the basic principle of national unity by connecting it automatically with the institution of the president, while other constitutions like that of Romania (Romanian Constitution, art 4, parag.1 stipulates: *"the nation unit, the equality between citizens: state is based on Romanian people's unity and solidarity between Romanian Citizens")* [4], Moldova (Moldavian Constitution, Art 10, paragraph 1 stipulates: „People's unit and right to identity: *state is based on peoples of Moldavia Republic unit. The Republic of Moldavia is the common and impartial fatherland of all its citizens")* [5], Hungary do not necessarily tie institution of the president with people`s unity, this may be because of their problems with minorities and they are obliged to stipulate imediatly on their constitutions the principle of national unity as the main principle of the existence of these countries.

President of Albania is a factor in the life of the country balance by standing upon the three powers and at the same time not become involved in any of them. Article 69 paragraph 1, of the Albanian Constitution prohibits to run or to be elected as

deputy without renouncing to the mandate, also in Article 89 is providet that: the *President of the Republic may not hold any other public function, can not be a member of a party or carry out other private activity*.

All these restrictions are intended to ensure the independence and to inaccurate largely peaceful exercise of his duty. So as a mediator between institutions, the President of the Republic, forms a neutral power, which does not participate in any of the three classical powers but is placed upon them. On the other hand must be very careful in respecting the principle of balance of powers and non-interference, thus would notice different styles of presidents, some less and some more active reserved but always within the limits prescribed by the legal framework of its constitutional powers. However, we conclude that although the constitutional provisions about the role and powers of the President are clear no presidential mandate can not be likened to another by way of exercise, as it depends on how the personality of each presidentis, and also depends of the political circumstances

Basic functions of head of state in Albania

1) **Symbolic function**. Apparently, this function does not represent any particular importance, but in fact constitutes one of the essential elements of the head of state, being primarily a symbol of the unity of the nation, this function based on Article 86 of the Albanian Constitution.

2) **The guarantor of the Constitution**. The main role of the President is precisely the guarantee of the constitution, other laws and the rights and freedoms of citizens. President exercises this function not only as a constitutional competence *de jure* but also *de facto* it has been awarded a 5-year term, which lasts more than that of other institutions, including the parliament. The longest term of the President of the state is intended to represent the continuity of the state and facilitating the transition of changing situations or politic powers.

3) **The function of the arbitrator**. Not being part of any of the three major powers as well as being chosen after a process mainly by consensus, the role of arbiter of the president takes a very special significance. The president is the main authority which has all legal and constitutional entitlements to operate between political forces and to seek real cooperation between them, determining them to arrive at a political consensus [6].

Cases of guaranteeing the rule of law by the President

President of the Republic in January 2005 addressed to the Constitutional Court for interpretation of Articles 124 and 134 of the Constitution of Albania, regarding the procedure that should apply Albanian Parliament to review the decrees on the appointment of members of the Constitutional Court and the Supreme Court, and that body has the right to withhold consent to these appointments, beyond the criteria defined in the Constitution and relevant laws. The representative of the Institution of the President has claimed, that: "*The Role of Parliament in this process is to verify whether the appointment is made based on criteria defined by the Constitution and the law, because the body can't connect consent other criteria. The Constitution has left to the President of the Republic the competence of candidate selection. Consequently, the receipt of this attribute by Parliament is beyond the powers and rights conferred by the Constitution*" [7].

Then the Assembly of Albania with Decision No. 138, dated 15.07.2004, decided not giving consent to the appointment of a member of the Constitutional Court which was selected by the President of the Republic. In these circumstances, the President of the Republic has requested the interpretation of Articles 125/1 and 136/1 of the Constitution of the Republic of Albania.

This way the consent given by the Assembly on the decrees of president on appointments of judges in Higher or Supreme Constitutional Court aren`t just formal but first of all are substantial. This way the parliamentary commissions which are competent to investigate on the candidatures appointed by the President have the possibility to not consent to these candidates. However, we believe that this is an improper practice because in way to implementation of constitutional principles like the principle of mutual control on balancing between constitutional bodies, parliamentary control on the Decrees of the President for the appointment of judges of the Constitutional Court and those of the Supreme Court, differently by the

case of the appointment of ministers, has strictly formal character.

Conclusions

Referring to the role of President in Albania, after a totalitarian regime for more than 60 years, and being thirsty for a democratic republic is very interesting, because Albanian judiciary system passed already in many grades: the Constitutional laws of 1991–1993, the Constitution of 1998, constitutional amendments of 2008 when was unfortunately decided that the president of republic can be elected not exclusively by 2/3 of the votes of Parliament, but after 3 unfortunate rounds can be elected on the fourth or fifth round only with ½ votes of Parliament, otherwise after the 5-th unfortunate round Albanian Parliament may go in new elections [8]. The Albanian Constitution of 1998 is the only one that was a result of a referendum, and this because the main question in this Constitution was: Must Albania be a Monarchy or a Republican State? This was very important after the return of the prince of Albania Leka Zogu I-st. The result of the referendum was the maintenance of the republic form of state.

Another big issue for the Institution of President of Republic is the Fact that he actually in Albania is not only the symbol of the unity of the state but also the head of the High Council of Justice being responsibility for the independence of the judiciary. Nowadays in Albania is running a very important reform in judiciary, where one of the main points is the Institution of President of Republic. In 2014 by implementing new laws regarding the Army and Authorities on Military Bodies, Law on International Service, and Law on Public Servant Service the competences of the President where limited a lot, and this new reform in judiciary foresees that the competences of the President will be limited in continuity.

In conclusion of all above the Albanian Institution of President of Republic is under a new legislative reform, but this time Albanians may be very carefully this time in understanding that this Institutions is not only a symbolic one but is a guarantee on the implementation of constitutional principles and rule of law.

References:

1. Art 2 of Basic Statute of the State: the executive power was a prerogative of the Head of the Republic, which exercises this power through ministries.
2. [Electronic source]. — available from http: http://president.al/?p=281
3. Constitution of Albanian Popular and Socialist Republic, Tiranë 1976.
4. Romanian Constitution
5. Moldavian Constitution
6. Omari L., Anastasi A. Constitutional Right, ABC Edition, Tirane 2010, pg. 134.
7. Decision of Constitutional Court V-2/05 dt 19.01.2005.
8. Omari L., Principles and Institutions of Public Law, Editions Elena Gjika, Tirane, 2007. Constitution of Albanian Popular and Socialist Republic, Tirane 1976, pg. 116.

Section 6. Organization of law-enforcement activities

Surovova Ksenia Yurievna,
graduate student of lawyers and notaries
Moscow State Law University OE Kutafin (MSLA)
assistant attorney in the Saratov Region Bar Association
E-mail: quiqi90@mail.ru

The activities of a lawyer as a legal adviser

Abstract: This article is devoted to description of the Advisory activities of a lawyer, its legal nature and its different types, peculiarities of legal regulation.

Keywords: advocacy, lawyer activity, Advisory activities of a lawyer

Суровова Ксения Юрьевна,
аспирант кафедры адвокатуры и нотариата
Московского государственного юридического
университета имени О.Е. Кутафина (МГЮА),
помощник адвоката в Саратовской областной коллегии адвокатов
E-mail: quiqi90@mail.ru

Виды деятельности адвоката как юридического консультанта

Аннотация: Настоящая статья посвящена характеристике консультативной деятельности адвоката, ее правовой природе и отдельным видам, особенностям законодательного регулирования.

Ключевые слова: адвокатура, адвокатская деятельность, консультативная деятельность адвоката

Деятельность адвоката как юридического консультанта сводится к осуществлению правовой помощи доверителю без привлечения и/или без участия третьих лиц, независимо от их роли и статуса в правоотношении, опосредующего исполнение поручения. При этом не имеет значения, идет ли речь о гражданах, организациях или государственных органах и должностных лицах.

Деятельность адвоката как консультанта возможна путем осуществления действий самостоятельно, но во взаимодействии с доверителем. Исходя из направлений деятельности адвоката, указанных в Федеральном законе «Об адвокатской деятельности и адвокатуре в Российской Федерации» (далее по тексту — Закон об адвокатуре) [1], к ним однозначно можно отнести только две: во-первых, это дача консультаций и справок по правовым вопросам как в устной, так и в письменной форме; во-вторых, составление заявлений, жалоб, ходатайств и других документов правового характера.

Не вызывает сомнения тот факт, что консультационная работа адвоката — важная составляющая профессиональной деятельности. Практически любому адвокату, независимо от специализации, приходится заниматься консультированием. Это один из самых распространенных видов оказания юридической помощи [2, 109].

Дифференциация деятельности адвоката по указанному направлению возможна по нескольким основаниям.

Если говорить в целом, то содержание этого направления адвокатской деятельности, по сути, представляет собой передачу клиенту (доверителю) определенных сведений правового характера, что возможно по инициативе доверителя (направление «клиент — адвокат — клиент») или адвоката (направление «адвокат — клиент»).

В юридической литературе и в законодательстве эти направления получили названия «информирование» и «консультирование». К примеру, информирование и консультирование как виды деятельности уполномоченного субъекта предусмотрены нормами главы 4 Федерального закона «О таможенном регулировании в Российской Федерации» [3]. В контексте указанного нормативного правового акта информирование обеспечивается посредством свободного бесплатного доступа к информации, а консультирование предполагает получение ответа на конкретный запрос.

Такая терминология применима и к адвокатской деятельности [4].

В широком смысле юридическое информирование — это передача определенных сведений (преимущественно правового характера) адвокатом гражданам и организациям. Информирование направлено на обеспечение осведомленности субъектов права, в целях использования этих знаний в процессе, например, предпринимательской или иной деятельности. Сообщение этой информации зачастую не является консультацией в чистом виде, то есть инициируется самим адвокатом в рамках соглашения с доверителем (например, договора о юридическом обслуживании, где может быть предусмотрена обязанность адвоката информировать доверителя, об изменениях в законодательстве, о новой судебной практике по определенным категориям дел и т. д.).

Информирование может рассматриваться двояко: как сама деятельность, так и ее результат. Значение информирования заключается не только в сообщении информации субъекту, но и разъяснении ее смысла. Задача юридического информирования, как пишет А. Эрделевский, это восполнение недостатка правовой информации, устранение имеющихся у лица сомнений и неясностей [5]. В результате информирования доверитель приобретает новые знания о правах и обязанностях, способах их реализации и защиты, необходимых для преодоления проблемной правовой ситуации.

Предоставляемая в порядке юридической помощи информация должна давать возможность правильно ориентироваться в проблемной правовой ситуации, принимать на ее основе правильное решение. При этом информация не содержит готовых вариантов поведения соответствующего лица, а лишь предупреждает о необходимости предпринять те или иные действия.

Содержание информирования составляет сам процесс передачи адвокатом своему доверителю юридической информации, которая должна обладать следующими свойствами: относимостью (связью с характером деятельности доверителя), достаточностью (полнотой), достоверностью (возможностью проверить подлинность) и некоторыми другими. Указанные свойства имеют важное значение, потому что такая информация содержит потенциальную ценность, будучи не только целенаправленно выбранной из всего массива правотворческого и правоприменительного контента, но и переработанной и адаптированной специально для доверителя с учетом его знаний, опыта, временных и финансовых возможностей и т. д.

Ценность юридического информирования как вида адвокатской деятельности заключается не просто в доведении той или иной информации в том виде, в каком она существует в официальных источниках и в принципе может быть получена лицом самостоятельно, а в адаптации и разъяснении.

С учетом того обстоятельства, то такая информация нередко передается доверителю в условиях дефицита времени принятия решения, очень важно, чтобы сведения, с одной стороны, максимально точно соответствовали юридической терминологии, но с поправкой на возможный перевод наиболее трудных понятий с «юридического» языка на «бытовой».

Еще одной формой оказания юридической помощи является юридическое консультирова-

ние, которая представляет собой процесс взаимодействия субъекта оказания и субъекта получения по поводу проблемной правовой ситуации с целью выявления возможных правовых путей ее решения и их последствий, уяснения путей и способов реализации выбранного решения [6, 181].

Р. Г. Мельниченко выделяет два аспекта юридического консультирования: доведения до сведения клиента содержания правовой нормы и ее толкование, т. е. разъяснение ее содержания применительно к конкретной ситуации [7].

Задачей юридического консультирования является разъяснение субъекту получения всех возможных вариантов решения проблемной правовой ситуации, правовых последствий каждого из них, рекомендация наиболее оптимального варианта решения и определение стратегии и тактики юридических действий по его реализации. Эти задачи решаются последовательно, на их основе выделяются этапы юридического консультирования [8].

Консультация лексически определяется как совет специалиста, и как направление деятельности представляет собой динамическую категорию, включающую совокупность действия адвоката и доверителя.

Представляется, что если структура информирования включает два основных этапа: действия адвоката по передаче информации и действия клиента по ее получению, то консультирование дополняется еще одним, предварительным этапом — принятием поручения. Прежде чем дать консультацию, адвокат должен выслушать клиента, уяснить суть просьбы. Дальнейшее движение информации от адвоката к клиенту будет структурно совпадать с аналогичными действиями в рамках информирования.

Тем не менее, отличия консультирования от информирования будут заключаться еще в двух аспектах: адресном характере с учетом обстоятельств конкретной жизненной ситуации и четких рекомендациях в выборе правовых средств решения возникшей проблемы.

Например, консультируя клиента по вопросу обращения в суд с иском и принимая во внимание наличие заключенного между истцом и ответчиком третейского соглашения, адвокат должен обратить внимание доверителя на возможные риски оставления искового заявления без рассмотрения, если ответчик по этому вопросу заявит возражения.

Результатом дачи адвокатом юридической консультации должно быть формирование четкого представления у клиента о возможности совершения тех или иных действий, с учетом возможных рисков, озвученных адвокатом.

Следует признать, что консультирование как вид адвокатской деятельности отличается от информирования также коммуникативным аспектом. Не случайно способность правильно выстроить взаимоотношения адвоката со своим клиентом называют одним из важнейших аспектов деятельности адвоката. С. И. Володина отмечает, что при анализе профессионального общения необходимо учитывать коммуникацию (обмен информацией), социальную перцепцию (восприятие и понимание человека человеком) и интеракцию (взаимодействие) [10, 2].

На необходимость правильно и грамотно выстроить диалог с доверителем обращает внимание А. Г. Кучерена, предлагая ценные рекомендации по осуществлению этого вида профессиональной деятельности. В частности, автор отмечает целесообразность разработки плана консультации, отражающего содержание наиболее типичной консультации, включающего в себя: правовую оценку сложившейся ситуации; раскрытие перспектив дела; дачу рекомендаций относительно конкретных вариантов поведения; раскрытие трудностей, с которыми доверитель может столкнуться при отстаивании своего нарушенного или оспариваемого права [10, 277].

Наличие у юридического консультирования и юридического информирования (консультативная работа адвоката) общих черт делает возможным их совместную классификацию по трем основаниям.

В зависимости от видов направления можно выделить консультирование как предварительную стадию осуществления помощи по гражданским делам, уголовным дела, делам об административных правонарушениях и т. д. Однако оговоримся, что формально отраслевой критерий здесь не является определяющим, поскольку

собственно консультирование до использования соответствующих правовых средств защиты лежит за пределами процессуально-правового регулирования.

Так, например, обращение организации к адвокату с вопросом о способах защиты прав на товарный знак может резюмироваться консультацией и составлением конкретных документов: претензии с требованием прекратить нарушение интеллектуальных прав, искового заявления в арбитражный суд о применении того или иного способа защиты исключительных прав, заявления в уполномоченный государственный орган с требованием привлечь нарушителя к административной или уголовной ответственности и т. д.

В зависимости от формы внешнего выражения консультативная работа может быть устной или письменной. Первый вариант возможен только в случае очного общения адвоката и его доверителя (в том числе с помощью технических средств, как то: телефонная связь, видеоконференцсвязь и т. п.). Письменная форма в широком смысле означает фиксацию сведений (информации) на материальном носителе как в рукописном виде, так и в печатном, электронном и т. п.

В зависимости от правовых последствий консультативной работы ее результатом может стать составление документа, не вызывающего для третьих лиц правовых последствий (различного рода справки, разъяснения, заключения, ответы, обзоры, результаты мониторинга и т. п.) или, наоборот, имеющего правовой эффект. В последнем случае речь идет о составлении документов правового характера, который Федеральный закон от 31 мая 2002 г. № 63-ФЗ «Об адвокатской деятельности и адвокатуре в Российской Федерации» (далее по тексту — Закон об адвокатуре) [11] выделяет в отдельный вид адвокатской деятельности.

Составление юридических документов — это создание и предоставление субъекту получения юридической информации, материализованной на определенном носителе (как правило, бумажном), оформленной в соответствии с правовыми требованиями и направленной на возникновение, изменение, прекращение прав и обязанностей получателя юридической помощи в проблемной правовой ситуации [12, 361–366].

Закон об адвокатуре, учебная и научная литература исходит из данного вида адвокатской деятельности как самостоятельного, отличного от консультирования. Однако следует принять во внимание тот факт, что составление документа правового характера невозможно без взаимодействия с субъектом, в чьих интересах он составляется. Классическая схема консультирования здесь, конечно, не применяется, однако адвокат не может составить документ, находясь в изоляции от фактов и средств их фиксации.

Составление юридических документов часто сопровождается юридическим консультированием по поводу порядка использования юридического документа, а также зачастую представляет собой итог консультирования с перспективой защиты материальных и нематериальных благ, как правило, в судебных или иных юрисдикционных органах.

Услуги адвоката в контексте этого вида деятельности не сводятся к механическому написанию документа. Так, например, вправе ли адвокат составлять исковое заявление в суд, если он считает невозможным судебную защиту, например, в силу отсутствия у истца-доверителя права на предъявление иска? Представляется, что нет, поскольку ст. 7 Кодекса профессиональной этики адвоката [13] предписывает адвокату принимать поручение на ведение дела, когда у него имеются сомнения юридического характера, не исключающие возможности разумно и добросовестно его поддерживать и отстаивать.

Задача составления юридических документов — предоставить в распоряжение (самостоятельное использование) субъекта получения юридической помощи для предотвращения и (или) преодоления конкретной проблемной правовой ситуации особого правового средства осуществления его правовой деятельности — юридического документа.

Следует иметь в виду, что подготовленный адвокатом документ не только венчает консультативную деятельность. Этот процесс требует особой подготовки, специальный знаний, умений и навыков. Юридический документ, составляемый адвокатом, не является официальным, зачастую представляет собой этап инициирования

процесса защиты и должен быть составлен грамотно и юридически корректно. В адвокатской практике недопустимо составление юридически неграмотных процессуальных документов и избрание такого способа защиты прав доверителя, который в соответствии с действующим законодательством и сложившейся судебной практикой заведомо не может привести к защите прав, свобод и интересов указанного лица [14].

Документ должен отвечать требованиям закона по форме и содержанию и быть ориентирован на максимальный учет интересов и целей субъекта получения, ради реализации которых документ создается. В документе не должно быть положений, неоднозначных формулировок, которые могут ущемить интересы субъекта получения (кроме согласованных с ним), должен присутствовать правовой анализ проблемной ситуации, правовое обоснование позиции субъекта получения; указан надлежащий адресат документа и т. д. [15, 25].

Необходимо учитывать, что осуществление любого вида консультативной деятельности связано с соблюдением не только требований законодательства, но и этических норм.

При проведении консультации адвокату следует изучить материалы дела, выслушать мнение доверителя, истребовать иные необходимые сведения и документы, применить к ситуации нормы действующего законодательства, судебной практики, изучить, обосновать и составить правовую позицию по делу. После этого адвокат должен обеспечить доверителю необходимое понимание правовой позиции, удостовериться, правильно ли доверитель понимает его разъяснения [16, 353].

Для решения вопроса о принятии поручения адвокату необходимо тщательно изучить все представленные доверителем документы и материалы, проанализировать действующее законодательство применительно к конкретным обстоятельствам и определить наличие правовой позиции [17, 123].

Отказывать в приеме поручения адвокат правомочен тогда, когда из имеющихся материалов (в том числе тех, которые могут быть получены в перспективе) однозначно усматривается, что права обратившегося за помощью гражданина или организации не нарушены либо их защита исключена. Кроме того, безусловным основанием для отказа от исполнения договора поручения для адвоката является выявившаяся незаконность требований доверителя [18, 354–359].

Таким образом, деятельность адвоката как независимого профессионального советника, консультанта представляет собой совокупность действий, направленных на достижение определенного результата, а именно: ликвидации правовой неопределенности по конкретному вопросу и создании условий для беспрепятственной реализации прав доверителем. Это такая форма деятельности, которая предполагает сотрудничество адвоката с доверителем без обращения к третьим лицам.

В зависимости от характера действий и целей деятельности можно выделить два основных вида этой формы: информирование и консультирование.

Консультативная форма оказания правовой помощи может быть устной или письменной (по процедуре), с составлением какого-либо документа или без такового.

Письменный результат консультативной работы возможен путем составления документа, направленного исключительно на получение желаемых сведений (заключение, справка, разъяснение и т. д.), что само по себе не влечет для доверителя правовых последствий, или инициирования механизма защиты прав или законных интересов (исковое заявление, жалоба и т. п.), который, с одной стороны, несет в себе потенциальный правовой эффект, а с другой, формально является переходом к следующему виду адвокатской деятельности — представительству.

Список литературы:

1. Федеральный закон РФ «Об адвокатской деятельности и адвокатуре в Российской Федерации» от 31 мая 2002 года № 63-ФЗ (с изм. и доп. от 2 июля 2013 г.)//СЗ РФ. 2002. № 23. Ст. 2102.
2. Скабелина Л. А. Психологические аспекты адвокатской деятельности: монография. – М.: Федеральная палата адвокатов, 2012. С. 109.

3. Федеральный закон от 27 ноября 2010 г. N 311-ФЗ «О таможенном регулировании в Российской Федерации»//Собрание законодательства РФ. 2010. № 48, Ст. 6252.
4. Панченко В. Ю. Теоретические основы типологии юридической помощи//Адвокат. 2011. № 11.
5. Эрделевский А. Комментарий к ст. 21 НК РФ//Комментарий к части первой Налогового кодекса Российской Федерации (постатейный)//СПС «Консультант Плюс».
6. Профессиональные навыки юриста: Опыт практического обучения/Отв. ред. Л. А. Воскобитова, Л. П. Михайлова, Е. С. Шугрина. М.: Дело, 2001. С. 181.
7. Мельниченко Р. Г. Право на юридическую помощь: конституционные аспекты. Волгоград, 2003.
8. Матюшенкова Ю. Л. Информирование и консультирование налогоплательщиков. Правовые и организационные аспекты//СПС «КонсультантПлюс».
9. Володина С. И. Адвокат-доверитель: возникновение отношений//Адвокатская практика. 2009. № 6. С. 2.
10. Адвокатура России: учебник/А. Г. Кучерена. – 3-е изд., перераб. – М.: ИНФРА-М, 2013. С. 277.
11. Федеральный закон РФ «Об адвокатской деятельности и адвокатуре в Российской Федерации» от 31 мая 2002 года № 63-ФЗ (с изм. и доп. от 2 июля 2013 г.)//СЗ РФ. 2002. № 23. Ст. 2102.
12. Вершинин А. П. Юридические документы в нотариальной и судебной практике. М.: Юридическая литература, 1993. С. 5–52; Черданцев А. Ф. Теория государства и права. М.: Юрайт, 1999. С. 361–366.
13. Кодекс профессиональной этики адвоката (принят первым Всероссийским съездом адвокатов 31 января 2003 г.) (с изменениями и дополнениями, утвержденными третьим Всероссийским съездом адвокатов 5 апреля 2007 г. I Всероссийским съездом адвокатов 08.04.2005; III Всероссийским съездом адвокатов 05.04.2007; VI Всероссийским съездом адвокатов 22.04.2013)//Бюллетень Министерства юстиции РФ. 2004. № 3 (75).
14. Обзор дисциплинарной практики//Вестник адвокатской палаты г. Москвы. 2010. № 5–6.
15. Берлин Е. Законодательное регулирование качества правовых услуг//Право и экономика. 2002. N 5. С. 25.
16. Скрипник О. Б. Этика взаимоотношений: адвокат-доверитель//Мораль и догма юриста: профессиональная юридическая этика. Сборник научных статей. – М.: Эксмо, 2008. С. 353 и далее.
17. Пилипенко Ю. С. Научно-практический комментарий к Кодексу профессиональной этики адвоката. – 2-е изд., перераб. и доп. – М.: Федеральная палата адвокатов РФ, 2013. С. 123.
18. Гончарова Н. Н. Принятие адвокатом поручения на ведение дела. Отказ от оказания юридической помощи // Актуальные проблемы российского права. 2008. № 1. С. 354-359.

Section 7. Judicial power

Prizhennikova Alena Nikolaevna,
assistant professor of the department of "Civil and arbitral process",
candidate of jurisprudence, associate professor
FSEBI of HE Financial university under the Government
of the Russian Federation Moscow, Russia
E-mail: alenaprizhen@mail.ru

The judicial system of the Russian Federation: the current state

Abstract: Subject matter of the study was the issue concerning prospects of constitution of specialized courts in Russia. The court reform carried out in Russia is oriented to the creation of the quality court defense of constitutional rights and freedoms of individuals and legal entities. The Federal Constitutional Law dated from 31.12.1996 № 1-FKZ «On the Court System of the Russian Federation» stipulates constitution of specialized federal courts (art. 26).Specialized courts are unique institute and have special place and power in hearing of specific cases between define subjects. There is an opinion that specialization of courts can be explained with the following number of reasons: firstly, their creation will favor strengthening of the judicial system; secondly, review and resolution of a certain category of cases secures a higher professionalism of judges; thirdly, courts of special jurisdiction will secure the appropriate rate of the trial.

The issue of specialization of courts is urgent question; firstly, specialization occurs in many areas of activity, in this context the specialization is also possible in judicial activity. Disputes are becoming more puzzled. They can be labor, corporate, administrative and others. In these instances it is essential to call attention to the consideration of individual peculiarities of each dispute. Firstly, as practice has shown, sophistication of disputes leads to transformation of judicial system. But frequent transformations are harmful. In the long all countries create their judicial systems.

In this juncture the author has come to the conclusion that the legal result depends on how duly the judicial system works. In terms of international experience author suggests the conception of organization of freestanding specialized courts and give reasons for it.

Keywords: judicial system, specialized courts, judicial reform, specialization of judges, administrative procedure, commercial courts, civil procedure, labor courts, justice, juvenile justice.

The court reform carried out in Russia is oriented to the creation of the quality court defense of constitutional rights and freedoms of individuals and legal entities. The right to judicial protection announced in Article 46 of the Constitution of the Russian Federation is basic as related to all other rights and freedoms of a person and a citizen. The European Convention of November 4, 1950 "On Protection of Human Rights and Basic Freedoms" vests the title of each person and citizen for just court proceedings performed by an independent and unprejudiced court in its Article 6.

According to p. 3 art. 118, p. 3 art. 128, art. 83 and art. 102 of Constitution of the Russian Federation judicial system is provided by the Constitution and Federal Constitutional Laws.

Foreign experience demonstrates that the judicial system of Germany includes five subsystems: general courts, administrative, financial, labor and social courts [23].

Judicial systems of Canada and Australia include two levels of courts: the federal courts and the courts of subjects of federation. In Australia there is a big amount of specialized courts which are not included in system of courts of general jurisdiction [9]. The principle of federalism is reflected in judicial system of Canada, there are two types of courts: Federal court of Canada and provincial courts.

In France there are two independent systems of general and administrative courts. There are civil, criminal and specialized courts in the system of general courts of the first instance. State Council is the highest instance in the system of administrative courts.

In Italy there are two systems of courts: civil and administrative.

The legislation of USA is a bright example. Federal judicial system consists of three levels: county courts, courts of appeal and the Supreme Court. All civil cases, which are not tried in state courts, are in competence of courts of appeal and the Supreme Court. Federal Specialized courts are also operating [2, 160–161].

In the area of specialized courts, the Russian Federation obtained positive result in the integration of the principles of specialization in development of the judicial system. Commercial courts were established in 1992 «as specialized government courts for settling economic disputes between organizations and individual entrepreneurs» [16, 36].

Under art. 28–29 of The Commercial Procedure Code of the Russian Federation from 24.06.2002 № 95-FZ (hereinafter CPC) commercial courts consider economic disputes and other cases, related to the exercise of entrepreneurial and other economic activities arising from civil relations administrative and other public relations. Specialized courts for settling economic dispute were also established in the CIS countries.

Analysis of the situation in the CIS countries shows that the title «commercial court» is perceived differently. For example, the arbitration courts are in the Republic of Georgia, Kyrgyzstan, Armenia. In the Republic of Armenia, Azerbaijan, Kazakhstan, Moldova, Tajikistan — Economic courts, commercial courts are located in the Republic of Belarus, Ukraine, Uzbekistan, Turkmenistan.

How should this government body be called in the Russian Federation — Commercial court or Economic court? Firstly, this expression «commercial proceedings» is synonymous with the «arbitration proceedings» and «economic proceedings» because in all procedure codes of the republics, term «commercial proceedings» implies all economic disputes. Secondly, commercial courts are able to use all of four existing forms of proceedings under the legislation for considering economic disputes and other cases within the scope of competence of a commercial court. Thirdly, Federal Constitutional Law from 05.02.2014 № 2-FKZ, the Federal Law of 05.02.2014 № 16-FZ entered into force in 06.02.2014 according to which the competences of the Supreme Commercial Court move to the Supreme Court of the Russian Federation. The Supreme Court of the Russian Federation is going to be sole highest judicial body for civil, criminal, administrative and other cases and also for economic disputes.

An actual problem was the lack of a clear delineation between jurisdiction of commercial courts and jurisdiction of general courts and problem concerning «administrative court proceedings». Thus, the issue of uniting civil and commercial procedure remains legitimate. Therefore, it would be necessary to pass consolidated procedural code (this point has been earlier made [22]), the contrary view has been also expressed [13; 19].

The Court for Protection of Intellectual Rights is specialized commercial court.

There are different views on the issue of constitution of Juvenal courts [7; 21]. This way, the Franco-Russian Roundtable on the reform of the penal system was held in the Embassy of France in Moscow on 15 April 2015 [25]. During the round-table discussion it was said that the decision not to establish Juvenile Court in Russia was made at the State level, the reason for this issue is the fact that our country is not currently prepared for the launch of juvenile justice. It was also explained that The Programme, on the basis of which juvenile courts were established, was discontinued from Government control. Although, in the speech of the representative of the Supreme Court of the Russian Federation it was indicated that established Juvenile Courts in several test regions will continue to operate.

The actual issue is to create the juvenal justice in Russia.

It should be noted that the establishment of a specialized juvenile justice system is obligation of the Russian Federation under existing the UN Convention on the Rights of the Child since 1990. In September 2005 40th session of the Committee on the Rights of the Child which again indicated that in spite of several legislative attempts, no juvenile courts have been established at the federal level in Russia that is one of the issues of concern to the international community because the juvenile wrongdoers' cases should be heard separately due to the system of justice [26].

For example, in 2011 elements of juvenal technologies are being used by general courts in Rostov, Irkutsk, Leningrad, Bryansk, Lipetsk, Kamchatka, Vladimir, Ivanovo, Saratov, Orenburg, Volgograd and Moscow regions, the Jewish Autonomous Region, the Perm Region, Republics of Khakassia and Karelia, the city of St. Petersburg and Moscow [24] in the Republic of North Ossetia — Alania, Kabardino-Balkaria and Ingushetia.

We believe that we must increase the number of special correctional institutions for adolescents; develop the network of institutions for minors in need of social rehabilitation; use a plan of the mediation, develop the restorative justice and improve the efficiency of securing the rights of children.

Discussions are ongoing regarding the possible reason of constitution labour courts, however, there are distinct perspectives on issue of the developing labour justice: "labour courts as other federal courts must be in engaged in judicial system of the RF"; "there is a need to create the Code of Labour Procedure… and not to create new legal bodies such as labour courts"; "one of the most efficient ways for resolving labour disputes is the arbitration court"; more attention needed to be paid now on the future work of putting rules of the LC in accordance with universally recognized principles and standards of international law and The Constitution [4; 5; 6].

There are specialized courts in Germany, Finland, Great Britain, France, Austria, Belgium, Denmark, Luxembourg, Spain, Portugal, Switzerland, Sweden, Norway and Canada (Quebec), New Zealand and Israel. There are specialized administrative bodies performing judicial functions in the United States, Japan, Canada (at the federal level and in the English-speaking provinces).

The individual labor disputes of a legal nature, the collective labour disputes concerning with implying of tariffs agreements and legal issues concerning activity of company's Counsels are in competence of labour court in Germany. In the first place these are individual labour disputes commonly related to the conclusion, implementation and termination of the employment contract, compensation of the caused harm to parties, as well as legal collective labor disputes, for example, relating to the status of trade unions or employee representative at the company, workers and trade unions participate in the management of the enterprise.

The activity of labour courts is regulated by «Law on Labour Courts» of 1953 (amended).

Labour courts of first and second instance are subject to the ministers of labor of the relevant federal lands. (except State of Hesse).

The activity of The Federal labour court is controlled by The Federal Ministry of Labour and the social order in Germany [11].

Thus, exploring the procedural peculiarities of consideration and resolution of labor disputes in Russia and analysing foreign experience it can be concluded that it is possible to constitute Judicial Boards for settlement of disputes arising from labour retaliations in general courts. The judicial board would be guided by the Code of Labour Procedure. Disputes arising from individual and collective agreements must be in special competence of the Judicial board for settlement of disputes arising from labour retaliations. The examination procedure of these cases must have its own specificities.

In the context of administrative courts the only approximate date of occurrence of administrative justice in Russia is the XVIII century — the first half of the XIX century.

Administrate courts were established in Europe countries (Germany, France, Austria, Poland, Spain, Holland, Belgium, Bulgaria, Greece, Italy, Latvia, Lithuania, Estonia, Czech Republic, Ukraine and others). Absolutely different system of administrative justice operates in these countries. Thus, in some courtiers specialized administrative courts

are included in the system of general courts (Mexico, United Kingdom, USA, Australia, New Zealand). In other courtiers, judicial boards on administrative matters were constituted in general courts (Georgia, Estonia, Spain, Bolivia). In other countries, administrative courts are separated from general courts and have independent system (Germany, France, Italy, Austria, Finland, Sweden, Poland, Israel).

Analyzing foreign experience of formation of administrative justice can be concluded that:

1) Two major models of control over administrative can be distinguished. The first model: states where there is no system of administrative courts, which does not exclude the presence of other similar institutions, such as administrative tribunals (UK, USA, Australia, New Zealand).The second model: States, where administrative courts operate (France, Germany, Italy, Austria, Finland, Sweden, Greece, Spain, Poland, Israel, and others) [3, 18–31];

2) The continental model (France, Germany) assumes the autonomy of administrative law and independent legal status of the judicial bodies of administrative justice; common law and anglo-american systems which lie in more or less consistent way of delivering the unite justice — where acts of management are under supervision of general courts [18, 4–21];

3) French; German; Anglo-Saxon; model administrative presence in the ordinary courts can be identified in organization of administrative justice [30];

4) Also there are combined systems.

Studying the foreign experience of the administrative courts in other countries will help the Russian Federation to identify the best approaches for creating its own model of administrative justice.

The Federal Law the Code of administrative court proceedings of the Russian Federation enters into force on 15 September 2015 № 21-FZ (except certain provisions). The Code of administrative court proceedings regulates the procedure of administrative proceedings in the consideration and resolution of the Supreme Court of the Russian Federation; the protection of violated or disputed rights, the rights and legal interests of organizations, as well as other administrative cases arising from administrative and other public relations related to the implementation of judicial review of the legality and validity of the state or other public authority.

Due to adoption of Code of Administrative Court Procedure of the Russian Federation, some legislative acts of the Russian Federation underwent corresponding amendments.

In particular, Law of the Russian Federation "On Mass Media", Federa Law "On the Public Prosecution Service of the Russian Federation", Law of the Russian Federation "On psychiatric care and civil rights guarantees at its application", Law of the Russian Federation "On State Secrets",: On Enforcement Procedures", "On Contract systems in the sphere of procurement of goods, works and services for provisioning governmental and municipal needs", in Tax Code of the Russian Federation, in the Civil Code of the Russian Federation, aimed at bringing the provisions of these laws into compliance with the Code of Administrative Court Procedure of the Russian Federation.

Also, in conjunction with the adoption of Code of f Administrative Court Procedure of the Russian Federation the competence of military courts and human rights commissioner in Russia were updated.

In particular it was specified that district (naval) military courts will among other things consider at first instance the administrative cases, related to the National Security Information, and also cases on administrative bills of complaint on award of compensation for breach of the right for court procedure within reasonable time or the right for execution of the court decree within reasonable time on the cases in subject to the jurisdiction of presidial military courts.

It has been clarified, that subsequent to the results of administration of citizens'' complaints the Human rights commissioner has the right to go to court with the administrative bill of complaint (claim) in defense of rights and freedoms (including unlimited range of persons), violated by the decisions or actions (failure to act) of a governing institution, organization, invested with certain government or any other public authorities, public individual, a public officer or a local government employee, and also personally or through his or her representative take part in a process in proper legal manner.

It has been also established, that the commissioner has the right to refuse witness testimony in a civil or an administrative case, administrative offence case or criminal case on the circumstances he came to know in relation to discharge of his or her duties.

The procedure of administrative proceedings is defined by the Constitution of the Russian Federation, the Federal Constitutional Law dated from 31.12.1996 № 1-FKZ «On the Court System of the Russian Federation», Federal Constitutional Law dated from 23.06.1999 № 1-FKZ «On military courts of the Russian Federation», Federal Constitutional Law dated from 07.02.2011 № 1-FKZ «On courts of general jurisdiction of the Russian Federation».

The matter of specialization (specialized courts) has been paid much attention to in national scientific literature [1; 12, 96–107; 14; 15; 17, 8; 20, 95; 27, 18; 28, 8]. It has been specified, that the court is the very specialization [29]; the court may be specialized.

Why do the specialized courts appear and what are they needed for? Creation of specialized courts is expediential for a variety of causes. In the first place, it will let the judges specialize in consideration of a certain category of cases; in the second place, it is designated for the quicker consideration of arguments in the light of specific features of the cases considered.

If we refer to history, we shall see that the specialization of courts has risen to unprecedented scale in Russia, turning by the XIX century into a complicated embroilment of court jurisdictions, which provoked great number of arguments On judicial jurisdiction and official knowledge. By the start of judicial reforms of Alexander II there had been an enormous number of all sorts of specialized judicial agencies with unclear and indefinite competence [10, 52].

Thus, there were specialized courts (state and и private ones), that were initially created depending on the subjective composition taking part in judgment of legal conflicts. In XVII century the specialization of courts had been for the first time thread due to a meritous attribute, that is the character of the argument had been made the corner stone, though up to 1917 the specialized judicial instances were singled out and functioned using both of the said attributes, and also with the amalgamation of those.

Therefore, the matter of expediency of the specialized courts has been existing for a long time.

We agree with the opinion, that classical full-scale judicial specialization must meet two attributes: it must have a well-defined sphere of specialized jurisdiction and, correspondingly, embrace all the three constituents, procedural and institutional mechanism of justice — judicial, procedural and the one defining status of persons, directly executing justice [8].

The basis for emerging of specialized courts are the developing social relations in the society. The society is developing from the system of social institutes and represents a complicated assemblage of economic, political, legal, spiritual relationships, providing its integrity as a social system. And the stronger the social relations and the society itself are developed, the more accurate is the reaction of state towards the necessity of regulation of individual spheres of conflicts in special jurisdictions. An important point in creation of the courts of specialized jurisdiction is the necessity of establishing a special (in comparison with the usual for regular court) order of hearing of some category of cases, take into account the peculiarities of procedural regulations for the given category of cases having their own purposes, and also their own independent mechanisms and peculiarities of statutory regulation, unify the processes of law.

We believe that the implementation of the constitutional and legislative provisions on administrative proceedings would clearly improve the quality of the Russian justice system.

We would like to conclude by saying that the judicial system of the Russian Federation develops with the values of the judicial system enshrined in the Constitution of the Russian Federation, and also In the light of the legal position of international legal bodies. The Russian judicial system cooperates and adopts positive foreign experience constantly improving the quality and efficiency of the judiciary.

References:

1. Baranov V. A., Prizhennikova A. N. Topical issues in improvement of administrative legal proceedings in Russia//Collected book of young scientists, MSIU. Moscow, 2004.
2. Bobotov S. V., Zhigachev I. Y. The Introduction to the legal system of the United States. M., 2007, P. 160, 161.
3. Boytsova V. V. Boytsova L. V. The system of judicial review of the administration: the classical models and modifications. Proceedings of the seminar. M., 2002. – P. 18–31.
4. Do we need labor courts: pro et contra. "The round table" organized by the State Duma Committee on Labor and Social Policy of November 30, 2004//URL: http://www.chelt.ru: Mironov V. I. Layoffs, cuts, transfers, new labor contracts, wages: labor disputes in usloviyaz crisis//ATP "Consultant Plus".
5. Ershova E. A. Labor law in Russia. Monograph 2007//URL: http://pravouch.com/trudovogo-prava-problemyi.
6. Kalinin I. B. Labour courts in the Russian State//Pedagogical University Herald. – 2007 No. 9 (72). Series: Humanities (Economics and Law).
7. Kirichek L. V. Juvenile justice and prospects of modern pedagogical culture/Juvenile Justice, 2010, № 4.
8. Kleandrov M. I. On model of radical autonomation of justice of the peace in the Russian Federation//Russian law journal, 2015, N 3//Legal reference system «Consultant Plus».
9. Malko A. V., Salomatin A. U., V. A. Terekhin The judicial federalism in the context of globalization (benchmarking)/Russian justice. – 2013. – № 7.
10. Nemytina M. V. Court in Russia: second half of XIX – early XX century. Saratov, 1999. P. 52.
11. Orobets V. M. Specialized labor courts: international experience and Russian law//Magazine of the Russian right. – № 9. –2003. URL: http://www/pravoakt.ru
12. Orobets V. M. Specialized labour courts: foreign experience and Russian legislation//Russian law journal. – 2003. – No. 9. – P. 96–107.
13. Popova Y. A. Procedural form of settling disputes arising from public and administrative relations//Russian judge. –2011. – № 4.
14. Prizhennikova A. N. Administrative legal proceedings in the Russian Federation: condition and prospects for further development: synopsis of thesis … candidate of legal sciences: 12.00.14/Prizhennikova A. N. Moscow, 2005.
15. Prizhennikova A. N. Necessity to form administrative legal proceedings//«Financial University», Ltd Riga. – 2012.
16. Reshetnikov I. V., The evolution of civil proceedings in Russia//the Russian justice. –2013. -№ 1. P. 36.
17. Salischeva N. G., Khamaneva N. Y. Administrative justice, administrative legal proceedings//State and law, 2002. –No.1. – P. 8.
18. Salishcheva N. G. Hamaneva N. Y. Administrative justice and administrative proceedings in the Russian Federation. M., 2001. – P. 4–21.
19. Shelyutto M. L. The VI review of Annual Scientific Conference dedicated to the memory of Professor SN Bratus//Journal of Russian law. – 2012. – № 1.
20. Starilov Y. N. Administrative courts: new pros and cons/Under the editorship of V. N. Radchenko. Moscow, 2004. – P. 95.
21. Timosha E. M. Juvenile courts in Russia//Questions of Juvenile Justice. – 2012. – № 4.
22. Tsygankova. V. New codes – the unity of the process?//EG-Jurist. – 2003. – № 14.
23. URL: http://www. bverwg.de.
24. URL: http://rusrand.ru
25. URL: http://www.juvenaljustice.ru
26. URL: http://www.sartracc.ru

27. Vlasov A. What will be the administrative justice?//Russian justice, 2002. – No.11. – P. 18.
28. Yarkov V. V. "Judicial power and protection of a personality in civil procedure//Legal Science. – 1992. – No. 1. – P. 48.
29. Zamyshlyaev D. M. on historical aspects of specialization of courts//Court administrator, 2014, N 3//Legal reference system «Consultant Plus».
30. Zelencov A. B. Control over the executive in foreign countries. Textbook. M.: Publishing House of Peoples' Friendship University of Russia, 2002.

Section 8. Labour law

Saquib Rahman, University of Warwick
LL.M. (Int'l Corporate Governance & Financial Regulation)
candidate, School of Law
E-mail: s.rahman@warwick.ac.uk

The compliance of labour regulations by TNCs in Bangladesh — a host state's perspective

Abstract: Having observed the death toll of over 1100 workers due to the collapse of Rana Plaza garments factory, the international community along with the educated quarters of Bangladesh had pressed towards amendment of the Labour Act, 2006. Though revised in 2013, the law still fell short of expectation, considering international standards. This paper points out the areas of law that require further amendment, highlighting the gaps between the domestic Act and international conventions ratified by Bangladesh. Addressing reasons for Transnational Corporations (TNCs) not to comply with the existing law, the paper provides a solution as to which portions of the law require immediate amendment and proposes ways to make TNCs comply with the regulations.

Keywords: Bangladesh Labour Law, Labour Act Bangladesh, RMG Bangladesh.

(I) Introduction

From as many as 25 separate legislations, a Labour Act was enacted in Bangladesh in the year 2006 [1]. Transnational Corporations (TNCs) while doing business in Bangladesh are required to abide by such, along with international conventions Bangladesh has ratified. Although there were gaps between these two and amendments to the Act were made in 2010, [47, 2] meeting international standards was brought to attention especially since the Rana Plaza factory building collapse, [51] causing death of over 1100 workers in April 2013 [5, 5]. The tragedy was followed by loss of 111 lives from fire inside another factory namely Tazreen Fashion in November 2012 [13]. Amending the law became a crying need, while meeting standards mentioned in the conventions was a challenge.

An amendment later in 2013 also failed to address major issues such as desired trade union rights, health and safety of workers in the factories, proper inspection of factories, working more than lawful overtime and so on [54]. Not only does the law require further consideration for TNCs to obey such, also reasons allowing TNCs for not adequately complying with the regulations are plenty.

Part (II) (a) briefly discusses the prevailing Labour Act, (b) mentions conventions Bangladesh has ratified and (c) describes two agreements signed by TNCs. Imperfections in the law are discussed in Part (III), emphasizing on gaps between the Act and conventions. Part (IV) mentions reasons of non-compliance of existing regulations by the TNCs other than faults strictly relating to laws. Lastly, part (V) aims at providing a solution as to which portions of the law require immediate amendment and proposes ways to make TNCs comply with the regulations. The paper addresses the issues, mainly focusing on TNCs in Bangladesh's dominating ready-made garments sector [28].

(II) An overview of labour regulations and agreements applicable for TNCs to operate in Bangladesh

(a) The National Labour Act

One striking feature of Bangladesh's Labour Act enacted in 2006 is that it regards one below the age of fourteen as a child [7, s. 2 (LXIII)]. The law prohibits child labour even at places that may be categorized as non-hazardous with exceptions in cases of workers above the age of twelve

to do light work, ensuring it does not affect the worker from receiving formal schooling [7, s. 44 (1)]. It mandatorily requires workers to be issued with identity cards and appointment letters [7, s. 5]. Death benefits must be arranged [7, s. 19]. Adolescent workers and females workers may not be employed during night hours and in professions characterized as unsafe [7, s. 39–40]. The Act mentions maternity benefits of sixteen weeks, [7, s. 46 (1)] which isn't applicable for a worker giving birth more than twice [7, s. 46 (2)]. Emphasis has been given on occupational health and safety, [7, s. 79] working environment [7, s. 51–60] and group insurance policies [57, s. 99 (1)–(2)]. Due wages according to the law may be realized through courts while wages must be paid in a limited time span [7, s. 329 (1)–(2)]. It contains provisions made for announcement of sector wise minimum wage rates [7, 138]. A worker's family is entitled to compensation in case of death and provided one is physically disabled for life. [7, s. 150–174]. Workers only belonging to the pay-roll of the employers shall be members of basic trade unions [7, s. 180]. The Act contains a widened range of understanding of unfair labour practices by employers [7, s. 195], workers and trade unions. [7, s. 196]. Collective Bargaining Agents are made from within the establishment based basic trade unions within a fixed time period [7, s. 202]. Provisions exist to form mandatory Participation Committees in all establishments that engage fifty permanent workers. [7, s. 205 (1)]. Adjudicating issues is to be done in the Labour courts. The labour appellate tribunal is required to address the appeals [7, s. 209–231]. For establishments running under private management, provisions exist for provident funds [7, s. 264]. For breach of provisions, imprisonment along with fines is stated [7, s. 283–316]. Strictly prohibited is any discrimination towards female workers [7, s. 345]. A children room has to be a facility provided for female workers with children aged less than six years [7, s. 94]. Termination of employment of workers voluntarily [7, s. 27] and by employers is mentioned. [7, s. 2]. Application of grievances is required by law to be made [7, s. 33]. Training periods shall be considered as if workers are performing their official duty [7, s. 348].

(b) ILO Conventions ratified by Bangladesh

With an exception of International Labour Organization (ILO) Convention 138 which emphasize on the minimum age issue concerning abolition of child labour, ratification of seven fundamental conventions has been done by Bangladesh [37]. Convention 87 namely The Freedom of Association and Protection of the Right to Organise Convention contains articles mentioning workers' and employers' rights to "join organisations of their own choosing without previous authorization" [20, art. 2]. The organizations have been provided with privileges of drawing up their own regulations and constitutions, elect freely their own agents and without any sort of intervention from public bodies, organize administrative tasks [20, art. 3]. In exercising the rights, the organizations are expected to respect laws of the territory [20, art. 8].

Ratified Convention 98 namely The Right to Organise and Collective Bargaining mentions the rights regarding independently organizing of members of the unions [21, art. 2 (1)], without any intervention by employers. [21, art. 2 (2)] Workers cannot be dismissed for getting union participation or memberships and employers cannot intervene or influence unions using means like finance [21, art. 1 (2)]. "For the purpose of ensuring respect" for the above, [21, art. 3] appropriate machinery from Bangladesh is looked for. Further worth mentioning is Article 4 that necessitates that the law upholds "the full development and utilisation of machinery for voluntary negotiation" between worker organisations and employer groups to regulation employment "by means of collective agreements [21, art. 4]."

In Article 2 of Convention 29 namely the Convention Concerning Forced or Compulsory Labour [22], forced labour means "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" [22, art 2 (1)]. It mentions that with an exception of five circumstances, forced labour is to be prohibited. [22, art 2 (2)] However Ratification of Convention 105 namely Convention Concerning the Abolition of Forced Labour wiped out those exceptions [23].

Elimination of discrimination has been ensured via ratifying Convention 100, the title of

which is the Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value. Bangladesh is required to employ laws to regulate equal remuneration for men and women [24]. Another that concerns elimination of discrimination is the ILO Convention 111 titled the Convention concerning Discrimination in Respect of Employment and Occupation. Colour or race, political ideology, gender, religion or exclusion and discrimination in any other manner are required to be prohibited [25].

Finally, as a step towards abolition of child labour, Bangladesh ratified Convention 182 namely the Convention concerning the Prohibition and Immediate Action for the Elimination of Worst Forms of Child Labour [26]. Upon ratification, Bangladesh is devoted towards the exclusion and removal of the worst forms of child labour that exist such as the sale and trafficking of children, debt bondage and serfdom and forced or obligatory labour, work expected to harm their safety, well-being or morals etc. [26, art. 3].

(c) Agreements

(i) *Accord on Fire and Building Safety in Bangladesh (Accord)*

The Rana Plaza tragedy led to the creation of the Accord on Fire and Building Safety in Bangladesh, a much needed step for TNCs to display their responsibilities [29]. The Accord involved signatories from both employers and workers [55]. Furthermore, delegated tasks were, to non-governmental organisations (NGOs), the ILO, suppliers of the TNCs that signed the Accord and Ministry of Labour and Employment of Bangladesh. TNCs as big as H&M, Primark, Marks & Spencer, Tesco & Sainsbury's are signatories, with global federations such as UNI and Industriall. Organisation for Economic Co-operation and Development (OECD) and similar players endorsed the Accord [6]. It outlines actions that were decided to be commenced, in particular data collection [40]. for the purpose of identifying supplying factories in Bangladesh and on the assessment of the Bangladesh textile industry plants. A training coordinator is to develop an extensive fire and building safety training programme for the purpose of giving safety training to the representatives of the workers and the management of supplier plants at regular time spans [31, 28–33].

(ii) *The Alliance for Bangladesh worker safety action plan (Alliance)*

The Alliance was founded by North American apparel TNCs and retailers joining together to advance and launch the Bangladesh Worker Safety Initiative, an obligatory undertaking, with the aim of such being of a transparent nature, results-oriented, assessable and certifiable, with primary concern being the safety in Bangladeshi ready-made garment (RMG) plants [9]. Renowned names like Wal-Mart, Macy's & Gap are players [10]. Labour bodies, the governments of both states, meaning Bangladesh and the United States of America and also non-governmental organisations held interests here [31, 28–33]. Providing with 'rapid implementation, worker empowerment, and the long-term support necessary to advance sustainable change in an industry that is vital to the economic future of Bangladesh' [48, 4] are the prime strategies of accomplishments it promises to follow**.** Developing uniform fire and building safety standards is one of Alliance's major tasks [48, 3].

(II) Flaws & loop holes of the Bangladesh Labour Law and the gaps between such and the ratified ILO Conventions

"The Bangladesh government desperately wants to move the spotlight away from the Rana Plaza disaster, so it's not surprising it is now trying to show that it belatedly cares about workers' rights," stated Phil Robertson, deputy director of Asia division of the Human Rights Watch [30], right after Labour Act 2006 was amended in 2013 since the law was believed to have failed to meet international standards. However inspite of amendments, it still fell short of expectations [12].

Workplaces hardly have active trade unions in Bangladesh [16]. The 2013 amendments also failed to resolve the fact that the law yet requires a minimum of 30% of the workers in an establishment to join a union and only then shall the Government of Bangladesh register such. [30] The provision is clearly in contradiction with Article 3 of Convention 87 and Articles 2 and 3 of Convention 98. Moreover, Article 3 of 87 is further violated since Labour Act requires that Unions must choose their leaders

only from workers at the establishment. [7, s. 180] Hence, this make a way for employers to sack union leaders by providing reasons that are not related to unions. A large portion of the work force at Export Processing Zones (EPZ) is at risk of lawfully forming trade unions since EPZ Trade Union and Industrial Relations Bill of 2004 gives the EPZ administration enough power to de-register unions. [14, 67] Furthermore, from clinics and hospitals to non-profit education and training facilities, a long list of employments is provided in the amendments, barring the formation of unions. [57, s. 1 (4)] Backing TNCs, anti-strike provisions in the law exist — prohibition of strikes in any establishment during the first three years of operation provided it is "owned by foreigners or is established in collaboration with foreigners". [7, s. 211 (8)] The law stresses on the formations of Participation and Safety Committees — bodies to be constituted by owners/management and workers. [7, s. 205 (1)] The idea being that workers at non-union workplaces would elect their representatives to the committees, although role of these committees is not clearly defined. Hence plant owners may make use of the committees as alternative to unions (which should actually be the forum to carry out what the committees are engaged in), enjoying adequate influence of their own. Weak trade union rights therefore are an attraction for TNCs to engage in business activities in Bangladesh. [14, 71] Interestingly, absence of union activity by the EPZ has been advertised for the purpose of attracting foreign direct investment. [14, 67].

Workers are entitled to identity cards and appointment letters as per the Act, and require those to include signatures of both employers and the workers. [7, s. 5] In reality, although they are given identity cards, common practice is that workers are not issued with appointment letters, [43, 160] thus making them incompetent to bargain with the owners — violation of ILO Convention 98. [21] Notably, workers are provided with appointment letters at not more than 50% of the big businesses [18].

Setting minimum wage by the creation of a Wage Board [49] every five years certainly does not sound rational with frequent changes in living standards at present. Moreover, cuts in wages due to participation in strikes in accordance to Labour Act [7, s. 126] and enjoying unauthorized leave [7, s. 125] and firing workers for misconduct by providing them with no compensation are in direct contradiction with ILO Conventions 29 and 105 that concern forced or compulsory labour and the abolishment of such.

Compensation provided to the workers are significantly low — Taka 100,000 in cases of death, Taka 125,000 in case of permanent disability and Taka 10,000 for labours who did not attain adulthood as yet. Providing such amounts appear to be inhumane [52, 4].

Government in the law has been given discretionary power [7, s. 214 (6–9)] to appoint representatives from workers and factory owners in the Labour Court, therefore increasing chances of nepotism and politicization of judicial process. [52, 4] Moreover, punishment for plant owners is not at all sufficient as per the Labour Act. [7, s. 283–316] A country with weak judicial processes certainly has reasons of glee for TNCs to operate in.

Level of sufficiency of light, water to drink, air circulation and sanitation has not been described. Not only unhygienic toilets or tiffin rooms are observed at workplaces, separate toilets for male and female is a rare sight. [39, 9] A study puts forward the fact that garment workers significantly suffer from water-borne and work related illnesses. Moreover, 70 and 63 per cent of women workers suffer from headache and weakness respectively [2, 457].

Inspite of Labour Act containing provisions concerning prohibition of discrimination based on gender and other aspects along with ensuring equal remuneration, sexual harassment of women has not been taken into account [38]. According to the Human Rights Watch, guidelines provided by the High Court of Bangladesh regarding sexual harassments in 2009 [8] could have atleast been considered in RMG sector, where percentage of female workers prevail way over the male [35].

Bangladesh Government was unsuccessful in carrying out factory inspections, but after the Rana Plaza disaster, the government, European Union, and ILO acknowledged the shortcomings in a memorandum of understanding signed in 2012, while making sure more inspectors were given appointment. [35] However with regard to the inspectors,

the law fails to provide a mechanism inorder to hold them liable in any manner [53].

Irrespective of what is mentioned in the Act, wage payments in Bangladesh are frequently delayed; in excess of hours mentioned in the Act when workers remain uninterruptedly at work. [16] It is not uncommon for workers to work for as much as 72 hours per week with as little as 2 days holiday per month in accordance to surveys carried out by the Centre for Policy Dialogue in the year 2006 [18, 11] [14, 70]. Too much overtime (more than the legal 2 hours/day) has become a practice [11].

Maternity leave is not provided by all factories in Bangladesh, inspite of the Labour Act's requirement and therefore pregnant workers quit their jobs unless they give births and eventually look for a new place of work. In various regions and sectors, women experience a gap of payment to as much as 30 to 45 percent, simply based on gender [38] — violation of ILO Convention 100.

21% of child labours are engaged in businesses [3, 120] mainly due to poverty — cause of poverty confirms child labor by 81.1 to 88.7% from 1995–96 to the year 2002. [34] So irrespective of existing law preventing child labour, reality is the fact that as many as 93% of children work in the informal sector, making the implementation of law difficult [19]. It is worth mentioning that the introduction of Harkin Bill in United States, which banned imports in their nation of all goods, produced using child labour in 1992 had helped in drastic reduction of child labour in Bangladeshi plants [44, 568].

(III) Reasons for poor compliance of labour regulations in Bangladesh

Implementation of existing policies is the key challenge with numerous reasons behind its failure. Concerned offices of the Government of Bangladesh are in short of infrastructure, logistics and resources. Lacking can be understood looking at a fact of 2006 when responsibility for the purpose of inspecting 20,000 structures (included docks and other businesses along with factories) were given to only 20 inspectors [39, 11]. Also, compliant auditors in Bangladesh are known for not appropriately inspecting factories, structural reliability and fire safety violations [4]. Considering garments sector, TNCs are basically buyers who seek for the lowest price. Irrespective of laws TNCs are bound to abide by, factory owners fraudulently receive export orders stating their factories are compliant. Similar bad practices include making fake conditions of compliance (with full approval of the TNCs' representatives, meaning buying houses) for the purpose of satisfying requirements of the compliance auditors, many TNCs tend to be quiet about plant owners producing at non-compliant places due to urgent need of production, unfair understanding between compliance auditor, plant owners and the TNCs' representatives leads to hiding the real situation of plants from the TNCs. [52, 9] The following quotation by Mizanur, Ayub & Rahmat best describes the scenario — "This complicated inter-relation between the sourcing company and the buying house is used by the sourcing companies to their advantage. Let us give an illustration: a US sourcing company obliges a garment manufacturer to fully comply with their business code of conduct. The onus of compliance is shifted on to the manufacturer and his state i. e. *de jure* the GOB. On its part the GOB owing to a series of grounds is unable to effectively ensure compliance because effective compliance of some of the existing labour law provisions (for example — health, hygiene, crèche) demands huge investment which it lacks. The sourcing companies on their part are extracting astronomical profits (in some cases 1400%) but not willing to share its social/corporate responsibility towards workers i. e. unwilling to share implementing value and risk" [36, 35].

Without following the correct building and fire safety codes, plants are set up, even at commercial or residential buildings [46]. Apart from absence of a safe working environment, good enough not to cause health hazards, alternative staircases (essential for emergency exit) are a rare sight. In cases of Tazreen Fashion, an alternative hardly mattered. [56] Bangladesh Garments Manufacturers and Exporters Association [15] (BGMEA)'s roles similar to the government such as issuing compliance certificates are highly unethical while they were accused of wrongdoings in paying of the TNCs' compensation to the sufferers of Tazreen Fashion and Rana Plaza [52]. BGMEA had directed inspectors to few factories and four buildings were found to have structural and other faults concerning labour regulations, while

unsurprisingly the buildings were owned by the president, ex-president and an ex-vice-president of BGMEA [45]. Moreover, RAJUK (office concerned with infrastructures) and local government bodies are involved with sanction for land use, approval of new design and changes in design while overseeing quality control of constructions in municipalities and concerned jurisdictions respectively. The former is in short of proper technicians while the latter is provided with no engineers, whereas given the power to approve plant constructions. The Fire Service & Civil Defence is commonly bribed to receive fire safety certificates and other shortcomings such as absence of water reservoirs or fire safety gear, nonexistence of exit gates or alternative staircases as discussed above etc [52]. It may further be said that ensuring labor rights are being endangered due to the business owners belonging to a particular elite group of people who are politically influential [39, 9] — 25 parliament members involved with garments business. [45] Thus the finance and the power help "manage" the police forces and make sure trade unions are suppressed, with help of muscle power if need be [50, 105].

(IV) In quest of a solution

Faults in Labour Act, especially direct contradictions with ILO Conventions well portray weakness. TNCs would not only take advantage of such poorly drafted regulation, but also enjoy the freedom of not abiding by the ILO Conventions Bangladesh has ratified — the reason being that provided such Conventions are not enacted as national legislations, there can be no enforcement in the real sense. [50, 105] Moreover, with TNCs' soul aim of maximum profitability, irregularities and corruption as described above act rather advantageous. Meaning, the aforementioned non-compliances lead to lower expenditures, thus significantly increasing gains.

Few portions of the law requiring immediate amendments include addressing the contradictions and fulfilling the gaps between the Act and the ILO Conventions as previously discussed — unions and the freedom of associations of workers and their bargaining rights, discrimination against women, prevention of compulsory/forced labour and the issues regarding use of children at workplaces. However other than such major shortcomings, amendments in the Bangladesh Labour Act is to be made. Bringing about EPZs under its governance [38, 15] would clear out issues regarding unions. Moreover the provision containing a ban on unions at hospitals, clinics, non-profit organizations and training facilities must not be completely omitted, however should include guidelines of how activities may be carried out — strike of all nurses at a time in a hospital could endanger lives of patients. Wage Board required to decide the minimum wage must ensure significant workers' participation in the board, avoiding minimum wages to be significantly low. Moreover, amendment has to be made for the compensations (death and disability) to adequately rise. The amendment must provide with a mechanism for the purpose of holding inspectors accountable. Lastly, the anti-strike provision in the Labour Act defending TNCs must be removed from the Act immediately [38, 15].

Addressing gaps between the local regulation and ratified ILO Conventions, and bringing about aforementioned modifications in the Act is however less of a challenge in comparison to introducing ways for complying with the regulations when high degrees of corruption and irregularities prevail. One of the ways where Bangladesh has already taken a step is signing agreements such as the Accord & Alliance, where signatory TNCs may directly be held responsible. Unlike the two that emphasize on fire and building safety, other labour related issues may be covered in agreements including government actors and international endorsers.

Compliance can be ensured through the TNCs' own changes in codes of conduct and the best possible way is by involving massive NGOs who would be able to pressurize the TNCs, or even voluntarily draft such codes for the TNCs. [27, 507] Through their activisms and campaigns, western customers are informed of how morally TNCs are doing businesses while maintaining principled labour practices in developing nations [32, 52] such as Bangladesh. The extent of influence may be seen by an instance of the year 1999 in the United States, when CSR policies had entered in the TNCs code of conduct. Moreover, while Gap and Levis were given special attention for objectionable labour practices, highly critiqued was Wal-Mart due to using child labour in Bangladesh [32, 52].

Lastly, home states (where the TNCs belong) may be brought into consideration. The relevance of such lie in the fact that many American TNCs have businesses in Bangladesh and thus the use of Alien Tort Claims Act (ATCA) — one that would permit Bangladeshi nationals to seek damages for claims of civil liability in United States. [41] Doe I v Unicol Corp of 1997 was the landmark case where Unicol was held liable for forced labour by the Myanmar government's (their business partner) influence. [42, 83] Moreover considering a big portion of TNCs are incorporated in the UK, redress may be found at UK courts where instances of past cases portray TNCs liable for violations of labour rights. Lubbe v Cape plc is one such example where South African miners brought claims relating to health & safety matters against a UK based TNC. Such actions by foreign courts would essentially bring about good practices by the TNCs themselves in Bangladesh [41].

(V) Conclusion

Bangladesh, where millions live in poverty, TNCs not only create employment but the RMG industry alone contributes to 81% of export earnings. [33] As growth in employment and economy persisted from TNCs entering Bangladesh over the years, the developing nation had to forego monitoring issues relating to poor labour standards and compliance of law. Inspite of such weakness as a state, the cost of lives made Bangladesh amend her Labour Act & sign agreements and as a host state it may be said that Bangladesh has started taking commendable steps towards making TNCs comply with its labour regulations. Now, involving home states and international bodies in raising awareness should bring about accomplishments towards improvement of labour issues in days to come.

References:

1. Handbook A On The Bangladesh Labour Act, 2006 (1st edn, Bangladesh Employers' Federation 2009) <http://www.ilo.org/dyn/travail/docs/352/A%20Handbook%20on%20the%20Bangladesh%20Labour%20Act%202006.pdf> accessed 20 December 2014.
2. Absar S, 'Health Hazards And Labour Laws In Bangladesh: A Narrative-Based Study On Women Garment Workers' (2003) 31 Asian Journal of Social Science.
3. Ahmed S and Ray R, 'Health Consequences Of Child Labour In Bangladesh' (2014) 30 DemRes.
4. 'Avoiding The Fire Next Time' [2013] The Economist <http://www.economist.com/news/business/21577078-after-dhaka-factory-collapse-foreign-clothing-firms-are-under-pressure-improve-working> accessed 19 December 2014.
5. Bangladesh All Party Parliamentary Group, 'After Rana Plaza' (Bangladesh All Party Parliamentary Group 2013) <http://www.annemain.com/pdf/APPG_Bangladesh_Garment_Industry_Report.pdf> accessed 20 December 2014.
6. Bangladeshaccord.org, 'Official Signatories/The Bangladesh Accord Foundation' (2014) <http://bangladeshaccord.org/signatories/> accessed 18 December 2014.
7. Bangladesh Labour Act, 2006.
8. Bangladesh National Women Lawyers Association (BNWLA) v Government of Bangladesh and Others [2009] Supreme Court of Bangladesh, Writ Petition No 5916 of 2008 (Supreme Court of Bangladesh).
9. Bangladeshworkersafety.org, 'About The Alliance' (2013) <http://www.bangladeshworkersafety.org/about/about-the-allianc> accessed 18 December 2014.
10. Bangladeshworkersafety.org, 'Alliance For Bangladesh Worker Safety Members' (2013) <http://www.bangladeshworkersafety.org/about/members> accessed 18 December 2014.
11. Bbc.co.uk, 'BBC Panorama Finds Bangladeshi Workers Locked In On 19-Hour Shifts — Media Centre' (2013) <http://www.bbc.co.uk/mediacentre/latestnews/2013/panorama-dying-bargain> accessed 18 December 2014.
12. bdnews24.com, 'ILO Wants More Labour Law Changes' (2013) <http://bdnews24.com/bangladesh/2013/07/23/ilo-welcomes-labour-law-changes> accessed 18 December 2014.

13. Bergman D and Rashid M, 'Bangladesh Factory Fire Kills 111 Garment Workers' The Telegraph (2012) <http://www.telegraph.co.uk/news/worldnews/asia/bangladesh/9701826/Bangladesh-factory-fire-kills-111-garment-workers.html> accessed 20 December 2014.
14. Berik G and Rodgers Y, 'Options For Enforcing Labour Standards: Lessons From Bangladesh And Cambodia' [2008] Journal of International Development.
15. Bgmea.com.bd, 'BGMEA' (2014) <http://www.bgmea.com.bd/> accessed 19 December 2014.
16. Butler S, 'Bangladesh Garment Workers Still Vulnerable A Year After Rana Plaza'' The Guardian (2014) <http://www.theguardian.com/world/2014/apr/24/bangladesh-garment-workers-rights-rana-plaza-disaster> accessed 18 December 2014.
17. Butler S, 'Workers For Lidl, H&M And Gap In Bangladesh Work 15-Hour Shifts' The Guardian (2013) <http://www.theguardian.com/fashion/2013/sep/23/workers-in-bangladesh-long-hours> accessed 20 December 2014.
18. Centre for Policy Dialogue (CPD), ''Bangladesh's Apparel Sector In Post-MFA Period: A Benchmarking Study On The Ongoing Restructuring Process' (2007) <http://saber.eaber.org/sites/default/files/documents/Bangladesh%27s%20Apparel%20Sector%20in%20Post-MFA%20Period.pdf> accessed 18 December 2014.
19. Child Labour In Bangladesh (1st edn, 2010) <http://www.unicef.org/bangladesh/Child_labour.pdf> accessed 18 December 2014.
20. Convention concerning Freedom of Association and Protection of the Right to Organise (adopted 1948, entered into force 4th July 1950) Co87.
21. Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (adopted 1949, entered into force 18th July 1951) Co98.
22. Convention concerning Forced or Compulsory Labour (adopted 1930, entered into force 1st May 1932) Co29.
23. Convention concerning the Abolition of Forced Labour (adopted 1958, entered into force 17th January 1959) Co105.
24. Equal Remuneration Convention (adopted 1951, entered into force 23rd May 1953) Co100.
25. Convention concerning Discrimination in respect of Employment and Occupation (adopted 1958, entered into force 15th June 1960) C111.
26. Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (adopted 1999, entered into force 19th November 2000).
27. Dias C, 'Corporate Human Rights Accountability And The Human Right To Development: The Relevance And Role Of Corporate Social Responsibility' (2011) 4 NUJS Law Review <http://www.nujslawreview.org/pdf/articles/2011_4/clarence-j-dias.pdf> accessed 19 December 2014.
28. Fukunishi T and Yamagata T, The Garment Industry In Low-Income Countries: An Entry Point Of Industrialization (Palgrave Macmillan 2014).
29. Greenhouse S and Harris E, 'Battling For A Safer Bangladesh' The New York Times (2014) <http://www.nytimes.com/2014/04/22/business/international/battling-for-a-safer-bangladesh.html> accessed 18 December 2014.
30. Greenhouse S, 'Under Pressure, Bangladesh Adopts New Labor Law' The New York Times (2013) <http://www.nytimes.com/2013/07/17/world/asia/under-pressure-bangladesh-adopts-new-labor-law.html?_r=2&> accessed 18 December 2014.
31. Haar B, 'The Collapse Of Rana Plaza And The Limits, Options And Challenges Of Transnational Labour Regulation' (2013) 43 Alibi.
32. Habib N, 'Multinational Corporations' Role In Improving Labour Standards In Developing Countries' (2009) 10 Journal of International Business and Economy.

33. Hassan F, 'RMG Industry Of Bangladesh: Past, Present And Future' Dhaka Tribune (2014) <http://www.dhakatribune.com/long-form/2014/sep/19/rmg-industry-bangladesh-past-present-and-future> accessed 19 December 2014.
34. Hosen M, Khandoker M and Islam S, 'Child Labor And Child Education In Bangladesh: Issues, Consequences And Involvements' (2010) 3 International Business Research.
35. Hrw.org, 'Bangladesh: Amended Labor Law Falls Short | Human Rights Watch' (2014) <http://www.hrw.org/news/2013/07/15/bangladesh-amended-labor-law-falls-short> accessed 18 December 2014.
36. Human Development Research Centre (HDRC), 'Labour Law Research For Bangladesh' (2013) <http://www.hdrc-bd.com/admin_panel/images/notice/1387706357.01.%20research%20for%20the%20labour%20wedge%20of%20the%20oi%20trade%20campaign%20_labour%20law%20research%20for%20bangladesh.pdf> accessed 19 December 2014.
37. Ilo.org, 'Ratifications Of ILO Conventions: Ratifications For Bangladesh' (2014) <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0:: NO:: P11200_COUNTRY_ID:103500> accessed 20 December 2014.
38. INTERNATIONAL TRADE UNION CONFEDERATION (ITUC), 'REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF BANGLADESH' (2012) <http://www.ituc-csi.org/IMG/pdf/bangladesh-final.pdf> accessed 18 December 2014.
39. Khan T, 'Labour And Rights', Accumulation and Alienation: State of Labour in Bangladesh 2013 (1st edn, Shrabon Prokashani 2013) <http://www.unnayan.org/documents/bookschapter/labour_and_rights.pdf> accessed 18 December 2014.
40. laborrights.org, 'Accord On Fire And Building Safety In Bangladesh' (2013) <http://www.laborrights.org/sites/default/files/publications-and-resources/Accord_on_Fire_and_Building_Safety_in_Bangladesh_2013–05–13.pdf> accessed 18 December 2014
41. Lucas K, Plank L and Staritz C, Securing Labour Rights In Global Production Networks (1st edn, Ludwig Boltzmann Institute of Human Rights 2010) <http://bim.lbg.ac.at/sites/files/bim/Securing_Labour_Rights_June_2010.pdf> accessed 19 December 2014.
42. Nandy D and Singh N, 'Making Transnational Corporations Accountable For Human Rights Violations' (2009) 4 NUJS Law Review <http://www.commonlii.org/in/journals/NUJSLawRw/2009/4.html> accessed 20 December 2014.
43. Nasrullah N and Rahim M, CSR In Private Enterprises In Developing Countries (Springer 2014).
44. NIELSEN M, 'The Politics Of Corporate Responsibility And Child Labour In The Bangladeshi Garment Industry' (2005) 81 International Affairs.
45. 'Rags In The Ruins' [2013] The Economist <http://www.economist.com/news/asia/21577124-tragedy-shows-need-radical-improvement-building-standards-rags-ruins> accessed 19 December 2014.
46. Reilly J, 'Baring Their Scars With Dignity, The Survivors Of Bangladeshâ€™S Factory Collapse Who Had Limbs Amputated Without Anaesthetic By Amateur First-Aiders So They Could Be Pulled From The Rubble' Daily Mail (2013) <http://www.dailymail.co.uk/news/article-2344896/Bangladesh-factory-collapse-Survivors-limbs-amputated-anaesthetic.html> accessed 19 December 2014.
47. South Asians for Human Rights, 'A Report On The Proceedings Of The Ninth Parliament Of Bangladesh' (SAHR Bangladesh 2010) <http://www.southasianrights.org/wp-content/uploads/2011/02/January-July-2010.pdf> accessed 20 December 2014.
48. The Alliance for Bangladesh Worker Safety, 'Alliance Action Plan' (2013) <http://www.bangladeshworkersafety.org/files/Alliance-Action-Plan-Package-FINAL.pdf> accessed 18 December 2014.
49. The Daily Star, 'New Wage Board Announced' (2013) <http://archive.thedailystar.net/beta2/news/minimum-wage-board-soon/> accessed 20 December 2014.
50. The ILO To The Rescue (1st edn, Institute for International Economics) <http://www.piie.com/publications/chapters_preview/338/5iie3322.pdf> accessed 19 December 2014.

51. Towards A Safer Ready Made Garments Sector For Bangladesh: Progress Made And Way Ahead (1st edn, International Labour Organization (ILO) 2014) <http://www.ilo.org/wcmsp5/groups/public/—-asia/—-ro-bangkok/—-ilo-dhaka/documents/publication/wcms_317816.pdf> accessed 20 December 2014.
52. Transparency International Bangladesh, 'The Readymade Garment Sector: Governance Problems And Way Forward' (2013) <https://blog.transparency.org/wp-content/uploads/2014/04/2013_TIB_GarmentSectorExecSum_EN.pdf> accessed 20 December 2014.
53. Transparency.org, 'Transparency International — News Feature — Rana Plaza One Year On: What Has Changed?' (2014) <http://www.transparency.org/news/feature/rana_plaza_one_year_on_what_has_changed> accessed 19 December 2014.
54. UN News Centre, 'Revised Bangladesh Labour Law â€˜Falls Shortâ€™ Of International Standards' (2013) <http://www.un.org/apps/news/story.asp?NewsID=45470#.VJWRqDj9g> accessed 20 December 2014.
55. United States Senate, Committee on Foreign Relations, 'WORKER SAFETY AND LABOR RIGHTS IN BANGLADESHâ€™S GARMENT SECTOR' (US GOVERNMENT PRINTING OFFICE 2013) <http://www.foreign.senate.gov/imo/media/doc/85633.pdf> accessed 18 December 2014.
56. Yardley J The New York Times (2012) <http://www.nytimes.com/2012/12/07/world/asia/bangladesh-fire-exposes-safety-gap-in-supply-chain.html?pagewanted=all&_r=0> accessed 19 December 2014.
57. Bangladesh Labour (Amendment) Act, 2013.

Section 9. Criminal law and criminology

Buriak Kateryna Mihaylovna,
Dnipropetrovsk national university Oles Honchar,
postgraduate student, the Faculty of Law
E-mail: ket_rin@bk.ru

Yuzikova Natalia Semenovna,
Dnipropetrovsk national university Oles Honchar,
Candidate of Law, docent of department
of administrative and criminal law
E-mail: yzikovans@mail.ru

Framework of media impact on a safe socialization of the child: a comparative analysis

Abstract: Stages of socialization of the child and the impact of media on the formation of her behavior was reviewed in the article. Analysis of regulations of foreign countries which aims to creating a safe information space was afforded. Ways of introducing of international experience in the formation of information policy for the child in Ukrainian legislation were determined.

Keywords: minor, socialization, negative impact, violence, unlawful behavior

Identification of social impacts on child development is an important component of democracy. Internal conflicts are promoted with a difficult economic situation, the catastrophe of past ideology and an aborted of new one. This period is more difficult for children and young people. Nihilism, demonstrative and defiant behavior, neglect of law and the rights of others increase among minor. Intensity of violence and aggression in the behavior of minors has increased.

Socialization of the child is a complex and long process of identity formation within the economic, political, legal, social, cultural, educational and other relations.

The problem considering the psychological and philosophical concept of socialization component was reviewed in the article. Socialization is a process of assimilation by individual norms of public life and social relations through common activities, communicate with other people, education and training [1, 330]. Socialization is the process of assimilation by the individual a certain system of knowledge, norms, values, which allowing him to function as a full member of society [2, 629].

The term "socialization" in the scientific sphere was introduced by American sociologist F. Hidinhsom in XIX century. This academic considered socialization to be as a processes of development the social nature of a person. Already in XX century, there were several approaches for understanding the scope and meaning of "socialization". Skiner B., B. Walters were representatives of behaviorism and neobihevioryzmu, they viewed socialization as a process of social learning. Charles Cooleyand J. Mead. were representatives of the school of symbolic interaktsionalizm, they investigated socialization as a result of social interaction between people. Proponents of structural functionalism T. Parsons, R. Merton perceived socialization as a process of role training [3, 4]. In these theories socialization are regarded as human adaptation to the environment with mastering society norms, rules, values, and so on.

Socialization gives a chance not only to communicate with each other, mastering the norms,

values, rules of conduct, performance of social roles, but also it ensures the preservation of society in the course of generations.

The process of socialization continues for the whole life. It appears among juvenile age (up to 18) more intense. During this period a person acquires certain qualities, learns rules, norms, values which determine its behavior.

During the process of socialization of the child there are three interrelated and forming components. The first of them is the formation of needs, values and creating conditions for their satisfaction during the process of realization social functions of institutions of society (political, economic, family, education, culture, etc.).

The second one is effective work of society institutions. There are political, economic, social, family, education, religion, culture, education, and public institutions.

The third one is implications of realization of social functions of society institutions during the process of development of the personality of the minor. This behavior is the result of behavior of a minor, his social activity, which has place in process of fulfilling of needs, interests and values. A.-H. Maslow has identified the following order to fulfilling of needs: physiological needs; the need for security; the need for love and affection; the need for recognition and evaluation; the need for self-actualization. At the same time, he noted that human behavior is determined with the highest needs only the extent to which the lower needs are satisfied.

Successful socialization is based on three factors. There are an expectation, a change of behavior and a pursuit for conformism. For example of successful socialization is respected peers, their behavior is repeated or peers try to do it. However, it is not only the influence of peers but also family, teachers, the media and other elements of socialization. Social, physical, moral, intellectual skills, which needed for realization of social roles in society are formed with their influence.

The media has become an integral part of the culture of modern society. The media creates an information background. It helps a man and a minor in particular, creates certain outlook about a way of life and a lifestyle, models of behavior [4].

The value of the media in modern society is important. In the mid-twentieth century a rapid development of information technology started. It laid the foundation of the formation of a new type of information society. The impact of the media on people starts from an early age and continuesly going for the whole life.

The first study of negative effects of the media on human behavior was conducted in the 60-th in last century. Thus, the US Commission of Parliament for studying of TV impact on children and young people reached a conclusion that television teaches children such moral and social values which are incompatible with the norms of civilized society. Experts of the Italian research center have similar views. They argue that today 12 million of samples of childrens' pornographic images are available not only online but also on television.

Recently a view about the impact of the media, especially television and film in the propaganda among the youth "criminal ideology" is met more often in criminological literature. A pumping of fear in front of crime on the background of an awful information is actived.

Nearly 90% of French, Germans, Belgians, Italians think that all troubles with children are caused with a fault of "TV screen". European Society for the Protection of Children has estimated that hourly 20 murders and crimes are shown with films and programs in all European channels. An Ukrainian commercial television has even more scenes of violence. Kushnarev said that during one day 160 fights, 202 murders, 6 robberies, 10 sex scenes and other violence and vulgarity were shown with television channels. As teenagers spend from 3 to 4 hours a day at the TV screen, you can imagine an impact of media on the child's psyche [5, 27].

In developed democracies there are accepted norms and prohibitions about the dissemination of information which can affect adversely on the process of formation of moral development of minors. In the Federal Republic of Germany limits of freedom of the press and freedom of information are set. They are distributed with radio, press and television. These rights are limited with general laws, including the Law about Youth and the right to protection of honor and dignity.

In 1953 the Law "About the distribution of material which is harmful for youth" was adopted by the German Bundestag. It aims to protect the interests of the younger generation. This law provides for the appropriate state agency — the Federal Office for Testing of Material, which is harmful for young people. Members of the agency consider the inclusion into the special list the following materials which are harmful to the younger generation: books with ethnic strife; videos with cruelty and violence; computer games with war or racism.

Penalties for selling pornographic material to people under 18 years are provided and the publication of the proposals, advertising of pornography and the sale of such materials in the places where minors have access is prohibited with German Penal Code Art. 184.

There are also regulations about the protection of minors from harmful effects of the media in the UK. The British Film Classification Committee classifies films and videos, depending on the age of the audience.

UK Law "About videos" (1984) was taken by public. It requires from the British Film Classification Committee to pay special attention to the likelihood of viewing products at home and also for corresponding age audience and take into account the probability of dangerous behavior among audience after viewing. Policy of Committee control a rental of movies. British law "About Cinematography" (1937) prohibits demonstration of violent scenes on animals, and the Law "About protection of children" (1978) prohibits to demonstrate indecent images with children under 16 years. For these violations, the court may make a ruling about a fine or imprisonment, or apply both of penalties at the same time. In Britain there are day time and evening time for broadcasting (limit is 21.00). Parents can control their children viewing.

An experience of USA, Canada and Japan is useful for Ukraine. The American public drew attention that the media provoke an increase of crime, especially among minors. So Americans follow common principles in the area of information security.

Since 2000 in US and Canada has forbidden to sell TVs which haven't a special encoding tool. It allows parents to program the TV with their age classification.

In Japan the National Association of Commercial speakers and the Supervisory Board for broadcast standards developed document which commits to alert about an unwanted viewing of certain gear by minors using captions or blending them during demonstrations of such programs and also earlier comments in the print media and the Internet pages. Japanese journalists must do such warnings, if the transmission has sex scenes and violence.

In Russia, the law "About a protection of children from a harmful information for their health and development" aims to protect children from the damaging impact of the information which hurts their psyche, and from the information which can develop childs' unhealthy tendencies. It is prohibited to spread an unchecked information, which can cause childrens' desire to take drugs, alcohol or induce to damage for life or health. The information which should be limited is defined with law — "this is information with image or description of violence, cruelty, crime", information of a sexual nature, and information which causes fear and panic among children, and also information which justify violence and illegal behavior. The owner of such information have to restrict children's access to it. Information products in-law classified by age of access. There are "universal", "to 6 years old", "from 6 years old", "from 12 years old", "from16 years" and "from 18 years". All products are not "universal" must be classified and labeled accordingly marked by the manufacturer or distributor independently [6].

The European Convention about Human Rights and Fundamental Freedoms was signed by Ukraine on the 4-th of November in 1950. Ukraine acknowledged the jurisdiction of the European Court of Human Rights and must consider the decision of the European Court and its interpretation of norms the "Convention for the Protection of Human Rights and Fundamental Freedoms".

The Law of Ukraine "Abour Printed Media (Press) in Ukraine" was adopted in 1992. It prohibits to use a print media for a propagation of violence and cruelty, aspreading of pornography and disclosure of information which indicates on the person of juvenile offender without his consent, consent of his

representative, such information is an abuse of the freedom of the media (Article 3).

The Law of Ukraine "About Television and Radio" prohibits the broadcast (films) which can damage a physical, mental, moral development of minors. A dissemination of information without the consent of their parents or persons who replace them is prohibited. The information about a suicide of minors if we can identify the person of a minor is prohibited too (Art. 41).

The Law of Ukraine "About Advertising" prohibits to use images of children in advertising which show products intended for adults or prohibited for minors. Advertisement must not undermine the authority of parents, guardians, trustees, teachers and trust to them. Advertisement must not contain appeals for children about a purchase of products. In advertising must not be toy weapons, explosive devices (Article 20).

In addition, art. 22, paragraph 3 prohibites advertising alcohol and tobacco on children's goods, printed publications.

The Law of Ukraine "About Protection of Public Morality" contains legal provisions about the protection of minors from the harmful effects of the media. The law prohibits the production and circulation production of pornography and erotic character and production with elements of violence and cruelty (Article 2). Sexual or erotic nature may be distributed in case it is available for minors (Art. 8). Involving to the sale of erotic products, introduction with products by minors of 16 years, in some cases 18 years is prohibited (Art. 11).

Thus, a legal framework and conditions for the formation of positive motivation of minors and prevent of their dangerous and criminal activity is established in Ukraine. The borrowing of foreign experience and implementation of international principles about media activities will contribute the prevention of minors.

References:

1. Психологічна енциклопедія/Автор-упорядник О. М. Степанов. – К.: «Академвидав», 2006. – 424 с.
2. Философский энциклопедический словар. М., 1983. – 720 с.
3. Соціологія: Підручник для студентів вищих навчальних закладів/За ред. В. Г. Городяненка – К.: Видавничій центр «Академія», 2002.
4. Бугера О. Насильницька злочинність неповнолітніх та засоби масової інформації/О. Бугера [Електронний ресурс]. – Режим доступу: http://uccg.org.ua/bulletin/Articles/02(6)/07-Doslidzhennya/060702.pdf
5. Кушнарьов С. В. Вплив засобів масової інформації на формування правосвідомості неповнолітніх: зарубіжний та вітчизняний досвід/С. В. Кушнарьов//Соціальна педагогіка: теорія і практика. – 2009. – № 2. – С. 24–31.
6. Куницький В. В. Захист неповнолітніх в інформаційному просторі як об'єкта гуманітарної експертизи: український та зарубіжний досвід/В. В. Куницький [Електронний ресурс]. – Режим доступу: http://www.academy.gov.ua/ej/ej14/txts/Kunitskiy.pdf

Usynin Vladislav Vutalevuch,
Institute of History and Law
N. F. Katanov Khakass State University
E-mail: msosuskrh@mail.ru

Concept of gambling in criminal legislation

Abstract: The paper analyzes legal regulation of gambling in Russia, meaning and essence of the concept of gambling. The need for a criminal definition of gambling.

Keywords: gambling, legal and illegal organization of gambling; the criminal law prohibition of gambling.

Усынин Владислав Витальевич,
Аспирант ФГБОУ ВПО «Хакасский государственный университет им. Н. Ф. Катанова», Институт истории и права, кафедра уголовного права и криминологии, Республика Хакасия, г. Абакан.
E-mail: msosuskrh@mail.ru

Понятие азартных игр в уголовно-правовом законодательстве

Аннотация: В статье рассматривается правовое регулирование азартных игр в России, значение и сущность понятия азартных игр. Необходимость уголовного определения игорного бизнеса.

Ключевые слова: азартные игры, законная и незаконная деятельность по организации и проведению азартных игр, уголовно-правовой запрет азартных игр.

Правовое регулирование азартных игр осуществляется на протяжении тысячелетия, с дореволюционного периода. Вместе с тем вопросы истории, как и вопросы самого правового регулирования азартных игр, являются малоизученными. Рассматривая действующее законодательное урегулирование азартных игр, можно выделить ряд проблем по определению сущности азартных игр, по установлению отличительных признаков азартных игр, а также по установлению компонентов, составляющих уголовно-правовой запрет азартных игр. Для рассмотрения данных вопросов необходимо изучить действующее законодательное понятие азартных игр.

Определение азартных игр дается в Федеральном законе 29.12.2006 № 244-ФЗ «О государственном регулировании деятельности по организации и проведению азартных игр и о внесении изменений в некоторые законодательные акты Российской Федерации» [9], так согласно п. 1 ст. 4 вышеуказанного закона, азартная игра — основанное на риске соглашение о выигрыше, заключенное двумя или несколькими участниками такого соглашения между собой либо с организатором азартной игры по правилам, установленным организатором азартной игры.

А. Ю. Кабалкин указывает: «Термин «игра» имеет несколько значений и потому едва ли можно выразить универсальное его понятие применительно к данным отношениям. В литературе игрой признается обязательство, в силу которого организатор должен выдать награду выигравшему лицу, причем победа в игре зависит одновременно и от случая, и от способностей, ловкости и других качеств участника. Вследствие этого свойством игры является то, что участники могут влиять на ее результат» [4, с. 783]. Кроме того, О. В. Сгибнева также отмечала, что «игра — это договор, в силу которого его участники обещают одному из них определенный выигрыш, который зависит от степени ловкости участников, их комбинационных способностей либо в той или иной мере от случая» [5, с. 780]. Таким образом, можно определить, что главной особенностью азартных игр является возможность игрока в процессе игры воздействовать на ее результат. Стоит отметить, также определение азартной игры правоведа Ю. В. Багно, который отмечал, что азартная игра — это основанное на имущественном интересе, заключенное между одним или несколькими участниками (физическими или юридическими лицами) и организатором, имеющим лицензию и (или) между собой соглашение, условия которого известны участникам заранее, а результат зависит от действий участников, так и от влияния случая [2, с. 34].

При этом, наиболее в полном объеме сущность азартной игры определяет правовед Н. А. Неклюдов, отмечал, что «играми же, основанными на случае, должны считаться такие игры, выигрыш или проигрыш в которых — дело случая и которые по сему именно увлекают человека до того, что он перестает уже сообразовываться

при проигрыше со своими финансовыми средствами» [6, с. 681]. Исходя из вышеперечисленных понятий, следует, что любая азартная игра характеризуется тем, что результат ее проведения определяется отдельным случаем, а также эмоциональным состоянием — состоянием азарта самого человека.

Сравнивая данные понятия с законодательным понятием азартных игр, законодатель не выделяет отрицательных характеристик азартных игр, а дает только юридически обоснованное понятия, определяя характерно гражданско-правовые особенности. Так, исходя из законодательного определения, азартная игра определяется следующими признаками:

1) Азартная игра — это соглашение о выигрыше между двумя сторонами, игрока с одной стороны и организатора с другой стороны;

2) Азартные игры сопряжены с риском. Данный риск присущ, прежде всего, участникам азартных игр, которые рискуя потерять свое имущество, заключают соглашение о выигрыше.

3) Азартные игры характеризуются самостоятельностью. Имущественная и организованная самостоятельность самого организатора проведения азартных игр;

4) Проведение азартных игр направлено на систематическое получение прибыли;

5) Азартные игры осуществляется определенным кругом лиц, только в установленных законодательством местах.

Однако данные признаки не раскрывают понятие азартных игр в уголовном законодательстве, так, согласно ст. 171.2 Уголовного кодекса Российской Федерации, незаконные организация и (или) проведение азартных игр с использованием игрового оборудования вне игорной зоны, либо с использованием информационно-телекоммуникационных сетей, в том числе сети «Интернет», а также средств связи, в том числе подвижной связи, либо без полученного в установленном порядке разрешения на осуществление деятельности по организации и проведению азартных игр в игорной зоне, запрещены.

Стоит отметить, что в целях защиты нравственности, прав и законных интересов граждан Федеральным законом от 29.12.2006 № 244-ФЗ «О государственном регулировании деятельности по организации и проведению азартных игр и о внесении изменений в некоторые законодательные акты Российской Федерации» [9] с 1 июля 2009 г. на территории России была запрещена деятельность по организации и проведению азартных игр вне законодательно установленных игорных зон.

Таким образом, уголовным законодательством определяется, что к уголовной ответственности подпадают лица, которые занимаются только незаконными организациями и (или) проведением азартных игр. При этом, из существа имеющегося определения азартных игр и запрета на организацию и проведения азартных игр, не определено в чем заключается нарушение прав граждан, а также негативное влияние на нравственность граждан.

Исходя из истории правового регулирования азартных игр, можно определить, что категория нравственности определяется тем, что результат проведения азартных игр определяется отдельным случаем, а также эмоциональным состоянием — состоянием азарта самого человека. Данные обстоятельства порождают возникновение привычки к азартным играм, которые сформировывают у человека психологическую зависимость — лудоманию (ludomania), которая стала распространенным заболеванием, связанное как с социальными, так и с семейными затратами [7].

Таким образом, исходя из законодательного определения азартных игр, нет обоснованного законодательного регулирования, направленного на законное существование азартных игр в установленных игорных зонах. Для их существования следовало бы определить их законность, для чего следует указать на отсутствие отрицательного влияния на человека. Однако, несмотря на отдаленность местности игорных зон, отрицательное влияние всегда будет, также стоит отметить, что в государственной думе рассматривается законопроект об установлении игорной зоны на территории Крыма. Таким образом, существование игорных зон связано исключительно в политических целях, в целях развития городов, привлечения туристов. В связи с вышеуказанным, при имеющимся уголовно-правовым запретом

на проведение (организацию) только незаконных азартных игр, определить в соответствующем законодательном акте обоснованную необходимость установления игорных зон.

Наряду с понятием азартные игры, необходимо рассмотреть понятие игорный бизнес. Так согласно п. 1 ст. 364 Налогового кодекса Российской Федерации, игорный бизнес — предпринимательская деятельность по организации и проведению азартных игр, связанная с извлечением организациями доходов в виде выигрыша и (или) платы за проведение азартных игр. Согласно п. 3 ст. 364 Налогового кодекса Российской Федерации игровое поле — специальное место на игровом столе, оборудованное в соответствии с правилами азартной игры, где проводится азартная игра с любым количеством участников азартной игры и только с одним работником организатора азартной игры, участвующим в указанной игре.

Учитывая имеющееся определение игорного бизнеса, возникает вопрос, будет ли понятие «игорный бизнес» уголовно-правовым понятием. Игорный бизнес — это легальный бизнес, осуществляемый в установленных игорных зонах. Уголовный запрет существует только на осуществление незаконных азартных игр, при этом к уголовной ответственности привлекаются лица, занимающиеся незаконной азартными играми, однако в уголовном кодексе не говорится о занятии незаконным игорным бизнесом. Следовательно считается, неприменимым высказывание о игорном бизнесе с уголовно-правовой точки зрения. Для устранения данных вопросов, необходимо в уголовный кодекс внести изменения, уточнив, что деятельность по организации и проведению незаконных азартных игр приравнивается к незаконному игорному бизнесу.

Список литературы:

1. Азартные игры//Энциклопедический словарь Брокгауза и Ефрона: В 86 томах (82 т. и 4 доп.). – СПб., 1890–1907.
2. Багно Ю. В. Гражданско-правовое регулирование отношений, возникающих из игр и пари. Дисс. канд. юрид. наук. Краснодар, 2004 г. С. 34.
3. Ковтун Е. В. Правовое регулирование игорного бизнеса в зарубежных странах: – М.: Аллель-2000, 2006. – 217 с.
4. Кабалкин А. Ю. Комментарии к Гражданскому кодексу Российской Федерации, части второй (постатейный)./Под ред. О. Н. Садикова, М., 2003. С. 783–784.
5. Комментарий к Гражданскому кодексу Российской Федерации, части второй (постатейный) под ред. О. Н. Садикова, Сгибнева О. В., главный эксперт банка – гл. 56–58; КОНТРАКТ, «ИНФРА-М-НОРМА», 1997, с. 780
6. Неклюдов Н. А. Руководство к особенной части русского уголовного права. СПб.: Типография П. П. Меркульева, 1876. Т. 2. С. 681.
7. Синицына Л. В. Игровая зависимость в противоправном поведении/Синицына Л. В., Бурдюг Д. Л.//«Юридическая психология». – 2008. – № 2.
8. Уголовный кодекс Российской Федерации от 13.06.1996 № 63-ФЗ: в ред. от 22.12.2014 № 430-ФЗ//Российская газета – от 18.06.1996 № 113; от 24.12.2014 № 293.
9. Федеральный закон 29.12.2006 № 244-ФЗ «О государственном регулировании деятельности по организации и проведению азартных игр и о внесении изменений в некоторые законодательные акты Российской Федерации»: ред. от 22.07.2014 № 278-ФЗ//Российская газета – от 31.12.2006 № 297; от 30.07.2014 № 169.

Contents

Section 1. Public Administration **3**

Irna Dobi (Peshkepia)
The impact of the EU through public administration democratization in Albania; a comparison with the Croatian model. 3

Section 2. Political regionalism. Ethnic policies **12**

Havrylyuk Viktoriya
Socio-political image of the Ukrainian regional mass media 12

Section 3. Political institutes, processes and technologies **14**

Gavrilyuk Gennadiy Ivanovich
"Imperfect democracies" in view of democratic transition concept 14

Mishina Daria
The similarities in causes of two Ukrainian Revolutions (2004, 2014) 17

Gorbachev Mikhail Valerevich, Cherniavskiy Alexander Igorevich
Projects of the «color revolutions» in the post-Soviet space through the prism of regional political competition (Discourse analysis of the Guardian and the Associated Press 2004–2005) 26

Rybalka Serghey Viktorovich
Local and regional elites: grounds of interaction in society political transformation 31

Trynkin Vadim Vladimirovich
Technology of revolutions 36

Section 4. Political problems of the international relations, global and regional development **40**

Wang Wan, Cheng Zhijie
Sino-Russian transboundary water cooperation regarding Heilongjiang River under the background of Silk Road Economic Belt 40

Mironova Margarita Anatolievna
The eastern dimension of the European Neighbourhood Policy: strategic challenges for the EU foreign policy 44

Section 5. Administrative law **49**

Bano Elona
President`s of the Republic role in ensuring the rule of law 49

Section 6. Organization of law-enforcement activities. **53**

Surovova Ksenia Yurievna
The activities of a lawyer as a legal adviser 53

Section 7. Judicial power **59**

Prizhennikova Alena Nikolaevna
The judicial system of the Russian Federation: the current state 59

Section 8. Labour law. **66**

Saquib Rahman
The compliance of labour regulations by TNCs in Bangladesh — a host state's perspective 66

Section 9. Criminal law and criminology **76**

Buriak Kateryna Mihaylovna, Yuzikova Natalia Semenovna
Framework of media impact on a safe socialization of the child: a comparative analysis 76

Usynin Vladislav Vutalevuch
Concept of gambling in criminal legislation 79