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Comparative Analysis of Capitalist Economies: a Focus on Europe and its Different Models

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Abstract

Capitalism is a widely discussed topic in economic as well as in sociological studies. Since the early '90s, after the collapse of the economic systems of socialist Countries, it has become the main way of organizing the economy in most of the world. This article is set to describe the features of Liberal Market Economies (LMEs) and Coordinated Market Economies (CMEs), as defined in the literature on the topic, with particular reference to the European context. Even if such description is based on traditional elements, it can be useful in order to study the current evolutionary patterns of the two main models of capitalism, not only in a European perspective but also in a global one.

Keywords

Capitalism, Democracy, Political economy, Corporate governance, Europe

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Capitalism is a widely discussed topic in economic as well as in sociological studies. It has been one of the main themes of analysis of classical social scientists such as K. Marx, É. Durkheim and M. Weber¹, not forgetting G. Simmel and W. Sombart, while contemporary authors are set today to identify its evolutionary trends, especially after the great economic crisis of 2008-2015.²

There are many definitions of capitalism in scientific literature, but it can be simply identified as a system of wage-labour and commodity production for sale, exchange and profit, rather than for the immediate need of the producers.³ It involves “an economy in which private ownership dominates, and the market is the primary mechanism for determining the production and the distribution of goods to people, for profit and in response to market demand.”⁴

Since the early modern age, capitalism is traditionally connected with the historical development of Western Europe and Anglo-Saxon countries, which provided the principal, but not the only, means of industrialization.⁵ In its evolution, it went together with the forms of liberal democracy and the rise of the welfare state.

After World War II, for many decades, Western states which adopted capitalism were confronted by the Soviet Union and the countries of the Comecon system, relying on socialism, a system where “the economy is predominantly publicly owned (e.g. by the state, workers or community) and production is planned by public bodies to meet what the planners decide is socially needed.”⁶

Since the early '90s, however, after the collapse of the economic systems of these socialist countries, capitalism has become the main way of organizing the economy in most of the world. Even if it has spread almost everywhere, it does not occur in just one single model. The variety of capitalist systems is broad. Nonetheless, it is possible to identify two main models of capitalism, to which the economic systems of different countries may be referred. They are not always labelled with the same terms in sociological and economic literature, but all authors have considered the same groups of countries and agreed on their structural features and differences.

1. A. Giddens, *Capitalism and Modern Social Theory*, Cambridge University Press 1971.

2. P. Diamond, *The Crisis of Globalization: Democracy, Capitalism and Inequality in the Twenty-First Century*, I.B. Tauris 2019.

3. G. Marshall, *Dictionary of Sociology*, Oxford University Press 1998, (2nd ed.), p. 53.

4. L. Martell, *The Sociology of Globalization*, Polity Press 2017, (2nd ed.), p. 40.

5. A. Giddens, *The Consequences of Modernity*, Polity Press 1990.

6. L. Martell, *The Sociology of...*, op. cit., p. 40.

The role of the market in the regulation of the economy is not recognized today only in very few countries, such as for example North Korea and Cuba. Many others are still experiencing a long and sometimes difficult transition to a market economy, while new forms of capitalism are consolidating. Among these countries, it is worth considering the case of China and its odd system based on “capitalism without (liberal) democracy”, involving the presence of representatives of the Chinese Communist Party in the boards of corporations.

This article is set to describe the features of the two main models of capitalism, *Liberal Market Economies* (LMEs) and *Coordinated Market Economies* (CMEs), as defined in the literature on the topic, with particular reference to the European economic context. Even if such description is based on traditional elements of the two models, it can provide interesting hints to study their current evolutionary patterns, the relations between them and also their relations with other forms of capitalism, not only in the European perspective, but also the global one.

In the last decade of the 20th century, the confrontation between market economy and planned economy eventually came to an end. After the collapse of the countries adopting the latter, the debate about the best way of organizing the economy seemed restricted to the former, and many social scientists brought interesting theoretical contribution on the issue.

One of the first authors to deal with the topic was M. Albert, who made a clear distinction between *Anglo-Saxon capitalism*, occurring mainly in the United Kingdom and the United States, and *Nippon-German capitalism*.⁷ The latter is also called *Rhineland capitalism* in its European declination, to include not only Germany but also other countries around it, sharing the same culture and institutional organization.

With regard to the same countries, L. Thurow⁸ defined two models in terms of *Anglo-Saxon capitalism*, based on the “paradigm of the consumer”, and *communitarian capitalism*, based on the “paradigm of the worker”.

Taking into account also the contributions of the two abovementioned authors, we are set to conduct our study using the analytical categories of P.A. Hall and D. Soskice, according to which there are LMEs and CMEs operating in individual countries all around the world.⁹ LMEs, in addition

The varieties of capitalism in the “political economy” perspective

7. M. Albert, *Capitalism Against Capitalism*, Whurr 1993.

8. L. Thurow, *Head to Head. The Coming Economic Battle Among Japan, Europe and America*, Morrow 1992.

9. P.A. Hall, D. Soskice, *An Introduction to Varieties of Capitalism*, in: *Varieties of Capitalism. The Institutional Foundations of Comparative Advantage*, eds. P.A. Hall, D. Soskice, Oxford University Press 2001, pp. 1–68.

to the UK and the US, occur in Australia, Canada, New Zealand and Ireland, while CMEs, occur in Germany and Japan, as well as in Switzerland, the Netherlands, Belgium, Austria and the four Scandinavian countries.

These two groups of countries show interesting structural differences, with consequences affecting also the organization of interests and the processes of decision-making and implementation of policies. It must be stressed, however, that not all the major world economies can be exactly framed into one of the two models. France falls between these two forms of capitalism, and so does Italy.

This study lies in the theoretical perspective of political economy, an actor-centered approach considering an economy as a terrain populated by multiple actors, each seeking to advance their interests in a rational way in strategic interaction with others.¹⁰ Even if relevant actors may be individuals, firms, producer groups or governments, it is stressed that “this is a firm-centered political economy that regards companies as the crucial actors in a capitalist economy. They are the key agents of adjustment in the face of technological change or international competition whose activities aggregate into overall levels of economic performance.”¹¹

In a relational conception of the firm, it is considered to be an economic actor seeking to develop and exploit core competencies, also called dynamic capabilities. These capacities are crucial for firms in order to develop, produce and distribute goods and services profitably.¹² To this end, the quality of the relationships the firm is able to establish both internally and externally becomes very important. While inside relationships are basically set with employees, on the outside there is a wide range of important actors to deal with, including suppliers, clients, collaborators, stakeholders, trade unions, business associations and governments.

The approach described here focuses on five spheres in which firms must develop relationships to resolve coordination problems that are central to their core competencies:

- industrial relations;
- vocational training and education;
- corporate governance;

10. F.W. Scharpf, *Games Real Actors Play: Actor-Centered Institutionalism in Policy Research*, Westview Press 1997.

11. P.A. Hall, D. Soskice, *An Introduction...*, op. cit., p. 6.

12. D. Teece, G. Pisano, *The Dynamic Capabilities of Firms: an Introduction*, “Industrial and Corporate Change”, 1994, Vol. 3, Issue 3, pp. 537-556.
DOI: [10.1093/icc/3.3.537-a](https://doi.org/10.1093/icc/3.3.537-a)

- inter-firms relations;
- relations with employees.

In this perspective, national political economies may be compared by reference to the way in which firms resolve coordination problems they face in these five spheres. The principal distinction is between the above-mentioned LMEs and CMEs.

In LMEs, firms coordinate their activities primarily via hierarchies and competitive market arrangements, in a context of competition and formal contracting. “In response to the price signals generated by such markets, the actors adjust their willingness to supply and demand goods or services, often on the basis of the marginal calculations stressed by neoclassical economics.”¹³ Coordination mechanisms are different in CMEs, where firms depend more heavily on non-market relationships to set up coordination with other actors and to construct their competencies. These coordination modes include “more extensive relational or incomplete contracting, network monitoring based on the exchange of private information inside networks, and more reliance on collaborative, as opposed to competitive, relationships to build the competencies of the firm.”¹⁴

These models of capitalism must be assumed in a typical-ideal dimension. On one hand, market relations and hierarchies are of course important to firms in all the economies considered, while, on the other, even in liberal market economies firms enter into some relationships that are not fully mediated by market forces.

In any national economy, anyway, firms face a set of coordinating institutions whose character is not fully under their control and will gravitate toward the mode of coordination for which there is institutional support. Also important are the roles of culture, informal rules, and history.

The presence of institutional complementarities reinforces the differences between LMEs and CMEs. Two institutions may be considered “complementary” if the presence of one increases the returns from the other. Fluid labour markets, for example, may be more effective at sustaining employment in the presence of financial markets that transfer resources readily among undertakings, thus maintaining a demand for labour.

13. P.A. Hall, D. Soskice, *An Introduction to...*, op. cit., p. 8.

14. Ibidem.

In the next paragraph we shall describe the two European economies that are closer to the LME model and to the CME model, respectively, the United Kingdom and Germany, with regard to the five areas in which firms must resolve coordination problems. In particular, aspects of corporate governance in both political economies will be analysed. Other spheres of coordination will be described, special attention being paid to non-market institutions of the German system. Later, we shall discuss the question of convergence or competition between the two models in the European dimension.

LMEs and CMEs in Europe: the UK vs. Germany

Corporate governance in the UK and Germany: “shareholder model” vs. “stakeholder model”

The first sphere we shall deal with in order to define the two models of capitalism is *corporate governance*. It refers to the mechanisms concerning ownership and management of large corporations and the way they gain access to capital markets. The solutions devised for these problems affect both availability of finance for particular types of projects and the terms on which firms can secure funds. Specific features of the two systems of corporate governance are very important in order to understand the differences in the organization of the whole set of a company’s internal and external relationships.

A broader definition of corporate governance includes:

- the nature, size and regulation of capital markets;
- the structure of ownership of companies;
- the relationship between the management and various stakeholders in a company;
- the structure of companies themselves (unitary or two-tier boards);
- the methods of bringing about corporate restructuring.¹⁵

15. S. Woolcock, *Competition among Forms of Corporate Governance in the European Community: the Case of Britain*, in: *National Diversity and Global Capitalism*, eds. S. Berger, R. Dore, Cornell University Press 1996, p. 181.

According to Kester the term refers to “the entire set of incentives, safeguards, and dispute-resolution processes used to order the activities of various corporate stakeholders, each seeking to improve its welfare through coordinated economic activity with others. Thus, the term implies more than simply the process by which the board of directors relates to corporate shareholders and top management.”¹⁶

The process of integration of the European Union has stressed in the last decades the peculiarities of single national systems of corporate governance. The main difference is between the “shareholder model”, the British version of the Anglo-Saxon corporate governance, and the “stakeholder model”, found in Germany and with variations in some neighbouring countries.

The Anglo-Saxon system of corporate governance puts emphasis on equity finance for business. Capital markets therefore tend to be large and regulated in a manner favourable to trading in equities. The London Stock Exchange is by far the largest in Europe with more than 2,500 listed companies. Its stock capitalization used to be about 90% of GDP, while it was just about 20% in Frankfurt, where the number of listed companies was just around 600.¹⁷

As banks provide a relatively small share of business finance, the links between banks and companies are not strong. Ownership of shares is largely in the hands of institutional fund managers, whose focus is on a relatively short-term return on capital rather than longer term market share issues. In the 1990s, shares owned by other companies accounted for just about 4% against 42% in Germany. On the contrary, shares ownership by financial institutions was more than 50% against a quote of just 20% in Rhineland. The percentage of shares owned by households in the UK was double than in Germany.¹⁸

The British system of corporate governance shows no evidence of extensive cross-shareholdings. A typical configuration among the majors is a *public company*, a shareholding company whose capital assets are owned by a great number of investors taking just a (relatively) small stake in it, in a “portfolio investment” logic. According to Franks and Mayer, in 1990 in the UK there was a single shareholder owning more the 25% of total capital in just 16% of the first 170 listed companies.¹⁹ These quotes were about 85% in Germany and 80% in France.²⁰ Windolf and Bayer, with regard to the first 500 companies in each country, report that in 1990 in the UK 48.6% of shareholders owned less than 5% of a company’s total capital against 9.5% in Germany.²¹ On the contrary, just

16. W.C. Kester, *American and Japanese Corporate Governance: Convergence to Best Practice?*, in: *National Diversity and Global Capitalism*, eds. S. Berger, R. Dore, Cornell University Press 1996, p. 109.

17. S. Woolcock, *Competition among Forms...*, op. cit., p. 185.

18. S. Vitols, *Varieties of Corporate Governance: Comparing Germany and the UK*, in: *Varieties of Capitalism. The Institutional Foundations of Comparative Advantage*, eds. P.A. Hall, D. Soskice, Oxford University Press 2001, p. 342.

19. J. Franks, C. Mayer, *Ownership and Control*, mimeo 1994.

20. M. Bianco, S. Trento, *Capitalismi a confronto: i modelli di controllo delle imprese*, “Stato e Mercato”, 1995, No. 43 (1), p. 73.

21. P. Windolf, J. Bayer, *Cooperative capitalism: corporate networks in Germany and Britain*, “British Journal of Sociology”, 1996, Vol. 47, No. 2, p. 212.

4.9% of shareholders had a stake worth more than 75% in the former country against a percentage of 38.1% in the latter.

Insider trading or bankruptcy regulations also discourage institutional shareholders from playing an active role in British companies. Links between the stakeholders in the company and management also tend to be weak. As a result, takeover is a typical practice for corporate restructuring. With regard to A.O. Hirschman's well-known analytical categories²², it occurs when shareholders are tempted to accept bid premiums and sell or "exit" rather than become actively involved in the rescue by "voicing" concern about the performance of the management.

The Rhineland form of corporate governance relies more on debt financed by banks, which have retained relatively close links with companies in many ways. The economic life in Germany has been dominated for many years by its three biggest financial institutions: Deutsche Bank, Dresdner Bank and Commerzbank – until 2009, when the second of these banks was incorporated into the third one. Also important is the network of local saving banks, especially for the operations of small and medium size companies. In recent years, the role of large commercial banks has declined, as they divest themselves of many holdings. Banks have an influence on companies through their role as shareholders in their own right, through their role as proxies for smaller shareholders, through participation in supervisory boards, or by fulfilling the role of the lender of last resort in crisis.

Capital markets are smaller and have fewer public companies. The relationships between companies and stakeholders – investors, employees, and local communities dependent on the company for their prosperity – tend to be closer than in the Anglo-Saxon model and as a consequence have a two-tier system of corporate governance. It has been stressed that "When problems arise, the normal practice is for these stakeholders to voice concern and for changes in management to take place, rather than stakeholders «exit» and a change in ownership. This characteristic enables implicit contractual relationships to develop between management and the stakeholders and means that takeovers or change in ownership are not the norm for corporate restructuring. Finally, consensus has a higher priority than in the Anglo-Saxon system, both within society and the company. Within the economy as a whole it is supported by the social market economy; within the company it is supported by solidarity in the shape of moderate wage differentials and institutions such as works councils."²³ To some extent, CMEs do not appear to be as open as LMEs, since the

22. A.O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States*, Harvard University Press 1970.

23. S. Woolcock, *Competition among Forms...*, op. cit., pp. 183–184.

market for corporate governance typically “provides companies with access to finance that is not entirely dependent on publicly available financial data or current returns.”²⁴

According to an emblematic image, these economies rely on a “patient capital.”²⁵ Access to this kind of financial resources “makes it possible for firms to retain a skilled workforce through economic downturns and to invest in projects generating returns only in the long run. The core problem here is that, if finance is not to be dependent on balance-sheet criteria, investors must have other ways of monitoring the performance of companies in order to ensure the value of their investments. In general, that means they must have access to what would normally be considered «private» or «inside» information about the operation of the company.”²⁶

A clear-cut distinction among the two systems of corporate governance refers to management boards. The Anglo-Saxon company law is based on existing directors and a unitary board system that is seen as most efficient. In Rhineland, companies are managed with a two-tier system, where a “supervisory board” (*Aufsichtsrat*) presides over a “management board” (*Vorstand*). The supervisory board includes representatives of shareholders, banks (creditors as well as shareholders), employees and, in some cases, even local communities. In all companies employing more than 2000 people, employees elect 50% of *Aufsichtsrat*’s members. The president of the supervisory board, however, is decided by shareholders and is entitled to have the casting vote in case of a tie. The supervisory board has no direct managing functions but is in charge of inspecting and monitoring the activities. Its main power is to decide the composition of *Vorstand*, the board including a company’s top managers, in charge of the day-to-day management, and keep it under continuous monitoring.

Supporters of the unitary board system appreciate its effectiveness, because of the concentration of power and responsibility in a single body. The two-tier system, however, lets the supervisory board evaluate the managers’ performance in a more independent way. It also offers room for discussing and compensating different points of view on strategic issues. Once decisions are taken in such a board where all the stakeholders are included, they can be implemented with no more vetoes or delays.

24. P.A. Hall, D. Soskice, *An Introduction to...*, op. cit., p. 22.

25. V. Ivashina, J. Lerner, *Patient Capital. The Challenges and Promises of Long-Term Investing*, Princeton University Press 2019.

26. P.A. Hall, D. Soskice, *An Introduction to...*, op. cit. pp. 22–23.

Comparative advantages and development trends of the two systems of corporate governance

An analysis of corporate governance institutions and firm strategies in Germany and UK makes it evident that there is no “one best” system of corporate governance but that the two systems have different comparative advantages. According to S. Vitols et al.²⁷, these are based on differences in the organization of capital markets, company law and employee participation, which in turn lead to differences in corporate governance practice in the following six areas:

- the different organization of capital markets leads to more pressure from shareholders to maximise share value in Britain than in Germany;
- the main role of the supervisory board in the German two-tier board structure is to give “stakeholders”, in particular labour, veto rights over important management decisions;
- decision-making among top management is consensus-oriented to a greater extent in German companies than in British companies;
- the pattern of unilateral decision-making among top management in Britain can also be found in the relations between top management and employees in British companies;
- companies in both countries are increasing the role of project teams in the governance processes;
- the pattern of consensus decision-making in Germany is reinforced by formal inclusion of employee representatives, which leads to a greater concern with the employment impact of strategic decisions and with the process by which underperforming business units are allowed to improve performance or be sold off.

With regard to corporate governance in other big players in the European Union, France for example has a system that falls between the two above-mentioned models. It has been recognized that “Paris has a larger capital market than any of the German capital markets, but smaller than London. It has more links between financial and industrial concerns than Britain, but less than Germany. Takeovers play a greater role than in Germany, but not as great as in Britain. The state has

27. S. Vitols et al., *Corporate Governance in large British and German companies: comparative institutional advantage or competing for best practice*, Anglo-German Foundation for the Study of Industrial Society 1997, pp. 35–36.

played a more important role in France than in either Britain or Germany, and this is reflected in the remaining state holdings. There are also cross shareholdings in France, but not as many as in Italy, where the leading industrial concerns have an extensive network of cross-shareholdings.”²⁸

Systems of corporate governance in the two political economies have been affected by the consequences of globalization processes. CMEs have been successful until the early 1980s, but after that period Anglo-Saxon economies proved to be more effective. In the last decades, the British system of corporate governance has been submitted to little improvements, while the Rhineland model had the need to substantial changes to cope with an economic and financial context characterized by greater interdependency at the global level.

Studies or investigations into “poor” corporate governance in the UK tend to focus on how to improve the operation of these unitary boards rather than the overall system of regulations and practice. A number of reports have been published in the 1990s prompted by the concern about cases of gross mismanagement and “fat cat” pay increases secured by executive directors.

The German system instead faced bigger changes in the 1990s, even if partial and incremental. More emphasis was put on modernisation and development of the financial system, while the institutions of co-determination (*Mitbestimmung*) remained untouched.

A new Corporate Governance Code was adopted in 2002. The aim of the document is to make rules more transparent for both national and international investors in a world where financial markets are completely interconnected, thus strengthening confidence in the management of German corporations. The Code addresses all major criticisms, especially those coming from the international community, levelled against German corporate governance, namely:

- inadequate focus on shareholder interests;
- the two-tier system of the management board and the supervisory board;
- inadequate transparency of German corporate governance;
- inadequate independence of German supervisory boards;

28. S. Woolcock, *Competition among Forms...*, op. cit., p. 184.

- limited independence of financial statement auditors.

Each of these five points has been addressed in the provisions and stipulations of the Code, also taking into consideration the legal framework. It is clear that the Code cannot cover all details of every single issue; instead it provides a framework that individual companies will have to fill in.

Conclusion

Among the main features of the European business environment there is the existence of different kinds of capitalism. Insofar as all countries are considered to be market economies, there are many varieties that can be placed on a continuum between CMEs and LMEs. In practice, Germany and the UK are, respectively, the economies that can be better identified with these ideal types, while other countries tend either to get closer to one of the two poles or fall in the middle.

These aspects of heterogeneity have consequences for economic activities at the European level, especially after the development of two integration processes: institutional integration, carried out by the European Union, and socio-economic integration under the pressure of globalization. Different systems of capitalism, in fact, mean also different business cultures as well as different considerations and attitudes towards the role of the market and the freedom of private enterprise.

Many important issues can be raised about this situation, which are summarized here in two interlinked questions. First, it must be understood what is happening to the different European capitalist systems: whether they are going towards convergence or competition. Second, it must be taken into due account that these differences have a strong impact on the process of policy-making and law enforcement at the European level.

With regard to single political economies in the last twenty years, as it has been described, British capitalism has changed very little, proving to be adaptive to the challenges of globalization. Germany, on the other hand, has undergone more substantial transformations, even if not affecting the very basis of its institutional organization.

A more complex situation appears if we consider a bigger picture. The main institutional achievements of the European Union include the establishment of the Single European Market, since 1993, and the adoption of a common currency by 12 European Countries since 2002. It is more dif-

difficult to get to a consensus when the new rules and institutions can damage some country's interests. Decision-making at European level very often implies long delays or endless mediations. This has been, among others, the case of the creation of a common ground of rules and regulations for companies operating in Europe. Because of institutional differences and national interests to be safeguarded, the ministers from EU Member States finally approved the Directive on cross-border mergers as late as in 2004, after 20 years of talks, drafts, objections and watering-down. By the way, both one-tier and two-tier systems of company management have been allowed. Therefore, we agree with S. Woolcock as he was imagining that "For the foreseeable future, Europe will continue to be characterized by competition between different forms of corporate governance, rather than converge toward a single model of Euro-capitalism."²⁹ Twenty years later, we might add, these processes have gone even further in the institutional dimension, with the withdrawal of the United Kingdom from the European Union in January 2020 following the results of the referendum held in 2016.³⁰

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29. Ibidem, p. 196.

30. M. Sandbu, *Brexit and The Future of UK Capitalism*, "The Political Quarterly", 2019, Vol. 90, Issue S2, pp. 187–199.
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The Risk of Destabilising Pension Fund Bodies, and the Procedural Position of Candidates for Members of the Governing Bodies of Supervised Entities

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Abstract

The author analyses the position of a candidate for member of a governing body in an entity supervised by the Polish Financial Supervisory Authority (PFSA) and discusses the related problems. The aim of the article is to identify the area of an increased risk level in financial institutions in the process of appointing members of the governing bodies of supervised entities. The PFSA assumes that the selection of the candidates for members of the governing bodies in Pension Fund Companies may be carried out by either the management board or the supervisory board. This leaves a large space for the activity of the boards. The management board can gain influence over the course of these proceedings. When the selection is conducted by the supervisory board, the risk is significantly reduced. The second aspect addressed therein concerns the position of a candidate for member of the governing bodies in supervised entities in legal proceedings. In jurisprudence it has been established that a candidate is to be treated as a party to the proceedings. The administrative courts found that inadmissibility of a candidate as a party would violate Article 77(2) of the Constitution by closing the

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judicial path for the candidate and preventing them from asserting protection of their rights and freedoms. Despite this, the Act of 21 July 2006 on Financial Market Supervision (Journal of Laws of 2020, item 2059, as amended) was amended in April 2021 to the effect that a candidate was not a party to the proceedings thus enhancing the risks, including conflicts of interest. The effect of these provisions has been instrumentalisation of those to whom a great deal of responsibility is entrusted – if the approval of the PFSA is obtained. The PFSA's decisions may affect the career path of candidates. In certain cases, they may even 'block' it, leaving little room for defence and narrowing the possibilities of adjusting the competence level to the positions held. There is also no timeframe for the PFSA's decision. The risks associated with such situation have been described in the article.

Keywords

societal security, COVID-19, pandemic, non-governmental organisations, aid activities, Warsaw

Introduction

Candidates for members of supervised entities' governing bodies have been deprived of their rights in the proceedings before the Polish Financial Supervisory Authority. This directly introduces a number of procedural and litigation risks, including the risk that the introduced solution would be declared unconstitutional.

The April amendment (enacted on 25 February 2021) to the Act of 21 July 2006 on Financial Market Supervision (Journal of Laws of 2020, item 2059, as amended), hereinafter referred to as the 'Act on Financial Market Supervision', the risks for the governing bodies of pension fund management entities have been exacerbated. The risks described below were already in place, but have been aggravated as a result of the amendment. The consequences of these changes have affected candidates for the position of a board member of an entity supervised by the Polish Financial Supervisory Authority, hereafter referred to as the 'PFSA'. However, the effects of the changes will be more far-reaching as they also affect future members of supervisory boards of these entities. The amendment made

by the legislator is contradictory to the Constitution and seemingly well-established jurisprudence of the administrative courts. As a result of the adoption of these provisions, instrumental treatment has been given to persons who are entrusted with great responsibility in the event that they receive approval from the PFSA. At the same time, a great deal of room for action has been left to the management board – a body that is not and should not be the company’s representative in its relations with the PFSA under the procedure approving appointment of candidates to the management board or the supervisory board.

Status of supervised entities:

- risk of failure to maintain independence of their governing bodies,
- risk of inadequacy of representation of their bodies,
- risk of instability of the pension fund market.

Appointment of members of the governing bodies of supervised entities

The procedure for the appointment of members of the governing bodies (management board and supervisory board) is subject to significant restrictions in entities supervised by the PFSA. The restrictions consist in the obligation of the supervisory body – the PFSA¹ to consent to the appointment of a given candidate in supervised entities such as banks, insurance companies, investment fund companies, brokerage houses or universal pension fund companies.

When it comes to universal pension fund companies, for example, the regulations are not specific as to who is to initiate and conduct proceedings before the PFSA on the part of a company – the party concerned themselves or perhaps the pension company. Everything points to the fact that it is the latter, since the newly added Article 11aa(2) of the Act on Financial Market Supervision provides that a copy of the PFSA’s decision shall be delivered also (and therefore additionally?) to the person concerned under the application. This is a logical premise.

1. See: Artykuł 59(1) ustawy z dnia 28 sierpnia 1997 r. o organizacji i funkcjonowaniu funduszy emerytalnych, Dz.U. 2020 poz. 105 z późn. zm., [Article 59(1) of the Act of 28 August 1997 on the organisation and operation of pension funds, Journal of Laws 2020, item 105 as amended]; artykuł 22b(1) ustawy z dnia 29 sierpnia 1997 r. - Prawo bankowe, Dz.U. 2021 poz. 2439 z późn. zm., [Article 22b(1) of the Act of 29 August 1997 - Banking law, Journal of Laws 2021, item 2439 as amended]; artykuł 42b(1) ustawy z dnia 27 maja 2004 r. o funduszach inwestycyjnych i zarządzaniu alternatywnymi funduszami inwestycyjnymi, Dz.U. 2021 poz. 605 z późn. zm., [Article 42b(1) of the Act of 27 May 2004 on investment funds and management of alternative investment funds, Journal of Laws 2021, item 605 as amended].

Therefore, since the circle of potential applicants is limited to a universal pension company, one wonders which of its bodies is competent in this respect. As regards obtaining approval for the appointment of a board member in a universal pension fund company, two types of proceedings have become established in practice.

In one variant, such a request is made by a company in accordance with the rules of representation, i.e. the board of management, possibly a proxy or an agent duly authorised by the board of management. This is, however, a very controversial situation, as it appears that not only the body authorised to do so under the articles of association or the law² (usually the supervisory board), but also the body itself, which is to include the candidate seeking PFSA's approval, is actively involved in the process of appointing management board members in such a cardinal manner. This raises a fundamental issue of allowing the activity of the body to which another person is appointed to fill a vacant seat (or a person to replace someone who, for example, is in office until the PFSA grants approval to the already selected candidate). Additionally, there is a potential of polarisation between the candidate and the current board members. Thus, this is a situation that meets all the indications that could lead to a conflict of interest.

The above-described scenario has to be assessed critically, as it is not difficult to imagine a situation when, as a result of certain events (e.g. due to sudden resignation of one of the members of the management board or due to their prolonged inability to perform their function due to sudden events or illness), one or two members of the management board remain in the company. At the same time, in accordance with the provisions of the Act on the Organisation and Operation of Pension Funds and consequently any articles of association, it is required for the management board in a pension fund to include at least three members.³ In such situation, two members of the management board constitute a so-called non-quorum board, which is a requirement for appointing an administrator under e.g. Article 42 of the Civil Code.⁴ Such a situation is therefore unlawful as it violates both the Act on the Organisation and Operation of Pension Funds and (arguably) the articles of association of the pension fund management company. It should be noted that in practice the PFSA does not request supervisory boards (by means of admonition or clear indication or expectation) that one of their members be delegated (for the duration of the selection or consent procedure). This creates not only a potential conflict of interest, but, as already mentioned, a space for the administrator to act.

2. Artykuł 201 § 4, artykuł 368 § 4 ustawy z dnia 15 września 2000 r. Kodeks spółek handlowych, Dz.U. 2020 poz. 1526 z późn. zm., [Article 201 § 4, Article 368 § 4 of the Act of 15 September 2000 Commercial Companies Code, Journal of Laws 2020, item 1526 as amended].

3. Artykuł 39(1a) ustawy z dnia 28 sierpnia 1997 r. o organizacji i funkcjonowaniu funduszy emerytalnych, Dz.U. 2020 poz. 105 z późn. zm., [Article 39(1a) of the Act of 28 August 1997 on the organisation and operation of pension funds, Journal of Laws 2020, item 105 as amended].

4. Artykuł 42 ustawy z dnia 23 kwietnia 1964 r. - Kodeks cywilny, Dz.U. 2020 poz. 1740 z późn. zm., [Article 42 of the Act of 23 April 1964 - Civil Code, Journal of Laws 2020, item 1740 as amended].

If we take into account the positions of doctrine⁵ and jurisprudence⁶ and assess that an entity operating with an incomplete board of management actually has no representation we are faced with the question whether such a proposal made by a non-quorum board of management is valid.

The second option – the classic one – involves the supervisory board (possibly another body with power to appoint members of the management board) appointing a member of the management board. This solution most fully implements the provisions of the Commercial Companies Code⁷ regarding the principles of commercial companies. This is because they provide specifically for the obligation of the body authorised to appoint a board member (usually the supervisory board, or an agent, or a nomination committee appointed by the supervisory board) to act with a view to the perceived potential risk of a conflict of interest.⁸

Practice shows, however, that the PFSA allows for both options regardless of the non-negligible risks involved.

Appointment of a company's supervisory board member

The procedure in place generates an even greater risk considering how the PFSA authorises the appointment of a supervisory board member. If the first option is followed, the authorisation is granted in the same way, i.e. after an application is submitted by the company's board of management (or a person authorised by the board – a lawyer or an employee). This means that, actually, the controlled body (the board of management) influences the process of appointing members of the controlling body (the supervisory board), which is supposed to supervise the activities of the board of management. If we take into account the fact that every mistake requires correction of the forms, which protracts the procedure, the question of overt or covert intentions or interests of the board – understood as a benefit of the board, a more favourable solution – arises again. It should also be taken into account that the board of management may actively acquire knowledge in a wide range of areas or exert influence on lengthening the PFSA approval process.

5. K. Rudnicki, *Glosa do uchwały SN z dnia 22 października 2009 r., III CZP 63/09*, PS 2010, No. 11-12, pp. 175–183; M. Dumkiewicz, *Składanie rezygnacji przez członka zarządu spółki z o.o.*, PPH 2012, No. 7, pp. 18–24.

6. Wyrok Sądu Rejonowego w Białymstoku z dnia 27.03.2015 r., sygn. VII K 312/14, [Judgment of the District Court in Białystok of 27.03.2015, ref. VII K 312/14]; Postanowienie Sądu Administracyjnego w Katowicach z dnia 11.05.2015 r., sygn. V ACz 362/15, [Decision of the Administrative Court in Katowice of 11.05.2015, ref. V ACz 362/15].

7. Artykuły 201 § 4, 209, 210, 211, artykuły 368 § 4, 377, 379, 380 ustawy z dnia 15 września 2000 r. Kodeks spółek handlowych, Dz.U. 2020 poz. 1526 z późn. zm., [Articles 201 § 4, 209, 210, 211, Articles 368 § 4, 377, 379, 380 of the Act of 15 September 2000 Commercial Companies Code, Journal of Laws 2020, item 1526 as amended].

8. Artykuły 209, 210, 211, 377, 379, 380 ustawy z dnia 15 września 2000 r. Kodeks spółek handlowych, Dz.U. 2020 poz. 1526 z późn. zm., [Articles 209, 210, 211, 377, 379, 380 of the Act of 15 September 2000 Commercial Companies Code, Journal of Laws 2020, item 1526 as amended].

**Serving as a
member of
a company's
management
board or su-
pervisory
board**

Pursuant to the Act of 28 August 1997 on the Organisation and Operation of Pension Funds, management boards of such funds may not comprise less than three persons.⁹ The legislation does not specify the time limit for the authorisation of the PFSA to be granted to a person appointed by a competent body as a member of the management board of a universal pension fund company (usually subject to authorisation by the PFSA). There is no stipulation as to the time limit for the PFSA to issue a decision on granting permission (or refusing to grant thereof) to perform the function of a member of the company's management board or supervisory board. In practice, there are cases when such a procedure takes longer than one year. A postulated solution is to specify in the law a timeframe for the PFSA to issue a decision in this matter.

Let's put the situation under scrutiny when as a result of the sudden resignation or death of one of the members of the three-member management board of a fund this body is not fully staffed, thus being a so-called non-quorum body. Such a scenario contradicts the provisions of the Act¹⁰ and the statutes of the entity representing a universal pension fund company. The pension fund (or the company acting on its behalf) does not have a properly functioning body, which means that it is not able to represent the entity and direct its activities. However, an attempt to appoint the missing member of the body requires approval by the PFSA. As indicated above, in practice such a procedure may take (and often does) even longer than one year, and this puts the fund's activities at risk during that time as its decisions may be declared invalid.

In such situation, mechanisms should be actively in place to ensure safe and reliable participation in business, especially as regards entities supervised by the PFSA. In accordance with the Civil Code, an administrator should be appointed - by the competent court - for this entity, which, however, generates further risks. This risk can be ruled out should the supervisory board act appropriately by supplementing the composition of the management board and delegating one of its own members for a specific period of time necessary for the PFSA to grant permission for the new management board member to perform their function, or when the PFSA, having noticed the absence of such decision, intervenes, with (in this case) the supervisory board as a party to the proceedings. However, with a view to the safety of business transactions, the request to specify a timeframe for the PFSA to issue a decision concerning authorisation for a new board member to perform their function remains valid.

9. Artykuł 39(1a) ustawy z dnia 28 sierpnia 1997 r. o organizacji i funkcjonowaniu funduszy emerytalnych, Dz.U. 2020 poz. 105 z późn. zm., [Article 39(1a) Act of 28 August 1997 on the organisation and operation of pension funds, Journal of Laws 2020, item 105 as amended].

10. Ibidem.

With regard to the time limit for processing the case, it is true that one may invoke the provisions of the Code of Administrative Procedure (which are probably only theoretically applicable here¹¹), which provide for the obligation to process the case without undue delay and, in case there is a need to conduct an investigation, within one month, or two months if the case is particularly complicated.¹² However, the PFSA does not respect these deadlines. The failure of the PFSA to respect the time limit regime in its decision-making process, as well as failure to respect the controlling regime in the process of appeal to an institution other than the PFSA, raises a number of risks at the organisational level and even poses danger threat of losing the stability and credibility of the system which the PFSA is currently overseeing.

The situation becomes even more complicated when members of the supervisory board become an active party – they act on behalf of the supervised entity during the procedure for obtaining the approval of the PFSA and, for example, for personal reasons or due to the ownership structure of the representative of a universal pension fund company, are not favourably disposed towards the nominee. This can happen if, for example, the company representing the universal pension fund company has several shareholders who may represent different strategies for growth and each of them has the right to appoint their own board member whom other members do not want on their board. Then, the lack of a regulation on a deadline for the PFSA's consent is in their favour – they can effectively procrastinate the proceedings by actively generating new information or documents for the body.

In such case, the candidate for the position of a board member and the entity representing the universal pension fund company itself land in a vacuum of several months, uncertain even as to when the supervisory authority shall finally issue a decision, let alone what that decision will be. This uncertainty is also reinforced by the fact that the PFSA is guided by very vague and evaluative criteria when assessing a candidate, e.g. as to their independence of judgment or the guarantee of proper exercise of functions.¹³ Although prudential supervision may require it, the situation of the entity and the candidate becomes difficult when there is no timeframe for obtaining a decision.

11. Artykuł 11(5) ustawy z dnia 21 lipca 2006 r. o nadzorze nad rynkiem finansowym, Dz.U. 2020 poz. 2059 z późn. zm., [Article 11(5) of the Act of 21 July 2006 on the supervision of the financial market, Journal of Laws 2020, item 2059 as amended].

12. Artykuł 35 § 1 oraz 3 ustawy z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego, Dz.U. 2021 poz. 735 z późn. zm., [Article 35 § 1 and 3 of the Act of 14 June 1960 Code of Administrative Procedure, Journal of Laws 2021, item 735 as amended].

13. Artykuł 41(1)(5) ustawy z dnia 28 sierpnia 1997 r. o organizacji i funkcjonowaniu funduszy emerytalnych, Dz.U. 2020 poz. 105 z późn. zm., [Article 41(1)(5) of the Act of 28 August 1997 on the organisation and operation of pension funds, Journal of Laws 2020, item 105 as amended].

Protraction of proceedings in the selection of a candidate for a member of a company's management board or supervisory board

A complaint for protraction of the proceedings would be a good idea if it were not for the provisions of the April amendment¹⁴, which introduced a direct norm stipulating that only the applicant¹⁵ (the supervised entity – the company – and, on its behalf, either the supervisory board or the management board, or the company's agent or employee, perhaps the one who shall soon be a subordinate to the person awaiting the PFSA's decision) is a party to the proceedings in question, thus excluding the management board candidate themselves from this circle (and, consequently, this also applies to the proceedings concerning the supervisory board candidate). This is important because, as we read in the Code of Administrative Procedure,¹⁶ access to the files of the proceedings is, as a rule, only granted to a party (entities acting as parties are omitted, which, however, does not include the candidate). In addition, the Code of Administrative Procedure provides¹⁷ that a complaint (and, accordingly, at the administrative-court stage also a complaint against the protracted conduct of the proceedings) may be lodged only by a party to the proceedings. A rather strict approach in this respect has been also expressed by the Supreme Administrative Court.¹⁸

The statement of the grounds for the act introducing the above-mentioned change attempts to use certain procedures that most often cause surprise or bewilderment. As the authors of the statement of the grounds themselves point out, the Supreme Administrative Court has recently (even before the entry into force of the amendments) adopted a line of jurisprudence according to which the status of a party in the proceedings concerning the consent of the PFSA is also granted to a candidate to this body (judgment of 31 October 2019 – II GSK 2725/17,¹⁹ of 20 September 2019 – II GSK 1407/18,²⁰ and the order of 6 November 2019 – II GZ 137/19²¹).

At the same time, as we further read in the statement of the grounds, the administrative courts perceived that the failure to admit the candidate as a party would constitute a violation of Article 77(2) of the Constitution of the Republic of Poland by closing the judicial path to them, which prevents such a candidate from pursuing the protection of their rights and freedoms.

Despite the existing clear jurisprudence, the legislator unfortunately just closed access to administrative proceedings to persons applying for the position of a board member – offering them only the possibility to appeal to an administrative court against the PFSA's decision refusing permission to serve as a board member.

14. See: Artykuł 5 ustawy z dnia 25 lutego 2021 r. o zmianie ustawy - Prawo bankowe oraz niektórych innych ustaw, Dz.U. 2021 poz. 680, [Article 5 of the Act of 25 February 2021 amending the Banking Law and certain other acts, Journal of Laws of 2021, item 680].

15. Artykuł 11aa ustawy z dnia 21 lipca 2006 r. o nadzorze nad rynkiem finansowym, Dz.U. 2020 poz. 2059 z późn. zm., [Article 11aa of the Act of 21 July 2006 on the supervision of the financial market, Journal of Laws 2020, item 2059 as amended].

16. Artykuł 37 § 1 ustawy z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego, Dz.U. 2021 poz. 735 z późn. zm., [Article 37 § 1 of the Act of 14 June 1960 Code of Administrative Procedure, Journal of Laws 2021, item 735 as amended].

17. Ibidem.

18. See, *inter alia*: Wyrok Naczelnego Sądu Administracyjnego z dnia 7.07.2016 r., sygn. I OSK 3389/15, [Judgment of the Supreme Administrative Court of 07.07.2016, ref. I OSK 3389/15].

19. Wyrok Naczelnego Sądu Administracyjnego z dnia 31.10.2019 r., sygn. II GSK 2725/17, [Judgment of the Supreme Administrative Court of 31.10.2019, ref. II GSK 2725/17].

20. Wyrok Naczelnego Sądu Administracyjnego z dnia 20.09.2019 r., sygn. II

The significant deterioration of the position of a candidate for a member of the governing bodies in a supervised entity may have, and often does, radical consequences concerning further path of their professional development, especially as the facts to which the candidate themselves is not privy are being verified. Thus, the candidate cannot comment on them: neither as to their reliability and importance, nor as to the context that may affect the assessment. As the Ombudsman has aptly observed: “(...) basing the criteria imposed on candidates for positions subject to the Commission’s supervision on a predictive method, which consists in examining past facts and drawing conclusions from them as to the candidate’s future behaviour in the role of manager of an insurance company, results, in the event of a negative review by the PFSA, in the destabilisation of their professional career and, not infrequently, in the loss of confidence or exclusion from the professional environment”²² and “(...) The decision on the outcome of the verification also has an impact on the situation of the person affected by the lack of administrative consent to take up a position in the company and – as a consequence – on the right of the assessed person to choose the exercise of their profession within the meaning of the first sentence of Article 65(1), of the Constitution of the Republic of Poland.”²³

Such state of affairs arouses justified doubts of a constitutional nature, e.g. the introduced Article 11aa of the Act of 21 July 2006 on Financial Market Supervision, as it may violate the constitutional right to a fair trial – expressed in Article 45(1) of the Constitution of the Republic of Poland – which is the foundation of a democratic state of law. This right is also realised through the possibility to participate as a party in administrative proceedings, which precede the admissibility of transferring a dispute to the court.

The above reasoning is supported by the position of the Constitutional Tribunal expressed in the judgment of 12 May 2021, ref. no. SK 19/15, in which Article 41(2) of the Geological and Mining Law of 9 June 2011 (Journal of Laws 2020, item 1064 as amended)²⁴ was found to be incompatible with Article 45(1) of the Constitution of the Republic of Poland: “According to the position of the Court, the value indicated by the Sejm, in the form of the speed of the concession proceedings, can in no way be perceived as an adequate and equivalent value to the right to a fair trial - it cannot be treated as a value justifying deprivation of persons having a valid and obvious legal interest, unequivocally justifying the necessity of their participation in these proceedings, of this important constitutional right.”²⁵

As is well known, the proceedings before the Voivodship Administrative Court take months, if not years, of further waiting, which, in the context of the inability of a universal pension fund compa-

GSK 1407/18, [Judgment of the Supreme Administrative Court of 20.09.2019, ref. II GSK 1407/18].

21. Postanowienie Naczelnego Sądu Administracyjnego z dnia 6.11.2019 r., sygn. II GZ 137/19, [Decision of the Supreme Administrative Court of 6.11.2019, ref. II GZ 137/19].

22. R. Stefanicki, *Kilka uwag w sprawie weryfikacji administracyjnej kandydatów na członków zarządu zakładu ubezpieczeń i reasekuracji*, “Wiadomości Ubezpieczeniowe”, 2021, No. 2, p. 12. DOI: [10.33995/wu2021.2.1](https://doi.org/10.33995/wu2021.2.1)

23. Ibidem, p. 13.

24. Ustawa z dnia 9 czerwca 2011 r. – Prawo geologiczne i górnicze, Dz.U. 2020 poz. 1064 z późn. zm., [Act of 9 June 2011 Geological and Mining Law, Journal of Laws 2020, item 1064 as amended].

25. *Prawo geologiczne i górnicze – strony postępowania koncesyjnego*, <https://trybunal.gov.pl/postepowanie-i-orzeczenia/komunikaty-prasowe/komunikaty-po/art/11530-prawo-geologiczne-i-gornicze-strony-postepowania-koncesyjnego>, (access 26.10.2022).

ny to operate legally owing to the incomplete composition of a governing body, is a threat to financial market participants. Irrespective of this, the owner of the entity representing the universal pension fund company (or the body authorised to appoint it), as a result of the PFSA's refusal (over which it had no influence) and given the spectre of the continuation of an unlawful state of affairs (a non-quorum body), may not be interested in maintaining its decision to appoint the candidate in question.

It is, therefore, reasonable to ask the question: What consequences do then arise for the company and for the candidate? In such case, the procedure starts from the beginning. The company permanently has an incomplete body, with all the risks that this state of affairs entails. So it reappoints the successful candidate and decides which path it will follow to appoint a new person to the post. Which solution does carry less risk? And what does happen if, in the meantime, the board loses the qualified composition provided for in the articles of association? Would then the non-quorum board have to act as a party before the PFSA and take action to complete the composition of the supervisory board, which is then to supervise it? Only if this procedure is successful, the supervisory board would select a new candidate, whose documents it (or perhaps again the non-quorum board) can proceed before the PFSA.

It should be noted that a candidate for a management board member who has not obtained approval of the PFSA, and then appealed the decision to the Voivodship Administrative Court (even if the Voivodship Administrative Court has recognised the complaint filed as legitimate) cannot feel satisfied. Each month of delay for a universal pension fund company is tantamount to the lack of proper representation, while for the candidate it is tantamount to the loss of remuneration and impossibility of even estimating when they will be able to start performing their functions and receive remuneration. It is also difficult for a candidate for a member of the board of management to take up a similar position in another entity on a temporary basis – as such functions cannot be combined.²⁶ On the other hand, possible claims for loss of revenue are virtually unenforceable – it would then be necessary to prove fault on the part of the PFSA (which will probably defend itself with having been overladed by cases) or the board members of the applicant entity.

In the latter case, the responsibility for the actions of the members of the management board is of course borne by the company, but proving the advisability of prolonging the proceedings also remains a challenge in this case. Particularly if both the PFSA and the supervised entity start to shift responsibility. At the end of the entire procedure (including the proceedings and litigation), the candi-

26. Artykuł 42 ustawy z dnia 28 sierpnia 1997 r. o organizacji i funkcjonowaniu funduszy emerytalnych, Dz.U. 2020 poz. 105 z późn. zm., [Article 42 of the Act of 28 August 1997 on the organisation and operation of pension funds, Journal of Laws 2020, item 105 as amended].

date for a member of the management board, while waiting for the decision of the supervisory body, cannot actually take up any other gainful employment (at an adequate position), and it is in practice impossible to obtain reimbursement of lost benefits.

The authors of the amendment created an artificial problem and carried out the amendments in question by merely adding a provision stipulating that a contender for a member of a governing body has the right to file a complaint with an administrative court. However, a copy of the decision (comprising the reasons for the refusal) served on the candidate may exclude “statutorily protected information”²⁷ – which also does not give them the opportunity to read the full argumentation of the PFSA and probably the case files, so constructing a complaint is sometimes going to be an arduous job or a task for a fortune teller rather than a lawyer. In other words, how is a complainant supposed to address such a decision of the PFSA without having a chance to read the full argumentation or case files? Not to mention the lack of influence on these proceedings.

Moreover, in the proceedings before the administrative court, only the legality of the issued decision is reviewed, while the evidentiary proceedings in this respect are significantly limited. Even if the administrative court agrees with the complainant and issues a verdict overturning the PFSA’s decision, the case shall consequently be referred back to the PFSA for reconsideration. Then the procedure starts anew, unless, following the PFSA’s decision, the designating entity has already withdrawn the candidate and adopted a resolution appointing another candidate to the management board or supervisory board, in which case further proceedings become unwarranted despite the apparent success. This procedure may prove to be completely unnecessary.

It should be noted that with regard to pension fund companies so far none of the specific provisions has determined who is a party to the PFSA’s consent proceedings. The circle of entities with the status of a party to the proceedings has been determined, as in any administrative case, on the basis of legal interest.²⁸ It was the bodies and, above all, the administrative courts that have decided who had such interest. Therefore, if, as a consequence of the regulations in force to date, the case law of the Supreme Administrative Court has become firmly established, according to which a candidate for a member of the management board in a supervised entity was entitled to the status of a party, the person concerned was also entitled to file a complaint with the Voivodship Administrative Court, and subsequently with the Supreme Administrative Court.

27. Artykuł 11aa(3) ustawy z dnia 21 lipca 2006 r. o nadzorze nad rynkiem finansowym, Dz.U. 2020 poz. 2059 z późn. zm., [Article 11aa(3) of the Act of 21 July 2006 on the supervision of the financial market, Journal of Laws 2020, item 2059 as amended].

28. Artykuł 28 ustawy z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego, Dz.U. 2021 poz. 735 z późn. zm., [Article 28 of the Act of 14 June 1960 Code of Administrative Procedure, Journal of Laws 2021, item 735 as amended].

This introduction of the aforementioned ('new') time limit in Article 11aa added by the April amendment to the Act on Financial Market Supervision seems to be meaningless. After all, the applicant could have already, during the course of the PFSA proceedings, supplemented the information or provided data that the PFSA could have taken into account when making its decision. They could also later file a complaint on the basis of the case files to which, as a party, they could have had access without the need to guess what the body had gathered in the file. However, if the intention of the introduction of the new provision was to take away the possibility for them to act as a party before the PFSA, it is apparent that this is neither in the interest of the fund nor of market participants. It also raises the risk that the provisions which exclude a candidate for a new member of the management board from participating as a party in the proceedings before the PFSA are deemed to be inconsistent with the Constitution of the Republic of Poland.

Certainly, an interesting issue worth considering is the question as to what a complaint against a decision of the supervisory authority would look like. Firstly, according to the amendment, a complaint may be lodged within 30 days of the delivery of the decision.²⁹ However, decisions are only served on the parties to the proceedings,³⁰ i.e. the entities that may have an interest therein in order to be able to challenge it. Under the current state of the law, there is an obligation to serve a copy of a decision (to a limited extent, however) on the candidate to the position of a member of a governing body. Thus, the discussed April amendment to the Act on Financial Market Supervision and, in particular, its new Article 11aa directly confirm that despite the fact that at the stage of the administrative proceedings before the PFSA the rights of a candidate for the position of a member of the board are weighed the candidate is excluded from active participation in these proceedings – a rather specific form, introduced contrary to well-established positions of the courts expressed in judgments and statements of reasons.

Secondly, it is unclear how the legislator has envisaged the filing of a complaint against an administrative decision in the issuance of which the complainant did not participate, not only actively, but also passively. After all, according to the provisions of the Code of Administrative Procedure,³¹ only a party has access to the files of the proceedings. Of course, they are also available to entities acting in lieu of a party, but the applicant's status is far from that – they have been actually excluded. How, then, would a potential complainant be able to find out about the shortcomings, inaccuracies in the evidence or misinterpretation of the rules applied on an ongoing basis during the proceedings? On the basis of the statement of the grounds for the decision, which may be incomplete? Despite the

29. Artykuł 11aa(4) ustawy z dnia 21 lipca 2006 r. o nadzorze nad rynkiem finansowym, Dz.U. 2020 poz. 2059 z późn. zm., [Article 11aa(4) of the Act of 21 July 2006 on the supervision of the financial market, Journal of Laws 2020, item 2059 as amended].

30. Artykuł 109 § 1 ustawy z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego, Dz.U. 2021 poz. 735 z późn. zm., [Article 109 § 1 of the Act of 14 June 1960 Code of Administrative Procedure, Journal of Laws 2021, item 735 as amended].

31. See: Artykuł 73 § 1 ustawy z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego, Dz.U. 2021 poz. 735 z późn. zm., [Article 73 § 1 of the Act of 14 June 1960 Code of Administrative Procedure, Journal of Laws 2021, item 735 as amended].

nature of the hearing, one feels like telling a joke: a visit to a fortune-teller will be necessary. The scope of such a complaint may indeed cover only the document, i.e. the decision with its statement of the grounds (but it is no longer possible to challenge violation of a party's right to participate in the proceedings, or evidentiary issues). However, the authors of the amendments have assured that even this is not fully possible, as according to the amendment statutorily protected information is additionally redacted in such decision.

Thirdly, granting the person concerned only the possibility to file a complaint to the Voivodship Administrative Court means that the decision, issued without their participation in the proceedings, becomes final and thus enforceable. The applicant is therefore deprived of the possibility to file a request for reconsideration of the case, even though it clearly concerns their legal interest. In legal terms, such person is treated as not fulfilling the requirements for a member of the board of management of a supervised entity, which significantly limits their possibility of finding employment. On the other hand, the filing of a complaint means additional months or years of waiting for the final hearing of the case, in which the person concerned stands in principle on a losing position, since they have no knowledge of the content of the files and the evidence that led to the refusal.

The body entitled to make an appointment initiates and hosts the proceedings before the PFSA

The regulations to date, although not ideal, have, with the help of the courts, taken on a bearable framework that allows for the protection of the interests and rights of the stakeholders and, most importantly, of the market (because they allow for avoiding conflicts of interest).

It is common practice not to intervene in the flawed provisions under which a well-established jurisprudence has developed, compensating for these shortcomings without the need to make unnecessary amendments, and when amendments are introduced, it is rather to ensure that the provisions reflect the practice developed in jurisprudence. In the case under review (the amendment made), it is difficult even to say that the case law has been forced to rectify legislative sloppiness – after all, no provision took away from the candidate for a member of the board of management the attribute of a party – well, maybe the long-established practice of the PFSA, but this is not a source of law. Furthermore, the rulings introduced in the April 2021 amendment are in clear contradiction to

Recommendations and conclusions

the interpretations of the legislation provided in the judgments and their statements of the grounds, which indicated a stable rational solution.

A clarification in the precise indication could be a reflection of the case law, whereas an absolute requirement is the introduction of provisions stipulating maintenance of a sharp competence limit. This could look, for example, as follows: the party appearing before the PFSA on behalf of the company is at all times the appointing body or, on its behalf, a designated agent unrelated to other bodies either directly or indirectly, or a nomination committee. Thus, only the supervisory board or its agent or, respectively, an agent appointed by the general meeting may be a party before the PFSA in the procedure of documenting and verifying the candidate.³² Thus, there would be no space for overt and covert actions of the management board (or, respectively, the supervisory board) in relation to the board's candidate. The board of management could, for the purposes of such proceedings, only make the company's infrastructure available for reception and secretarial needs – even without the right to inspect the documentation relating to the candidate for a board member.

Determining the time limit and the consequences of its non-observance by the PFSA

The problem that has arisen can be rectified in a number of ways. One of them would certainly be to clearly define the time limit within which the PFSA is obliged to issue a decision, for example 3 months. Upon its ineffective expiry, consent for the appointment of the person concerned would be deemed to have been given. There is also a reverse option (as applied in France³³), in which silence would mean a refusal, but it is highly regrettable to note – given the speed with which public bodies do function – that few applications would pass as a result of such option. External circumstances that are difficult to foresee (e.g. COVID) would also come into play.

Restoration of the status of a party

It would make sense to bring the principles under consideration to at least a decent standard, where the rights of a person are respected. This must start with the repeal of the bizarre provision depriving a candidate for a management board or supervisory board member of the status of a party to the proceedings. This is what Germany, for example, has done.³⁴ It would then be necessary to clarify which body of the company is the applicant in the given case, and specifically to establish that it is

32. This is advocated, for example, by: M. Bielecki, *Dopuszczalność zawierania umów pomiędzy członkiem rady nadzorczej a spółką kapitałową*, "Monitor Prawniczy", 2007, No. 14, pp. 777-785.

33. *Délivrance de l'agrément*, <https://acpr.banque-france.fr/autoriser/procedures-secteur-assurance/regime-administratif/agrement-administratif/delivrance-de-lagrément>, (access 26.10.2021).

34. Federal Financial Supervisory Authority, *Guidance Notice on management board members pursuant to the German Banking Act (Kreditwesengesetz – KWG), the German Payment Services Supervision Act (Zahlungsdiensteaufsichtsgesetz – ZAG) and the German Capital Investment Code (Kapitalanlagegesetzbuch – KAGB)*, Bonn/Frankfurt am Main, 4 January 2016 (as last amended on 31 January 2017).

the body entitled to appoint members of the management board (supervisory board) and, as far as appointment of members of the supervisory board is concerned – for example, an agent – appointed by a resolution of the general meeting. Then this body, as a party to the proceedings, designates an agent unconnected with the board (concerned), while the board of the supervised entity in question acts merely as a secretariat – perhaps even without seeing the documents. Such a step would resolve the problem of conflicts of interest and guarantee that the actual will of the bodies entitled to make appointments is realised without conscious or hidden competing actions by unauthorised persons.

The current legal state of affairs is all the more incomprehensible as, in order to avoid doubts with regard to the election of board members in a bank³⁵ or an investment fund company,³⁶ the legislator has specified that the applicant is the supervisory board. However, in view of the completeness and coherence of the legal system, such specification is probably not necessary. Indeed, there is a mandatory article 379 § 1 of the Commercial Companies Code, which states: “In an agreement between the company and a member of the management board, as well as in a dispute with him/her, the company shall be represented by the supervisory board or an agent appointed by a resolution of the general meeting”.³⁷

The doctrine unequivocally indicates that: “The dispute to which Article 379 § 1 of the Companies Act relates does not necessarily have to be of a judicial nature and may also be conducted before an arbitration court or public administration bodies. (...) Article 379 § 1 of the Companies Act regulates the representation of a joint-stock company in agreements and in a dispute between the joint-stock company and a member of the management board. As indicated in the judgment of the Administrative Court in Białystok of 9.12.2015 (III AUa 599/15, Legalis), Article 379 of the Companies Act is intended to protect the company, its shareholders and creditors from decisions of the management board that are unfavourable to the company. The legislation does not require that a conflict of interest actually exists. This is because it is about a potential collision of the interests of the persons managing the company, with the interests of the company.”³⁸

It is certain, however, that this situation (dualism of regulations) is far from the legislative standards and should be brought into line with them as soon as possible by either removing the provisions referring to the supervisory board as the initiator of the procedure for the PFSA to grant consent for a member of the management board, or by introducing into the Act on Pension Funds such regulations as those for investment fund companies or banks. The current state of the law may raise doubts.

35. Artykuł 22b(1) ustawy z dnia 29 sierpnia 1997 r. - Prawo bankowe, Dz.U. 2021 poz. 2439 z późn. zm., [Article 22b(1) of the Act of 29 August 1997 - Banking law, Journal of Laws 2021, item 2439 as amended].

36. Artykuł 42b(1) oraz (2) ustawy z dnia 27 maja 2004 r. o funduszach inwestycyjnych i zarządzaniu alternatywnymi funduszami inwestycyjnymi, Dz.U. 2021 poz. 605 z późn. zm., [Article 42b(1) and (2) of the Act of 27 May 2004 on investment funds and management of alternative investment funds, Journal of Laws 2021, item 605 as amended].

37. Artykuł 379 § 1 ustawy z dnia 15 września 2000 r. Kodeks spółek handlowych, Dz.U. 2020 poz. 1526 z późn. zm., [Article 379 § 1 of the Act of 15 September 2000 Commercial Companies Code, Journal of Laws 2020, item 1526 as amended].

38. Commentary to Art. 379 k.s.h., in: *Kodeks spółek handlowych (i.e. Commercial Companies Code)*, ed. Z. Jara, Series: Duże Komentarze Becka (i.e. Beck's Large Commentaries), C.H. Beck, Edition 3, Warsaw 2020.

Subsequent consent of the PFSA

Perhaps an acceptable option is to take the main ideas from the institution provided for in the construction law, specifically the possibility of a subsequent objection by a public administration body. By implementing such a solution, a supervised entity could, without the consent of the PFSA, appoint a new member of the management board or supervisory board, thus enabling uninterrupted and continuous operation of the company. This action would be subject to notification to the PFSA, which would have a specified period (e.g. two months) to raise an objection. Alternatively, the decision could impose an obligation on the entity's governing bodies to take certain actions, and failure to do so would be subject to a severe sanction.

Resolution of the Constitutional Court

In addition to the legislative route, the possibility of the Constitutional Court resolving this issue as a result of at least an enquiry by a court (specific control) or the Ombudsman (special control) certainly deserves attention. As mentioned above, the Supreme Administrative Court has indicated that inadmissibility of a candidate for a member of a governing body as a party to the consent procedure violates the Constitution of the Republic of Poland.

Conclusion

The purpose of addressing this topic is to analyse in greater depth the position of a candidate for member of the governing bodies of supervised entities and their procedural position. The instrumentalisation of the candidate's position and their 'professional fate' is thoroughly unconstitutional as proven by the cited sources and mentioned even by the authors of the amendment – unfortunately misappropriating the spirit of the law and the letter of the statements of the grounds for judgments. The Rule of Law begins with the relationship between citizens and institutions. The relationship described in the article needs to be repaired, which is possible only on the basis of the recommendations given above.

One more solution should be noted, the application of which at all times would exclude the necessity to correct such legal regulations. This antidote is the creation of law in accordance with the state of the art and the archetype of human honesty and respect for the human being affected by the actions taken by the armed (with resources and law) administrative apparatus.

Of course, the law must be made in accordance with the Constitution of the Republic of Poland and in a manner consistent with the legal system.

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Ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny, Dz.U. 2020 poz. 1740 z późn. zm., [Act of 23 April 1964 - Civil Code, Journal of Laws 2020, item 1740 as amended].

Ustawa z dnia 25 lutego 2021 r. o zmianie ustawy – Prawo bankowe oraz niektórych innych ustaw, Dz.U. 2021 poz. 680, [Act of 25 February 2021 amending the Banking Law and certain other acts, Journal of Laws of 2021, item 680].

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Ustawa z dnia 29 sierpnia 1997 r. – Prawo bankowe, Dz.U. 2021 poz. 2439 z późn. zm., [Act of 29 August 1997 - Banking law, Journal of Laws 2021, item 2439 as amended].

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The Importance of Leadership in Shaping the Security and Organizational Culture of Hierarchical Units

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Abstract

Nowadays, we are observing the growing role of leadership not only in organizations but also in hierarchical units. This importance is related to shaping the organizational culture of individuals and teams working in them. The aim of the article is to present the importance of leadership in shaping the security and organizational culture of hierarchical units on the example of the War Studies University. The analysis was made using Geert Hofstede's organizational culture model using participant observation. On the basis of the conducted analysis, it can be indicated that the discussed hierarchical unit is characterized by a high power distance, collectivism, masculinity, a high degree of avoidance of uncertainty and short-term orientation in time. Such dimensions of organizational culture as: avoidance of uncertainty, collectivism and power distance have the greatest impact on the occurrence of a specific leadership style, and their verification should be an integral element of the exercised power in order to increase the level of structural security of the institution and personal security of members of this organization.

Keywords

structural security, personal security, security, organizational culture

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Introduction

Nowadays, in organized activities, special importance is attached to the idea of leadership, which in the practice of superiors' and leaders' actions is able to give greater meaning and effect to individual, let alone collective efforts of people and to ensure the security of the institution. The multiplicity and variety of interpretations of leadership, its understanding, types and categories of influence, sources of human abilities or qualities necessary for leadership do not facilitate an unambiguous understanding of the phenomenon. For example, according to Barbara Kożusznik,¹ a leader is a person who has mastered the art of creating a vision and presenting it in an inspiring way to other members of the organization. A leader also may be defined as a person with the responsibility to influence one or more followers and direct them to achieve a set objective. While doing so, a leader has to be aware of the strength of each of his followers and identify the areas to be improved.² The vision unites leaders with their followers, is associated with good communication and trust.³ According to Grzegorz Mazurkiewicz, a leader is a person who has the power to externalize the potential of others.⁴ In this approach, leadership is a process, an important feature of an organization, its potential and capital. Thus, it can be indicated that the level of the organization's leadership potential is greater in those organizations where a larger number of employees participate in its activities, take responsibility for it, make decisions, play leadership roles by supporting other employees and participate in joint exercise of power.⁵ Viewing leadership in social terms, it can be pointed out that it is "a special type of exercising power. Like power, leadership is relational, collective and goal-oriented,"⁶ and emphasizing the psychological dimension, the ability of an individual to influence members of an organization, motivate them and enable them to contribute to the effectiveness and success of the organization of which they are members.⁷ Fullan⁸ claims that the real test of strong and effective leadership is when the leader is able to make sure that team members are focused and are moving in a meaningful direction within the organization. Ann T. Hilliard notices: "There are many definitions for leadership; however, a simple meaning of leadership is the art of motivating a group or team of people to work toward a common goal based on the needs of the organization or university."⁹ However, regardless of the theoretical approach or the adopted leadership paradigm, it is necessary to point out the important role of leadership in building the potential of individuals and teams, as well as in shaping their organizational culture.

1. B. Kożusznik, *Zachowania człowieka w organizacji*, Polskie Wydawnictwo Ekonomiczne 2002, p. 153.
2. B.E. Winston, K. Patterson, *An Integrative Definition of Leadership*, "International Journal of Leadership Studies", 2006, 1 (2), pp. 6–66.
3. B. Kożusznik, *Zachowania człowieka w...*, op. cit., pp. 6–66.
4. G. Mazurkiewicz, *Przywództwo edukacyjne: kierunki myślenia o roli dyrektora*, in: *Jakość edukacji. Różnorodne perspektywy*, ed. G. Mazurkiewicz, Wydawnictwo Uniwersytetu Jagiellońskiego 2012, p. 391.
5. Ibidem.
6. J. McGregor Burns, *Władza przywódcza*, in: *Władza i społeczeństwa*, ed. J. Szczupaczyński, Scholar 1995, p. 266.
7. J. Mączyński, *Diagnozowanie politycznej decyzji*, IPiS PAN 1998, pp. 55–56.
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Description of a hierarchical unit on the example of a civil-military educational institution

The hierarchical unit analysed in this study is a civil-military educational institution – organized in accordance with the Act of 20 May 2016 on the establishment of the War Studies University.¹⁰ It was established on 1 October 2016, in place of another organization with the same educational and military specificity that was liquidated at that time. However, its direct heritage is the Higher School of Warfare, operating from 1919 to 1946. It is worth noting that during World War II, the Higher School of Warfare was moved to the United Kingdom together with the Polish Government-in-Exile, where it continued its educational activities in Scotland. The organization is the highest-ranking civil-military university in the territory of the Republic of Poland. It is a source of highly qualified commanders for military and government administration. However, the training cycle is continuous, which means that the organization does not educate candidates for an officer degree, but develops their skills and qualifications, which distinguishes it from other military universities, such as Military University of Technology, Military University of Land Forces, Military Aviation Academy or the Naval Academy. In line with the Development Strategy of the War Studies University for 2017-2022: “The Academy as a military university contributes to the development and consolidation of military security of the Republic of Poland, the EU and NATO by [...] training military and civilian personnel for the defense and security purposes, and shaping patriotic attitudes, democracy and respect for national traditions.”¹¹

In addition, the Academy also educates civilian students at the bachelor’s, master’s and doctoral degree level in social sciences in the field of security science and in the area of management and quality studies¹² at three faculties: National Security Department, Management and Command Department, Military Department, and two institutes: Institute of Law and Institute of Military History. Apart from the faculties and institutes, education is also provided by other organizational units of the Improvement Courses Division, which prepare courses for government administration and officers. The main teaching initiatives include Postgraduate Studies in Defense Policy, preparing candidates for the general’s rank and are necessary to obtain this promotion. The Academy also runs language courses for both Polish and foreign students. In addition, the Foreign Language Centre of the organization in question prepares and examines students under the NATO STANAG 6001 standardization agreement, specifying the levels of proficiency in foreign languages required for cooperation within the North Atlantic Alliance.¹³ “The teaching activity of the Academy aims at ensuring that its graduates have modern knowledge and are well prepared to perform tasks in the structures of the armed forces, public administration and institutions related to security and defense in the national and in-

10. Ustawa z dnia 20 maja 2016 r. o utworzeniu Akademii Sztuki Wojennej, Dz.U. 2016 poz. 906, [Act of 20 May 2016 on the establishment of the War Studies University, Journal of Laws 2016, item 906].

11. Strategia rozwoju Akademii Sztuki Wojennej na lata 2017-2022 (przyjęta uchwałą nr 17/2017 Senatu ASzWoj z dnia 15 marca 2017 r.), [Strategy for the development of the War Studies University for 2017-2022 (adopted by Resolution No. 17/2017 of the Senate of ASzWoj of 15 March 2017)], https://www.wojsko-polskie.pl/aszwoj/u/70/d6/70d6d8a3-6312-470a-b7bd-fc147dfdd996/nr_17-2017_z_15032017_r_ws_strategii_rozwoju_aszwoj_na_l_2017-2022.pdf, (access 16.05.2021).

12. Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego z dnia 20 września 2018 r. w sprawie dziedzin nauki i dyscyplin naukowych oraz dyscyplin artystycznych, Dz.U. 2018 poz. 1818, [Regulation of the Minister of Science and Higher Education of 20 September 2018 on scientific fields and disciplines and artistic disciplines, Journal of Laws 2018, item 1818].

13. *NATO STANDARDIZATION*, https://www.nato.int/structur/AC/135/50years_nato/chapters/2_standardization.htm, (access 16.05.2021).

ternational dimension."¹⁴ The university also has the right to confer the degree of habilitated doctor in the field of social sciences in the area of security science.¹⁵

The War Studies University is a hierarchical unit. It is headed by the Rector-Commandant, directly reporting to whom are: Vice-Rector for Military Affairs, Vice-Rector for Scientific Affairs, Vice-Rector for Student Affairs and Chancellor, as well as three departments (Department of National Security, Department of Management and Command, Military Department) and two institutes (the Institute of Law and the Institute of Military History).¹⁶

From the very beginning of its operation, the organization put a stress on foreign cooperation to perform its basic functions. This was possible, *inter alia*, thanks to the fact that it had been created with the help of a French military mission, which provided the organization with experienced lecturers from other armies, including: Georgians, Ukrainians, Estonians, Latvians, one Japanese and one French. Moreover, the aforementioned predecessor of the organization directly inherited the tradition of the Academy of the General Staff, which also accepted foreign students from almost all communist countries. The only exception was the Armed Forces of the German Democratic Republic, with which the academy did not actively cooperate, which was a result of resentments dating back to World War II, deliberately kept up by the Soviet Union. The Polish-German relations within the organization improved in the 1990s, already with the predecessor of the current one, which is symbolized by the two oaks of friendship between both nations situated on the campus next to one of the buildings, which were planted by representatives of both armed forces. The Bundeswehr Liaison Officer, responsible for Polish-German cooperation, is also assigned to this organization.¹⁷

It is extremely important that leaders understand and know their roles in maintaining or developing an organizational culture. A deeply embedded and established culture illustrates how people should behave, which can help employees achieve their goals. This behavioural framework, in turn, ensures greater job satisfaction when an employee feels that the leader is helping them complete a goal.¹⁸

Before considering organizational culture, it is worth referring to the general definition of culture. Barbara Szacka¹⁹ claims that culture distinguishes man from the natural world. "It means everything that is created by man, what is acquired by him through learning and passed on to other

14. Strategia rozwoju Akademii..., op. cit.

15. Rozporządzenie Ministra Nauki i Szkolnictwa Wyższego z dnia 20 września 2018 r. w sprawie dziedzin nauki i dyscyplin naukowych oraz dyscyplin artystycznych, Dz.U. 2018 poz. 1818, [Regulation of the Minister of Science and Higher Education of 20 September 2018 on scientific fields and disciplines and artistic disciplines, Journal of Laws 2018, item 1818].

16. Akademia Sztuki Wojennej, <https://www.wojsko-polskie.pl/aszwoj/>, (access 16.05.2021).

17. R. Surgiewicz, *Zarys historii Akademii Sztabu Generalnego im. gen. broni Karola Świerczewskiego w latach 1947–1962*, "Wojskowy Przegląd Historyczny", 1962, No. 3 (39), pp. 3–40.

18. Y. Tsai, *Relationship between Organizational Culture, Leadership Behavior and Job Satisfaction*, "BMC Health Services Research", 2011, 11 (98), pp. 1–9. DOI: [10.1186/1472-6963-11-98](https://doi.org/10.1186/1472-6963-11-98)

19. B. Szacka, *Wprowadzenie do socjologii*, Oficyna Naukowa 2008.

people and also to the next generations through non-genetic information.”²⁰ On the other hand, Antonina Kłoskowska has pointed out that culture is based on a specific order of human life, its non-genetic nature, a way shaped by the historical experiences of human groups.²¹ Culture is an order of collective human activities, but it differs in different societies with a different historical experience. From a sociological perspective, culture is simply a regulator of social practice. Thus, culture may be called a system of behavioural patterns, the behaviours themselves and their products that are created, acquired, transformed and applied in the process of social life.²² Thus, culture consists of the patterns of behaviour, the behaviour itself, the products of these behaviours, values, ideas and principles.²³

Taking into account the deliberations of many authors, Marian Golka indicated the following important features of culture:

- It is an abstract concept;
- Although it is built on nature, uses and changes it; it is not nature or its element;
- It is acquired from other people during upbringing and cooperation, hence its basis is social inheritance;
- It is always common to a given number of people, a given group in which it functions and is associated with its social features;
- It is valid in a given community and is usually regarded by its members as valuable and desirable;
- Culture includes patterns of behaviour (values, ideas, rules), the behaviour itself and the products of behaviour;
- It is capable of breaking away from its direct producer, originator, inventor; it can also be adopted by other people and other communities;
- Surrounds people on all sides and almost all their behaviour is determined or co-determined by cultural patterns that are present in a given community and its culture;

20. Ibidem, p. 79.

21. A. Kłoskowska, *Kultura*, in: *Encyklopedia kultury polskiej XX wieku*, ed. A. Kłoskowska, Wiedza o Kulturze 1991, p. 21.

22. G. Banaszak, J. Kmita, *Społeczno-regulacyjna koncepcja kultury*, Instytut Kultury 1991.

23. M. Golka, *Socjologia kultury*, Wydawnictwo Naukowe Scholar 2007, p. 55.

- It has the ability to last in time, while at the same time specific to it is its relative ability to adapt to the changing conditions, needs, experiences and generations;

- It creates a relatively integrated whole that is generally violated and transformed.²⁴

Organizational culture is a specific type of culture, which can be understood as any behaviour of employees related to work problem solving and conflict resolution.²⁵ In other words, it is a set of specific norms, values and behaviours that shape interpersonal relations in a given organization.²⁶ Culture also includes an organization's vision, values, norms, systems, symbols, language, assumptions, beliefs, and habits.²⁷ Simply stated, organizational culture is "the way things are done around here."²⁸

Organizational culture describes issues related to the specificity, identity and uniqueness of a company. It is a set of characteristics or traits that distinguishes an organization from other entities so that its employees can identify with it. It is also a set of beliefs, values, behaviours, attitudes and habits that help employees and associates better understand what an organization stands for, how it works and what are its priorities.²⁹ "Organizational culture illuminates the distinctive image of a given organization, creates a favourable opinion, gives consistency that protects against uncertainty, and guides the choice of priorities."³⁰

The issue of organizational culture generates a number of epistemological, ontological and methodological doubts, hence it is difficult to describe it and indicate a single, effective method of cognition. Nevertheless, this concept is necessary to describe many processes that occur in an organization, including its security.³¹ Therefore, various models of organizational culture emerge, among which worth mentioning are the following models: E.T. Hall (1976, 1981),³² G. Hofstede (1980, 1997),³³ E.H. Schein (1985),³⁴ F. Trompenaars and Ch. Humpden-Turner (1997)³⁵ or K.S. Cameron and R.E. Quinn (1999, 2015).³⁶ In this study, due to the ease of observation and the multidimensional inference field possible in a selected organization, the Hofstede model has been used for analysis.

24. Ibidem, p. 54–59.

25. L. Jabłonowska, G. Myśliwiec, *Współczesna etykieta pracy*, Szkoła Główna Handlowa 2006, pp. 11–12.

26. M. Gitling, *Człowiek w organizacji: ludzie, struktury, organizacje*, Difin 2013, p. 251.

27. D. Needle, *Business in Context: An Introduction to Business and Its Environment*, Cengage Learning Business Press 2004.

28. T.E. Deal, A.A. Kennedy, *Corporate Cultures: The Rites and Rituals of Corporate Life*, Harmondsworth, Perseus Books 2000.

29. E. Zimniewicz, *Współczesne koncepcje i metody zarządzania*, Polskie Wydawnictwo Ekonomiczne 2003.

30. E. Stroińska, J. Trippner-Hrabi, *Rola kultury organizacyjnej w kształtowaniu efektywności organizacji*, "Studia i Prace WNEiZ", 2016, No. 44/3, p. 209. DOI: [10.18276/sip.2016.44/3-17](https://doi.org/10.18276/sip.2016.44/3-17)

31. Ł. Sułkowski, *Kultura organizacyjna od podstaw*, Społeczna Akademia Nauk 2020, p. 49.

32. See: E.T. Hall, *Poza kulturą*, Wydawnictwo Naukowe PWN 2001.

33. See: G. Hofstede, G.J. Hofstede, *Kultury i organizacje*, Polskie Wydawnictwo Ekonomiczne 2007.

Geert Hofstede's model of organizational culture

Geert Hofstede's model of organizational culture originally referred to national culture, but nowadays it is also used in relation to organizational culture. In this approach, the essence of organizational culture are the values. However, most visible from the outside are: symbols, heroes (characters from organizational myths, identifying specific features that are exceptionally valued in a given organizational culture, and thus constituting a specific pattern of behaviour) and rituals, which have been included in a broader category of practices. The meaning of the practices is not clear to everyone, even though they are easy to notice. However, they are easily interpreted by members of a given organization. Moreover, the authors propose to perceive organizational culture as one of the levels of an individual's "mental programming," such as: human nature (universal vs. inherited), culture (group or category specific vs. acquired) and personality (individual vs. inherited and acquired).³⁷

However, the most common analyses were carried out in the 1970s at the IBM group, thanks to the proposed concept based on the following dimensions: 1) power distance, 2) individualism – collectivism, 3) masculinity – femininity, 4) avoidance of uncertainty, 5) orientation in time.³⁸

Power distance is understood as "the extent to which unequal distribution of power is accepted and expected as expressed by less influential members of an organization or institution."³⁹ It is also closely related to the subordinate-superior relationship and the influence exerted by people occupying higher positions in the hierarchy on people at lower ranks. It is worth pointing out that all societies are characterized by inequalities, though they differ in their aversion to this phenomenon. Moreover, in cultures with short power distance, people are seen as inherently equal, and all inequalities as regards access to power are opposed. Furthermore, for power to be exercised in an ethical and moral manner, constant scrutiny is necessary. In close-up organizational cultures, superiors and subordinates work together and they need each other to achieve goals. In turn, in cultures characterized by a large power distance, all inequalities between people are treated as justified and even desirable, thus ensuring social order. There, power is considered primary to morality, while superiors are unavailable and treat their subordinates as a constant threat that can take over power. For the safety of an organization in the sense of duration and survival, it seems justified to maintain a distance of power directly proportional to the degree of hierarchy.

Individualism vs collectivism is a dimension that characterizes an individual's relationship with a group, defines an individual's place in the group and the influence of the group on an individual's

34. See: E.H. Shein, *Organisational Culture and Leadership*, Jossey-Bass 1985.

35. See: A. Trompenaars, Ch. Hampden-Turner, *Siedem kultur kapitalizmu. USA, Japonia, Niemcy, Francja, Wielka Brytania, Szwecja, Holandia*, Oficyna Ekonomiczna 2006.

36. See: K.S. Cameron, R.E. Quinn, *Kultura organizacyjna – diagnoza i zmiana: model wartości konkurujących*, Oficyna Ekonomiczna 2003.

37. A. Wojtowicz, *Istota i modele kultury organizacyjnej – przegląd koncepcji*, "Zeszyty Naukowe Małopolskiej Wyższej Szkoły Handlowej w Tarnowie", 2004, No. 5, pp. 164-165.

38. G. Hofstede, G.J. Hofstede, *Kultury i organizacje*, op. cit.

39. Ibidem, p. 58.

behaviour. In individualistic societies, an individual is perceived in terms of a subject being an independent element of society. The ties between people are loose, and private life is a sphere in which other members of society should not interfere. In individualistic cultures, joining an organization is caused by the desire for personal achievement; individual initiatives and decisions are valued. On the other hand, collectivism emphasizes the role of a group (family, clan, nation), and the value of an individual is determined by their belonging to a group. What is important here is participation in a group, belonging to it and building ties and relationships that dominate the pursuit of an individual goal. In collectivist societies, there is also confidence in group decisions. One is also responsible for other members of one's group. Balanced relations within the group that form an organization will promote structural and personal security.

Masculinity vs femininity is a dimension that defines the extent to which social roles assigned (often stereotypically) to both sexes are required in a given culture. Male organizations are characterized by activity, aggressiveness, constant gaining and competition. Achieving professional success here requires determination, and the main motivator of actions by members of culture is ambition. Moreover, they identify themselves with the statement: "a man should rule, a woman – educate." On the other hand, in female organizations, building interpersonal bonds and focusing on other people dominate. Members of female cultures value gentle, sensitive and non-aggressive behaviour, and the main motivator for their actions is serving others. The superiors' thinking is characteristic here, according to which they should look after their subordinates, which ensures personal security and development opportunities for members of an organization.

Avoidance of uncertainty is a dimension of organizational (or national) culture that determines how to cope with and approach new, ambiguous and uncertain situations. It can also be assumed that it is an indicator of a society's sensitivity to change, new and unpredictable situations. Societies with a high degree of avoidance of uncertainty regard future as a threat and therefore believe that any new situations should be anticipated and prepared for. Absolute truths and everlasting values are sought. People feel fear that they try to overcome with advanced technology, lawmaking, establishing rules and regulations, and even referring to religion. In organizations with a high degree of avoidance of uncertainty, motivation is based on security, belonging and appreciation. Vertical careers predominate according to top-down, clear rules. Strong nationalism and perception of work as the highest value are also characteristic. On the other hand, in cultures with a low degree of avoidance of uncertainty, each new day is treated as one that brings about chal-

lenges, so it is an opportunity and a chance people wait for with openness. Differences of opinion are acceptable, and therefore anything that is different should be treated with due respect and tolerance. In organizations with a low degree of avoidance of uncertainty, motivation is based on the need of achievement and recognition. Promotion can be vertical and horizontal here, hence career paths are usually “zigzag.” It is worth emphasizing that avoiding uncertainty means avoiding risk, which directly translates into increased safety. However, we can only talk about security in a narrow sense, i.e. as the lack of threats. It does not seem possible to ensure conditions for the development of an organization and its members, i.e. full structural and personal security.

Time orientation defines attitude towards short-term and long-term goals and development of qualities that will make it possible to benefit in the future or to nurture the past and present, and therefore can be long or short term. Long-term oriented organizations are characterized by persistence and systematic efforts to achieve their goals. They are willing to subordinate everything to this objective. At the same time, they respect circumstances and strive to adapt to the changing conditions of the modern world. In turn, building and maintaining interpersonal relationships are dominated by the principle of status and perseverance. On the other hand, in short-term-oriented organizations, there is an expectation of quick results of actions taken. They are also characterized by the presence of strong social pressure on the behaviour imitating the behavioural patterns, which is closely related to the observance of the principle of “saving face.”⁴⁰ For the security of an organization and its members, the long-term perspective seems to be much more favourable.

An analysis of a hierarchical organization under Hofstede’s organizational culture model on the example of the War Studies University.

When analysing the organization concerned in terms of Hofstede’s organizational culture model, all dimensions of this model were characterized on the basis of participant observation. It is worth pointing out that this description was based on the available information, and despite all efforts to maintain scientific objectivity and holistic view of the issue, most likely it was not without fragmentary aspects. Nevertheless, it may be a contribution to further analyses in this area. Referring to the first dimension of Hofstede’s organizational culture model, it may be pointed out that the War Studies University is characterized by a large power distance. The employees of the organization are not perceived as equals, and all inequalities between people are treated as justified due to the education and career advancement of employees. It is a hierarchical entity in which a strictly defined

40. Ibidem.

system of social roles ensures harmony and social order, hence it is accepted and even desirable. At the same time, it is a source of certainty and predictability of the rights and duties in a strictly defined professional stratification. Authority is most important here, and at the same time primary to morality. The superiors are unavailable, do not trust their subordinates and treat them as potential candidates who could take over his power.

The entity is characterized by collectivism. The importance of the role of a professional group is essential, and therefore all activities for the benefit of the group are rewarded, while individual decisions and aspirations meet with disapproval. Thus, the value of individual employees determines their belonging and loyalty to the group. Various actions are also taken to increase the sense of belonging, such as the requirement of a strictly defined dress code (military uniform for officers and representative uniform for civilian employees), the scenario of behaviour in various situations is also precisely indicated, and messages are formulated in terms of “we.” By means of various activities for the sake of the organization, joint execution of tasks, or frequent business trips, also longer and international ones, not only task-related, but also keeping up the social dimension of the functioning of the group, a sense of responsibility for its other members is created. Ties and relationships that enter the realm of private life are also built. In addition, trust is placed in group decisions, which is confirmed by adopting resolutions or decisions at various meetings, such as the Senate, the Discipline Board, the Honours Committee, the Discipline Committee, and others. A certain individualistic tendency may be noticed when some decisions lie within the competence of the person exercising central authority, which is manifested in the orders of the Rector-Commandant, although they are also the result of the work of various teams.

In terms of the third dimension of Hofstede’s organizational culture, one notices distinct masculinity of the War Studies University, in which both sexes are stereotypically assigned their typical social roles. This tendency is gradually changing due to the increasing number of women serving in the military and holding managerial positions. Nevertheless, women are seen here as weaker, less task-oriented, requiring care, support and respect, while men are perceived as efficient, task-oriented and firm. In addition, competitive and aggressive behaviour can be observed in the daily functioning of the organization, which is especially visible in the ambitious pursuit of planned goals.

The organization is characterized by a high degree of avoidance of uncertainty, hence activities are constantly carried out to prepare for future threats (military, unconventional, hybrid and

others). For this purpose, training is conducted, various plans and patterns of behaviour are redefined, and laws, rules and regulations are constantly being enacted. In many situations, there is also a reference to religion and nationalism, which can be observed in the participation of members of the organization in holy masses on the occasion of various religious and national holidays, or the support of employees with the activities of a chaplain, as well as their respect for national symbols and colours. Work is the topmost value, therefore employees are motivated by rewarding them for the efficient performance of tasks. There is no respect and tolerance towards people who fail to fulfil these tasks. Vertical careers, which are carried out in accordance with precisely defined rules, are the main focus here.

The short-term orientation is specific for the analysed hierarchical unit. It is a paradigm of activities oriented towards closer goals, hence special care is given to the past and the present, which is visible in the respect for the traditions, achievements of past generations and national holidays. This respect is also visible in the design of the organization's material base, in which there are numerous plaques and photos, decorations of various employees are displayed, and the national emblem is hung in most of the rooms. The organization is also distinguished by the expectation of quick results of the actions taken, which is reflected in the maxim: "task-execution." Procedures imitating the adopted patterns of behaviour are also emphasized, which is visible during drills, reporting, organization of briefings, or observance of various ceremonies.

Conclusion

Leadership plays an important role in shaping the organizational culture of individuals and teams in various enterprises, which in turn translates into structural security of a given institution and personal security of its members.

The cognitive value of the indicated model of organizational culture consists in showing which of its components are "alive" and "useful" in the daily life of the hierarchical unit discussed. Moreover, this model shows organizational culture as a result of the perceptions of its participants as well as external observers. This approach is possible due to the fact that each individual has a certain pattern of feeling, thinking and behaviour, which he or she acquires via various forms of life, including professional life.

Based on the analysis, it may be indicated that the organization in question is characterized by a large power distance, collectivism, masculinity, high degree of avoidance of uncertainty, short-term orientation in time.

A large power distance is the basis of its functioning. In this regard, it would be worth making efforts, the essence of which would be to reduce inequalities in access to power, at least among the managerial staff. Thanks to such gestures to achieve goals, superiors and subordinates would work together and would feel that they are needed. This would reduce inequalities and disproportions resulting from the formal dimension of exercised power. Moreover, reducing the power distance due to the fact that it is closely related to building a relationship between the subordinate and the superior would have a significant impact on effective leadership in the analysed organization. In longer term, this could help to improve personal security of the members of the organization.

Collectivism is not specific to Polish culture. In the context of leadership, it can be assumed that the actions of the person in power are group-oriented. It seems reasonable to step up individualistic tendencies in respect of an individual as an independent being, although the aforementioned collectivism serves well for structural security of the organization, which, due to the role and place of the War Studies University in the state security system, may have a positive impact on improving national security.

Masculinity means that roles are stereotypically assigned to both genders. The reason for this is history and tradition, which proves that the uniformed service and professional work, and even more so managerial positions, are assigned to men. It seems worth considering here the need for superiors to pay more attention to employees' competences, knowledge and skills than to their gender and the schematic features assigned to it. Such a change could positively affect improvement of security in its broadest sense, i.e. by creating conditions for the development of the organization and its staff.

There is a high degree of avoidance of uncertainty. Thus, It can be concluded that this organization is more likely to be violent, aggressive, emotional and intolerant, as well as motivated by a sense of security, belonging and recognition. Therefore, it would be worthwhile to make efforts to ensure that motivation is also based on the need of achievement and recognition, which would increase the efficiency of the organization and its security.

The organisation is characterised by short-term orientation in time. Therefore, it would be worth considering actions aimed at not changing this dimension completely, as it would be impossible due to the historical conditions of the organization. The recommendation may concern taking a long-term orientation in certain activities. It seems that such strategy would be justified especially in the pursuit of a goal, which would increase perseverance and systematic activities aimed at its implementation and would positively affect structural security of the organization.

On the basis of the conducted analysis, it is also worth pointing out that such dimensions of organizational culture as: avoidance of uncertainty, collectivism and power distance are the ones that have the greatest impact on the occurrence of a specific leadership style and whose verification should be an integral element of the exercise of power. Moreover, in the context of the above analyses, it seems interesting and cognitively valuable to conduct research on the importance of leadership in various types of organizations, including hierarchical units. The results of the research, and consequently their practical applications, may significantly contribute to the increase in the effectiveness of individuals and teams working in them and raise the level of personal and structural security.

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**The Project:
“Implementation of
the educational program
»Politics – Religion – Security.
Conflicts and attempts to resolve
them« basing on international co-
operation.” Presentation of
the Content of the Training
Module – Teaching Materials**

DOI: [10.58183/pjps.02122022](https://doi.org/10.58183/pjps.02122022)

Abstract

The article is a presentation of the teaching materials which were one of the key elements for the preparation and implementation of the training module under the project: “Implementation of the educational programme »Politics – Religion – Security. Conflicts and attempts to resolve them« basing on international cooperation.” This publication is made up of the following parts: presentation

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of the main assumptions of the project; presentation of entities involved in the implementation of the project; description of ideas underlying the project and its objectives ("Issues"); discussion of the contents of twelve sets of teaching materials (textbooks) and academic documents (syllabuses) developed by project promoters. The educational program prepared by the authors has been dedicated to Polish students – project participants. The project has been aimed at preparing its participants for their future roles as employees or employers effectively functioning in the religiously and culturally diversified labour market. Having this objective in mind, twelve sets of teaching materials have been profiled, which address issues covering the time space from the Antiquity until the present. These issues are linked with: biblical texts; ancient Greek philosophy and tragedy; the legal and political situation of first Christians; the Church at the late Antiquity; the medieval project of uniting Europe; modern times and ideologies; modern sources of totalitarianism; the religious dimension of political ideologies; relations between the Church and nationalists; contemporary Catholic social teaching.

Keywords

identity, academic teaching project, teaching materials, religion, politics, security, multicultural society

Introduction

This article¹ is aimed at presenting the teaching materials which were one of the key elements for the preparation and implementation of the training module under the project: "Implementation of the educational programme »Politics – Religion – Security. Conflicts and attempts to resolve them« basing on international cooperation.¹ In the first part (Issues), discussed will be the objective and ideas underlying the project, the entities involved in its implementation and the means of its implementation. In the second part (Presentation of the teaching materials), presented will be the materials with the teaching content developed by the initiators and promoters of the project. The main source material are textbooks (12 volumes), academic documents (syllabuses) and documents associated with the project itself and developed for the purposes of the application for financing from EU funds. The methods used for the preparation of this text have been primarily the analysis and the synthesis.

1. Application for a grant, *Operational programme Knowledge Education Development (implementation project)*, (POWR. 04.03. 00–00–0013/18), own archives of the Centre for European Projects in Warsaw. On the assumptions of the project, see: C. Smuniewski, K. Kochańczyk-Bonińska, K. Majka, *Assumptions for the project "Implementation of the educational programme »Politics – Religion – Security. Conflicts and attempts to resolve them« basing on international cooperation"*, "Polish Journal of Political Science", 2020, Vol. 6, No. 1, pp. 119–148.

Issues

The Faculty of Political Science and International Studies of the University of Warsaw has carried out a project "Implementation of the educational programme »Politics – Religion – Security. Conflicts and attempts to resolve them« basing on international cooperation." Three entities collaborated in the implementation of the project: the abovementioned University of Warsaw,^{II} Saint Nicolas Foundation^{III} (project initiator and leader) and Centro Studi Medi^{IV} from Genoa in northern Italy. The project was financed by the Centre For European Projects.^V

As conceived by the initiators of the project (Cezary Smuniewski, Dariusz Karłowicz) and the team elaborating the entirety of the undertaking,^{VI} its frontline idea was to introduce in Poland the Italian model of looking at international, national and regional security. In that model, the issue of societal multiculturalism is seen from the angle of religion as one of the most crucial factor contributing to the development of culture and determining various identities in the contemporary world. The authors of the project aspired to build a set of instruments, which would enable preparation of students for: (1) functioning in professional life set in multicultural societies; (2) comprehending their own identity set in history, philosophy, religion; (3) understanding other than one's own identities in the world undergoing globalisation processes. Therefore, the aim was to elaborate an element for adjusting (supplementing) the educational system and program functioning in higher education institutions to the challenges of the labour market arising from the contemporary threats associated

with the co-existence in this market of people representing diverse cultures and religions. The aim of the program was also to build students' awareness as regards existence of relationships between cultural and religious identity and the legal system in a state. It was assumed that this awareness was a means to improve the quality of collaboration among people and eventually contributed to creating security at the local, regional and global level. The ultimate objective of the educational process was to build students' competences as regards perception of what constitutes added value in the context of their functioning in the multicultural labour market.²

The educational program developed in the course of implementation of the project contains prototype instruments for collaboration of the higher education institutions with employers as regards preparation of students for functioning in the multicultural work environment. Those instruments may be used by various entities. Primarily, this concerns institutions participating in the process of educating a modern multicultural society and entities responsible for societal security (e.g. NGOs, universities, local government units). Thanks to cooperation with an Italian partner (Centro Studi Medi) – having experience in developing and implementing educational programs related to building security based on conscious management of the migration issue – a new solution adapted to the Polish realities was developed.³

The project's objective was attained through preparation of a training module covering 12 subjects together with: first – academic documents (syllabuses) describing goals, educational results, program contents separately for each subject; and second – a set of teaching material for each of the 12 subjects.⁴ Six persons were directly engaged in developing the materials for students (Cezary Smuniewski, Dariusz Karłowicz, Karolina Kochończyk-Bonińska, Konrad Majka, Tomasz Herbich, Adam Talarowski), each of whom prepared two sets containing teaching materials and a syllabus – one per semester.^{vii} In this way, 12 academic documents and 12 sets of teaching materials^{viii} were prepared under the project. It is those that will be analysed further on.

The teaching materials and academic documents will be characterised according to a historical key. Therefore, the reflection shall start with the texts selected and elaborated by Cezary Smuniewski,⁵ which deal with matters related to the Old and the New Testament. Following will be the materials authored by Dariusz Karłowicz,⁶ aimed at acquainting students with the wisdom of Ancient Greek tragic playwrights and philosophers, and then the materials by Karolina Kochończyk-Bonińska,⁷ directed towards presenting selected areas of Patristic thought. At a further stage, reflected upon will be

2. Application for a grant, op. cit., pp. 7, 14–15.

3. Ibidem, pp. 20 and 7.

4. Ibidem, pp. 8–19.

5. See: C. Smuniewski, *Biblia a człowiek, polityka, wojny i władza. Materiały dydaktyczne*, Teologia Polityczna 2020; C. Smuniewski, *The Bible vs man, politics, war and power*, Syllabus of a general university subject (OGUN – General University Courses), offered by the Faculty of Political Science and International Studies of the University of Warsaw, archived document.

6. See: D. Karłowicz, *Tragedia religii, tragedia polityki. Dyskusje tragików. Materiały dydaktyczne*, Teologia Polityczna 2020; D. Karłowicz, *Tragedia polityki. O związkach religii i polityki według starożytnych Greków. Cz. 2*, Teologia Polityczna 2020; D. Karłowicz, *The tragedy of politics. On the relationships between religion and politics*, Syllabus of a general university subject (OGUN – General University Courses) for classes conducted in the first semester of the academic year, offered by the Faculty of Political Science and International Studies of the University of Warsaw, archived document; D. Karłowicz, *The tragedy of politics. On the relationships between religion and politics*, Syllabus of a general university subject (OGUN – General University Courses) for classes conducted in the second semester of the academic year, offered

the materials devoted to medieval issues, prepared by Adam Talarowski.⁸ At the subsequent stage of the analysis, analysed will be Tomasz Herbich's⁹ sets, which were intended by the author to cover the philosophical thought of the 19th and 20th centuries. Then go those prepared by Konrad Majka,¹⁰ who undertook to present issues of the period stretching from the 19th until the 21st century. The whole shall be crowned by the description of the second part of Cezary Smuniewski's teaching material dedicated to contemporary social teaching of the Church (Catholic Social Teaching).¹¹

Presentation of teaching materials

The series of twelve sets of teaching materials is opened by those prepared by Cezary Smuniewski. A source material proposed by the researcher to students for the first semester are biblical texts. The author set himself an objective to provide students with the knowledge, skills and abilities helpful in understanding and functioning of the Polish political community seen in the perspective of contemporary problems associated with cultural and religious minorities. The aim was to help students comprehend the reality manifesting itself at the junction of three notions: religion, politics and security. It was also meant to provide students with a set of instruments to describe and explain contemporary problems of a political community, which is at the same time a cultural community and a community in many aspects relating to religion. Another aim of the prepared materials was for students to develop the ability to describe contemporary issues through references to biblical contents which affected the life of the community, its culture and politics. Finally, as conceived by Smuniewski the classes conducted at the University of Warsaw were also meant to reflect universal problems faced by representatives of minority religions and state authorities in the pluralistic Europe. In order to emphasize the timelessness of the presented issues all classes were planned as covering two parallel themes: the biblical and the contemporary one. Additionally, the subject was to teach the ability to think analytically about socio-cultural processes and their relationships with politics and creation of national security.¹² Smuniewski grouped the materials prepared for students in seven thematic blocs: "The Bible – the text about God, man and contemporaneity"; "State and power in ancient Israel"; "Israel's holy wars"; "«Thou shalt not kill» and «... [we] forgive our trespassers»"; "«Honor your father and mother» and the love of the homeland»; "Pacifism of the New testament"; and "State and power in the New testament."¹³ Smuniewski assumed that thanks to those classes students would acquire the knowledge of, first, key problems of religious minorities in the area of political and social life; second, understanding the role of religion as one of the major culture-forming factors determining diverse identities in the contemporary world; third, the ability to function in a multicultural and multireligious society, thanks to which the future graduates will stand greater chances of finding

by the Faculty of Political Science and International Studies of the University of Warsaw, archived document.

7. See: K. Kochańczyk-Bonińska, *Kościół późnego antyku wobec państwa i władzy. Materiały dydaktyczne*, Teologia Polityczna 2020; K. Kochańczyk-Bonińska, *The Church of the late Antiquity towards state and power*, Syllabus of a general university subject (OGUN – General University Courses), offered by the Faculty of Political Science and International Studies of the University of Warsaw, archived document; K. Kochańczyk-Bonińska, *Pierwsi chrześcijanie wobec państwa i władzy. Materiały dydaktyczne*, Teologia Polityczna 2020; K. Kochańczyk-Bonińska, *The Early Christians towards State and Power*, Syllabus of a general university subject (OGUN – General University Courses), offered by the Faculty of Political Science and International Studies of the University of Warsaw, archived document.

8. See: A. Talarowski, *Średniowieczny projekt zjednoczenia Europy. Materiały dydaktyczne*, Teologia Polityczna 2020; A. Talarowski, *A medieval project for the unification of Europe*, Syllabus of a general university subject (OGUN – General University Courses), offered by the Faculty of Political Science and International Studies of the University of Warsaw, archived document; A. Talarowski, *Średniowieczny projekt zjednoczenia Europy cz. 2. Materiały dydaktyczne*, Teologia Polityczna 2020; A. Talarowski, *A medieval project for the unification of*

fulfilment in the contemporary labour market; fourth, understanding the role of religion as one of the major culture- and community-forming factors that determine diverse identities in the contemporary world. According to Smuniewski the same source material used during classes was to equip students with specific skills. The participants were to learn how to analyse historical texts and read them in the contemporary context, conduct a discussion using the knowledge of cultural differences, acquire the skills of observation and interpretation of the phenomena and processes in the political community, perceive their mutual links and interdependencies. Moreover, the author assumed that students would acquire the following capabilities: (1) recognition of relationships between religious and ideological identity on one hand and political activity and legal order of the state on the other; (2) awareness of one's own identity as a creative force; (3) ability to function in the multicultural world (building relationships therein and managing diversity); (4) utilising cultural differences as added values.¹⁴

The starting point for the teaching materials developed by Dariusz Karłowicz was ancient Greece beginning from the 5th century B.C. The presented views of tragic playwrights, philosophers and historians were to be used by participants as a basis for reflecting on questions that arise in connection with the constantly manifested tensions between religion and politics as well as the crisis afflicting contemporary democracies.¹⁵ This intention is best expressed by Karłowicz's words: "We wish – as Leo Strauss formulated it – learn from ancient thinkers rather than about them."¹⁶ The object of reflection the first part of the abovementioned teaching materials – entitled "The tragedy of religion, the tragedy of politics. The discussion of tragic playwrights"¹⁷ – covers the texts of tragic playwrights¹⁸ and historians,¹⁹ supplemented with a fragment of the Holy Bible (Psalm 130) and a text by Aristotle.²⁰ It should be noted that it is the thought of the four abovementioned great poets of the Antiquity constitutes the core of the materials, thus making them different from the next part. Quoting what was written in the syllabus of the subject, let us emphasise that the texts were interpreted in light of the nature of the relationship linking religion, politics and security (understood both from the viewpoint of indispensability of religion for politics, as well as the sources of any potential tensions between them), and a correct model of the relationship between the political and the religious sphere.²¹ The discussed teaching materials are made up of six parts, which include source texts preceded by extensive introductions. Let us also note that in the introductions Karłowicz explicated the currency of reflections contained in the writings of ancient authors.²² To this end, the scholar *inter alia* showed how the concepts he had developed continued to taint the thinking of the contemporary man of the West about their own identity.²³

Europe: visions and practice, Syllabus of a general university subject (OGUN – General University Courses), offered by the Faculty of Political Science and International Studies of the University of Warsaw, archived document.

9. See: T. Herbich, *Nowoczesne źródła totalitaryzmów. Materiały dydaktyczne*, Teologia Polityczna 2020; T. Herbich, *The Modern Origins of Totalitarianism*, Syllabus of a general university subject (OGUN – General University Courses), offered by the Faculty of Political Science and International Studies of the University of Warsaw, archived document; T. Herbich, *Nowożytność a wiek ideologii. Materiały dydaktyczne*, Teologia Polityczna 2020; T. Herbich, *Moderernity and the Age of Ideology*, Syllabus of a general university subject (OGUN – General University Courses), offered by the Faculty of Political Science and International Studies of the University of Warsaw, archived document.

10. See: K. Majka, *Bóg a naród. O wzajemnych stosunkach Kościoła i nacjonalistów* *Materiały dydaktyczne*, Teologia Polityczna 2020; K. Majka, *God and the nation. About the mutual relationships between the Church and nationalists. Materiały dydaktyczne*, Syllabus of a general university subject (OGUN – General University Courses), offered by the Faculty of Political Science and International Studies of the University of Warsaw, archived document; K. Majka, *Religia jako polityka. O religijnym wymiarze ideologii politycznych. Materiały dydaktyczne*, Teologia Polity-

The described contents find a complement in the successive part of the teaching materials prepared by Karłowicz. It is indicated already by the title: "The tragedy of politics. On the relationships between religion and politics according to ancient Greeks."²⁴ This time, the references to the Greek *polis* assumed the form of an analysis of mainly philosophical texts,²⁵ additionally supplemented with the texts of selected tragic playwrights, including Aristophanes.²⁶ The view and narrations of those thinkers were learned by students from the perspective of three main issues: the genesis of politics (from the Greek thinking about man as a political creature), the perfect political system and the causes of the collapse of the state (answers given by the Greek to the question about the ideal political system and its durability), the indispensability of religion and problem with the traditional religion (the philosophical description of a political religion, the status of religion both as a factor contributing to the durability of a state and as a factor that can constitute a threat to politics).²⁷ Also those teaching materials are made up of six parts, which include source texts preceded by extensive introductions by the author. Let us note that this time in his introductory texts Karłowicz undertook to present the thoughts of ancient Greek from the angle of their currency, emphasizing this aspect for instance in the context of their quests for whatever ensured durability of political systems.²⁸

The teaching materials prepared by Karolina Kochańczyk-Bonińska were also devoted to the issues of the Antiquity. The source materials, expounded on in the book "The first Christians towards the state and power,"²⁹ as well as the comments thereon refer to the socio-political situation of the followers of Christ from the beginning of Christianity until the 4th century, when Emperor Constantine recognised Christianity as a religion allowed on a par with other traditional cults.³⁰ The reading of the teaching materials offered students an opportunity to learn the dilemmas Christians faced as a religious group, whose social and political status in the Roman Empire underwent an evolution from a persecuted cult to a force exerting impact on the image of the empire.³¹ The participants encountered such issues as for instance; the eschatological context of Christians' thinking about politics, Christian thinking about social life, Christians' attitude to pagan culture. Kochańczyk-Bonińska tried to highlight the complexity and diversity of the reflection of the followers of Christ as regards individual issues. Let us mention that to illustrate the attitude of Christians to wealth she used the views of Hermas³² or Clement of Alexandria³³, whose positions in this matter were after all totally different. The fact that the philosopher decided to use the described problems to reflect on the present deserves special mention. The analysis of the texts included in the materials as well as the discussions conducted during the course were aimed to present the problems which also today surface at the junction between the state and a religious minorities, but also to work out potential schemes for

czna 2020; K. Majka, *Politics as religion. About the religious dimension of political ideology*, Syllabus of a general university subject (OGUN – General University Courses), offered by the Faculty of Political Science and International Studies of the University of Warsaw, archived document.

11. See: C. Smuniewski, *Kościół a człowiek, polityka, wojny i władza. Materiały dydaktyczne*, Teologia Polityczna 2020; C. Smuniewski, *The Church vs man, politics, war and power*, Syllabus of a general university subject (OGUN – General University Courses), offered by the Faculty of Political Science and International Studies of the University of Warsaw, archived document.

12. See: C. Smuniewski, *Biblia a człowiek...*, op. cit., p. 7; C. Smuniewski, *The Bible vs man, politics, war and power*, Syllabus..., op. cit.

13. See: C. Smuniewski, *Biblia a człowiek...*, op. cit., pp. 13–186.

14. See: C. Smuniewski, *Biblia a człowiek...*, op. cit., pp. 8–9; C. Smuniewski, *The Bible vs man, politics, war and power*, Syllabus..., op. cit.

15. D. Karłowicz, *The tragedy of politics. On the relationships between religion and politics*, Syllabus..., op. cit.

16. D. Karłowicz, *Tragedia religii...*, op. cit., p. 12.

17. Ibidem.

their resolution.³⁴ The set prepared by Karolina Kochańczyk-Bonińska is made up of an introduction, four thematic blocs, a conclusion and a reference lexicon of ancient authors. It also needs to be noted that the blocs were divided into part, the titles of which are derivatives of the problems discussed therein. Each of them includes: an introductory text written by the philosopher, introductory comments to the issues dealt with in a source text, source texts, ancillary questions referring to the text, bibliography.

The subsequent teaching material prepared by Kochańczyk-Bonińska, chronologically being a continuation of the earlier one, was entitled "The Church of Late Antiquity towards the state and power."³⁵ Its contents are focused around the status of Christians as a religious group, which with times started to exert an ever greater impact on social life, legal norms, and even key military and political decisions made in the Roman Empire.³⁶ The beginnings of the reflection covered by the materials refer to the Edict of Milan, whereas its final part is associated with the fall of the empire. This time, students dealt with problems of a triple nature presented in three thematic blocs.³⁷ The first ones directly touch upon religious and political issues. This concerns both the interference of the clergy in political life and involvement of rulers in theological disputes, as well as the foundation of Christian thinking about the state, revealed *inter alia* in the context of theological discussions on the role of the Roman Empire. The second set of issues refers to responsibility of Christians for the universe basing on the texts devoted to anthropological problems, the universalistic mission of the Church, the impact of Providence on Human history. The participants learned the meanders of social involvement of the Church, *inter alia* aid given by Christians to the poor or the possibility of doing military service by Christians. The analysis of so outlined problems underlying the discussions conducted during classes provided students with the possibility of acquire a more in-depth knowledge of continuously current and universal dilemmas faced by representatives of religious communities (especially those aspiring to universal religions) and state authorities in the pluralistic Europe.³⁸ Let us also note that the convention of the discussed teaching materials is based on the same principle as the teaching materials analysed in the previous paragraph.

The teaching materials prepared by Adam Talarowski go beyond the time horizon of the so far described textbooks. They are devoted to selected problems of the Middle Ages. The first part, entitled "A medieval project for the unification of Europe", is founded on the understanding of Europe that surpasses its status as a notion denoting the sub-continental region in the western part of Eurasia. The inherent sense of this term refers primarily to a certain reality with the spiritual

18. The texts of Aeschylus, Aristophanes, Sophocles, Euripides.

19. The texts of Herodotus and Thucydides.

20. Arystoteles, *Polityka*, transl. L. Pitrowicz, Polskie Wydawnictwo Naukowe 2011, pp. 84–89. Karłowicz decided to sue those fragments of Aristotle's *Politics* which are dedicated to political forms. The use of the Polish translation of *Politics* as well as Polish translations of other texts, including Descartes' *Meditations on First Philosophy*, was dictated by the fact that they were used by the authors of the quoted teaching materials. Therefore, the intention is to reproduce the contents of those materials as faithfully as possible.

21. D. Karłowicz, *The tragedy of politics. On the relationships between religion and politics*, Syllabus..., op. cit.

22. D. Karłowicz, *Tragedia religii...*, op. cit., p. 64.

23. Ibidem, p. 24.

24. See: D. Karłowicz, *Tragedia polityki...*, op. cit.

25. *Inter alia*, the texts of Plato, Aristotle, Cicero, Protagoras.

26. References to Aristophanes' *The Clouds* were used by Karłowicz as a starting point in the reflection on the problems of oath and the problem of region as a source of moral order.

and cultural realm.³⁹ Talarowski also uses references to history as a pretext to reflect on the present – the then model of unification is considered in the dimension of “a set of good and bad lessons.”⁴⁰ Those teaching materials are made up of seven chapters, an introduction and bibliography. Each of the chapters includes an introductory commentary and source texts.⁴¹ The ideas contained therein forms a basis for students to investigate such problems as the theoretical principles of the European medieval thought understood in the context of: a conviction about the nature of the world as well as the place of man and human communities in relation to God; a dispute about the sources of law, ethicality of politics, a discussion with respect to the comprehension of the entitlements of the political authorities and the subjects; a relationship between the temptation of imperialism and prerogatives of the state; forceful imposition of faith.

Talarowski continued these themes in the second part of the teaching materials entitled “A medieval project for the unification of Europe.”⁴² However, the contents cover somewhat different problems focused around the political culture of the medieval society in the dimensions of the ideological foundations of political power. Eight thematic blocs delimiting the textbook structure, which are made up of source texts preceded by a synthetic description, refer to the following issues: similarities and differences occurring between conversions of selected rulers to Christianity; the Islamic model of understanding the relationship between religion and politics; the importance and development of the idea of just war as divine judgment; the role of myth and historical remembrance as the sources of legitimisation of the political order; the function of coronation from the viewpoint of political theology in the Middle Ages.⁴³

The teaching materials elaborated by Tomasz Herbich are devoted, in turn, to issues of the modernity. In the book “The modernity and the age of ideology”⁴⁴ students found fragments of the texts by Descartes⁴⁵ or writings by Stanisław Brzozowski.⁴⁶ Their reading as well as the discussions conducted during classes were directed towards a reflection on whether and to what degree modern philosophy was responsible for totalitarianism. The discussed teaching materials are made up of six parts, plus an introduction and bibliography. It should be noted that each of the parts starts with an introductory text and source texts. The issues discussed therein refer to three main problem areas: the identity of modern man; modern man’s finding themselves between religion and politics; the methods for resolving this tension.⁴⁷ It is in those contexts that the participants considered *inter alia* the modern concept of the subject; the epistemological turn of philosophy; such concepts as sovereignty or messianism; the philosophical sources of atheism.

Arystofanes, *Chmury*, in: Arystofanes, *Komedie*, transl. J. Ławińska-Tyszkowska, Vol. 1, Pruszyński i S-ka 2001, pp. 171–255.

27. D. Karłowicz, *The tragedy of politics. On the relationships between religion and politics*, Syllabus..., op. cit.

28. D. Karłowicz, *Tragedia polityki...*, op.cit., p. 17.

29. See: K. Kochańczyk-Bonińska, *Pierwsi chrześcijanie...*, op. cit.

30. Ibidem, p. 13.

31. The thematic content of the textbook is synthetically reflected by the problems enumerated in the syllabus. They are: the limits of the obedience of Christians to secular power; the discord between the norms of revealed and legislated laws. K. Kochańczyk-Bonińska, *The Early Christians towards State and Power*, Syllabus..., op.cit.

32. See: Hermas, *Pasterz*, III, 6,5–7, in: *Pierwsi świadkowie. Pisma Ojców Apostolskich*, ed. M. Starowieyski, transl. A. Świderkówna, Wydawnictwo M 2010, pp. 220–221.

33. See: Klemens Aleksandryjski, *Który człowiek bogaty może być zbawiony?*, transl. J. Czuj, Wydawnictwo M-Apostolicum 1995, pp. 12–15.

34. K. Kochańczyk-Bonińska, *Pierwsi chrześcijanie...*, op. cit., p. 9.

The second part of the teaching materials prepared by Herbich was, in turn, devoted to the sources of totalitarianism. In "The modern origins of totalitarianisms"⁴⁸ the answer to the question about the degree of responsibility of modern ideological thinking for the birth of totalitarianism and its inherent cruelties was based – as specified in the syllabus – on the analysis of "the processes as a result of which people realise their rule over the external world, at the same time devastating the foundations of their own security."⁴⁹ The reading of the seven-part textbook enabled students to acquire an in-depth knowledge of such issues as: theodicy, philosophy of history, utopian thinking, the essence of bolshevism, the causes why fascists took the reins of power, rationality of totalitarianism, the status of a concentration camp as an instrument of the totalitarian rule. Moreover, not without seems to be the fact that during the course discussed were not only the views of philosophers, e.g. Giorgio Agamben, Zygmunt Bauman, August Comte, Hannah Arendt, but also the narrations of men of letters. In the context of the latter group, it is worth mentioning Fyodor Dostoevsky or Joseph Conrad.

The teaching materials prepared by Konrad Majka – entitled "Politics as religion. The religious dimension of political ideologies" – presented ideologies as phenomena of a quasi-religious character.⁵⁰ The analysis of how ideologies took over the functions earlier reserved for religions was meant as a pretext for the course participants to reflect on political radicalism and extremism that today jeopardize progressing ethnic, cultural and religious pluralisation of the Western societies.⁵¹ The set of texts prepared by Majka is made up of two main parts. The first one, more theoretical, concerns political religion, the notions that are related to it (civil religion), but also philosophical approaches (known for instance from the works by Eric Voegelin⁵² or Juan Donoso Cortés⁵³), which allow for considering this term in a decidedly broader context.⁵⁴ The second part is devoted to analysing the examples of political religions manifesting themselves in the 19th and 20th centuries, namely Italian fascism, Marxism, Romanian nationalism, Saint-Simonianism. Let us also turn attention to the convention of the discussed textbook.⁵⁵ Its two thematic blocs include source texts, preceded by an introduction to the problems they deal with and concluded with a commentary summarising the key aspects.

In the following semester, the participants in the classes conducted by Majka had at their disposal teaching materials entitled: "God and the nation. About the mutual relationships between the Church and nationalists."⁵⁶ Already the title indicates that with respect to the issues that are dealt with therein they are not a continuation of the previously described textbook. It is worth noting that the reading of the textbook and the discussions conducted during classes were to allow students

35. See: K. Kochańczyk-Bonińska, *Kościół późnego antyku...*, op. cit.

36. Ibidem, p. 9.

37. As noted in the syllabus to the subject conducted by Kochańczyk-Bonińska, the problems touched upon therein refer to such issues in the area of the relationship between religion and politics in the discussed historical context as: the limits of influence of secular and religious power; social involvement of the Church; the question about just war; the relationships between the development/fall of state structures and the development of religion. K. Kochańczyk-Bonińska, *The Church of the late Antiquity towards state and power*, Syllabus..., op. cit.

38. K. Kochańczyk-Bonińska, *Kościół późnego antyku...*, op. cit., p. 9.

39. A. Talarowski, *Średniowieczny projekt zjednoczenia Europy*, op.cit., p. 7.

40. A. Talarowski, *A medieval project for the unification of Europe*, Syllabus..., op. cit.

41. Talarowski invokes thinkers frequently voicing actually different views as regards a given phenomenon. In this context, worth mentioning are Augustine of Hippo and Joachim of Fiore advocating various narrations in the area of the theology of history. See: Joachim z Fiore, *Wprowadzenie do Apokalipsy*, transl. P. Grad, "Kronos. Metafizyka - Kultura - Religia", 2014, No. 2, pp. 42–55; Święty Augustyn, *O państwie Bożym. Przeciw poganom ksiąg XXII*, transl.

better orientation in the contemporary world which is becoming more and more multicultural.⁵⁷ The materials are made up of an introduction, two main parts and a biographical lexicon. The first thematic bloc outlined the attitude of nationalists to the Church (considered were the examples of the discussed ideology that negatively, indifferently and positively treated that faith), whereas the second one – the view of the Church on nationalism (revealed in light of the principles of the Church's thinking about national community and the diversity of views on this ideology manifesting themselves therein). Students investigated the essence of these issues beginning with the shaping of the Church-nationalism relationship at the turn of the 19th and 20th centuries. The materials contained also references to the present.

The teaching materials prepared by Cezary Smuniewski for the second semester were entitled: "The Church vs man, politics, war and power. Teaching materials."⁵⁸ They are a continuation of the classes in the first semester ("The Bible vs man, politics, wars and power. Teaching materials"), which can be seen in the list of their titles. The classes prepared for the second semester are based on the analysis of the contemporary Catholic social teaching.⁵⁹ As regards knowledge, skills and competences which were to be acquired, they are similar to those in the first semester with one fundamental difference. Since the proposed source texts are contemporary texts of ecclesial provenance, the author assumed that thank to that they will contribute to development of student's ability to describe contemporary issues affecting the life of society, culture and politics through reference to the teaching of the Catholic Church.⁶⁰ Smuniewski grouped the source texts in eight blocs: "The Church on integral and solidary humanism"; "The Church in the world"; "The Church vs man and contemporaneity"; "The Church on the love of the homeland"; "The power of the Church and the power of the state"; "The rudiments of social teaching"; "The Church vs contemporary armed conflicts"; "The Church vs ecology."⁶¹

Conclusion

The teaching materials and academic documents presented in this article were aimed at preparing the participants in the training module implemented under the project: "Implementation of the educational programme »Politics – Religion – Security. Conflicts and attempts to resolve them« basing on international cooperation" to find their place on the labour market. In the Polish realities, this labour market is characterised by an ever greater cultural diversity of the people functioning therein. The project was aimed at offering future employees (present students) an opportunity to get a more in-depth understanding of own cultural identity, which in the course of history was shaped

W. Kornatowski, Vol. II, PAX 1977, pp. 162–163, 427–436.

42. See: A. Talarowski, *Średniowieczny projekt zjednoczenia Europy cz. 2*, op. cit.

43. A. Talarowski, *A medieval project for the unification of Europe: visions and practice*, Syllabus..., op. cit.

44. See: T. Herbich, *Nowożytność a wiek...*, op. cit.

45. It concerns: R. Descartes, *Medytacje o pierwszej filozofii*, in: R. Descartes, *Medytacje o pierwszej filozofii. Zarzuty uczonych mężów i odpowiedzi autora. Rozmowa z Burmanem*, transl. M. and K. Ajdukiewiczowie, S. Swieżawski, I. Dąbska, Wydawnictwo Antyk 2001, pp. 48–52.

46. It concerns: S. Brzozowski, *Kant. W stulecie śmierci*, in: S. Brzozowski, *Kultura i życie. Zagadnienia sztuki i twórczości. W walce o światopogląd*, Państwowy Instytut Wydawniczy 1973, pp. 249–253.

47. T. Herbich, *Modernity and the Age of Ideology*, Syllabus..., op. cit.

48. See: T. Herbich, *Nowoczesne źródła...*, op. cit.

49. T. Herbich, *The Modern Origins of Totalitarianism*, Syllabus..., op. cit.

50. See: K. Majka, *Religia jako polityka...*, op. cit., p. 7.

under the influence of such factors as religion and philosophy. The diversity of the methods to attain those objectives is evidenced by the assortment of issues dealt with in each of the 12 sets of teaching materials. Students of individual academic subjects acquainted themselves with a broad gamut of problems, frequently rooted in distant historical contexts. References to Greek philosophers, the first Christians, the history of ancient Israel, medieval reflections on the nature of the world, modern sources of totalitarianisms or political religions were meant to constitute for them a starting point for pondering over those problems of the present that arise as a result of a junction of three notions: religion, politics and security.

I. The article has been written as part of the project "Bezpieczeństwo narodowe – religia – historia" (National security – religion – history) carried out at the Interdisciplinary Research Centres of the University of Warsaw "Tożsamość – Dialog – Bezpieczeństwo" (Identity – Dialogue – Security).

II. University of Warsaw – the largest university in Poland. It was founded in Warsaw in 1816.

III. Saint Nicolas Foundation (Pol. *Fundacja Świętego Mikołaja*) – a public benefit organisation set up in Poland in 2002. It is involved in publishing, educational, and scholarship activities.

IV. Centrum Badań Medi (It. *Centro Studi Medi*) – a non-governmental organisation based in Genoa, Italy, established in 2003, involved in broadly conceived issues of migration. It is involved in research, publishing, and educational activities.

V. Centre For European Projects (Pol. *Centrum Projektów Europejskich*) – a government budgetary unit established by Regulation No. 16 of the Minister for Regional Development of 15 December 2008. The main goal of the Centre is to improve the effectiveness of absorption of European funds. See: Zarządzenie Ministra Rozwoju i Finansów z dnia 10 listopada 2017 r. w sprawie ustalenia regulaminu organizacyjnego Centrum Projektów Europejskich, Dz. Urz. Min Roz. i Fin. z dnia 14 listopada 2017 r., poz. 224, [Ordinance of the Minister for Development and Finance of 10 November 2017 on establishing organisational rules of the Centre for European Projects, Official Journal of the Minister for Development and Finance, 14 November 2017, item 224].

VI. Cezary Smuniewski (University of Warsaw) – academic director of the project, senior expert preparing the program as well as the materials and a textbook, head of substantive work, lecturer; Karolina Kochańczyk-Bonińska (University of Warsaw) – senior expert preparing the program as well as the materials and a textbook, lecturer; Dariusz Karłowicz

51. K. Majka, *Politics as religion. About the religious dimension of political ideology*, Syllabus..., op. cit.

52. The author invoked a text by Voegelin. E. Voegelin, *Namiastka religii*, transl. J. Świątek, "Człowiek w Kulturze", 2005, No. 17, pp. 271–290.

53. Students learned his way of thinking about the relationships between religion and politics, which exerted an overwhelming impact on Carl Schmitt. J. Donoso Cortés, *Esej o katolicyzmie, liberalizmie i socjalizmie rozważanych w ich fundamentalnych zasadach*, in: J. Donoso Cortés, *O katolicyzmie, liberalizmie, socjalizmie*, transl. M. Wójtowicz-Wcisło, *Ośrodek Myśli Politycznej* 2017, pp. 5–15.

54. K. Majka, *Religia jako polityka...*, op. cit., p. 7.

55. Ibidem, p. 8

56. See: K. Majka, *Bóg a naród...*, op. cit.

57. K. Majka, *God and the nation. About the mutual relationships between the Church and nationalists. Materiały dydaktyczne*, Syllabus..., op. cit.

58. See: C. Smuniewski, *Kościół a człowiek...*, op. cit.; C. Smuniewski, *The Church vs man, politics, war and power*, Syllabus..., op. cit.

59. During classes students read not only papal encyclicals. They had an opportunity to acquaint themselves

– senior expert preparing the program as well as the materials and a textbook, lecturer, representative of an NGO (Saint Nicolas Foundation); Tomasz Herbich, Konrad Majka, Adam Talarowski – assistants co-preparing the program as well as the materials and textbooks, lecturers; support scientific consultants; Krzysztof Koseła (University of Warsaw), Tomasz Żyro (University of Warsaw), Ewa Maria Marciniak (University of Warsaw), Maciej Marszałek (War Studies University), Ryszard Szpyra (War Studies University), Cyprian Kozera (War Studies University), Ilona Urych (War Studies University), Andrea Zanini (University of Genoa), Agostino Massa (University of Genoa), Andrea Tomaso Torre (Centro Studi Medi) – scientific consultants; Joanna Paciorek – representative of an NGO (Saint Nicolas Foundation).

VII. In Poland, the academic year has two semesters.

VIII. 12 books published by the Saint Nicolas Foundation.

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60. C. Smuniewski, *The Church vs man, politics, war and power*, Syllabus..., op. cit.

61. See: C. Smuniewski, *Kościół a człowiek...*, op. cit., pp. 15–221.

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Investigating War Crimes and Human Rights Violations Commit- ted in the Hawaiian Kingdom

edited by Dr. David Keanu Sai, Head of the Hawai-
ian Royal Commission of Inquiry, 2020, 380pp.

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The subject of review here is the multi-author publication *Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom*, edited by Dr. David Keanu Sai, Head of the Hawaiian Royal Commission of Inquiry, published in 2020. The book is divided into three parts, i.e. Part 1 *Investigating war crimes and human rights violations committed in the Hawaiian Kingdom*; Part 2 *The prolonged occupation of the Hawaiian Kingdom*; and Part 3 *Hawaiian law, treaties with foreign states and international humanitarian law*. This final part represents a collection of source documents in such fields as Hawaiian law, but also international-law treaties with foreign states (in fact 18 including the USA) – dating back to the 19th century. A selection of treaties from the sphere of international humanitarian law has also been made and included.

The essence of the publication nevertheless resides in its two first parts, in which the authors offer an in-depth treatment of the complicated long-time relationship between Hawaii and the United States. Nevertheless, the thesis pursued here overall is the straightforward one that Hawaii has been

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occupied illegally and incorporated into the United States unlawfully, with that occupation continuing to the present day and needing to be understood in such terms. The authors also pursue the difficult thread of the story relating to war crimes.

The above main assumption of the book is emphasised from the very beginning of Part 1, which is preceded by the text of the Proclamation Establishing the Royal Commission of Inquiry, recalling that that Commission was established to “ensure a full and thorough investigation into the violations of international humanitarian law and human rights within the territorial jurisdiction of the Hawaiian Kingdom.”¹

In fact, the main aim of the above institution as called into being has been to pursue any and all offences and violations in the spheres of humanitarian law, human rights and war crimes committed by the Americans in the course of their occupation of Hawaii – which is given to have begun on 17 January 1893.

Presented next is the genesis and history of the Commission’s activity described by its aforementioned Head – Dr. David Keanu Sai. He presents the Commission’s activity in detail, by reference to concrete examples; with this part going on to recreate the entire history of the Hawaiian-US relations, beginning with the first attempt at territorial annexation. This thread of the story is supplemented with examples and source texts relating to the recognition of the Hawaiian Kingdom by certain countries (e.g. the UK and France, and taken as evidence of international regard for the integrity of statehood). Particularly noteworthy here is the author’s exceptionally scrupulous analysis of the history of Hawaii and its state sovereignty. No obvious flaws are to be found in the analysis presented.

It is then in the same tone that the author proceeds with an analysis relating to international law, so as to point to the aspects of Hawaii’s illegal occupation by the United States – including an unprecedentedly detailed analysis of the contents of documents, resolutions, mutual agreements and official political speeches, but also reference to other scientific research projects. This very interesting strand of the story is followed by Matthew Craven in Chapter 3 on the *Continuity of the Hawaiian Kingdom as a State under International Law*. Notwithstanding the standpoint on the legality of the occupation or annexation of Hawaii by the United States, the matter of the right to self-determination keeps springing up now and again.

1. *Proclamation Establishing the Royal Commission of Inquiry*, in: *Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom*, ed. D.K. Sai, Royal Commission of Inquiry 2020, p. 8.

Considerable attention is also paid to the multi-dimensional nature of the plebiscite organised in 1959 (with regard to Hawaii's incorporation as a state into the United States of America), with the relative lack of transparency of organisation pointed out, along with various breaches and transgressions that may have taken place.

In turn, in Chapter 4 – on *War Crimes Related to the United States' Belligerent Occupation of the Hawaiian Kingdom* – William Schabas makes attempts to verify the assertion, explaining the term war crimes and referring to the wording of the relevant definition that international law is seen to have generated. The main problem emerging from this concerns lack of up-to-date international provisions as regards the above definition. The reader's attention is also drawn to the incomplete nature of the catalogue of actions or crimes that could have constituted war crimes (in line with the observations of Lemkin).²

While offering narration and background, this Chapter's author actually eschews Hawaiian-US examples. Instead, he brings the discussion around to cases beyond Hawaii, and in so doing also invokes examples from case-law (e.g. of Criminal Courts and Tribunals). While this is a very interesting choice of approach, it would still have been interesting for the valuable introduction to the subject matter to be supplemented by concrete examples relating to Hawaii, and to the events occurring there during the period under study.

Chapter 5 – on *International Human Rights Law and Self-Determination of Peoples Related to the United States' Occupation of the Hawaiian Kingdom* – allows its author Federico Lenzerini to contribute hugely to the analysis of the subject matter, given his consideration of the human rights protection system and its development with a focus on the right to self-determination. The author separates those dimensions of the law in question that do not relate to the Hawaiian Kingdom³, as well as those that may have application to the Hawaiian society.⁴ Indeed, the process ends with *Applicability of the Right to Self-Determination During the American Occupation* – a chapter written with exceptional thoroughness, objectivity and synthesis. The author first tells the story on how the human rights protection system came to be formulated (by the 1948 Universal Declaration of Human Rights and the Covenants of 1996, but also by reference to other Conventions). Rightly signalled is the institutional dimension to the protection of human rights, notably the Human Rights Committee founded to protect the rights outlined in the Covenant on Civil and Political Rights. It is of course recalled that the US is not a party to the relevant Protocols, which is preventing US citizens from assert-

2. W. Schabas, *War Crimes Related to the United States Belligerent Occupation of the Hawaiian Kingdom*, in: *Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom*, ed. D.K. Sai, Royal Commission of Inquiry 2020, p. 156.

3. F. Lenzerini, *International Human Rights Law and Self-Determination of Peoples Related to the United States' Occupation of the Hawaiian Kingdom*, in: *Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom*, ed. D.K. Sai, Royal Commission of Inquiry 2020, p. 212.

4. Ibidem, p. 214.

ing the rights singled out in the 1966 Covenants.⁵ Again rightly, attention is also paid to the regional human rights mechanism provided for by the 1969 American Convention on Human Rights, which also lacks the United States as a party.

The focus here is naturally on the right to self-determination, which the author correctly terms the only officially recognised right of a collective nature (if one excludes the rights of tribal peoples). The further part of the chapter looks at the obligations of states when it comes to safeguarding their citizens' fundamental human rights. The philosophical context underpinning the right to self-determination is considered next (with attention rightly paid first to liberty related aspects and the philosophical standpoints of Locke and Rousseau⁶, along with the story of the formulation of this right's ideological basis and reference to what is at times a lack of clarity regarding its shape and scope (not least in Hawaii's case).⁷ What is therefore welcome is the wide-ranging commentary offered on the dimensions to the above rights that do relate to Hawaiian society as well as those that do not.

In summing up the substantive and conceptual content, it is worth pointing to the somewhat interdisciplinary nature of the research encompassed. Somewhat simplifying things, this book can first be seen as an in-depth analysis of matters historical (with much space devoted to the roots of the relations between Hawaii and the United States, to the issue of this region's occupation and the genesis of Hawaii's incorporation into the USA). These aspects have all been discussed with exceptional thoroughness and striking scrupulousness, in line with quotations from many official documents and source texts. This is all pursued deliberately, given the authors' presumed intention to illustrate the genesis of the whole context underpinning the Hawaiian-US relations, as well as the further context through which Hawaii's loss of state sovereignty came about. This strand to the story gains excellent illustration thanks to Dr. Keanu Sai.

The second part is obviously international law related and it also has much space devoted to it by the authors. The publication's core theses gain support in the analysis of many and varied international documents, be these either mutual agreements between Hawaii and the United States or international Conventions, bilateral agreements of other profiles, resolutions, instruments developed under the aegis of the UN or those of a regional nature (though not only concerned with the Americas, as much space is devoted to European solutions, and European law on the protection of human rights in particular). There is also much reference to international case-law and juris-

5. Ibidem, p. 177.

6. Ibidem, p. 209.

7. Ibidem, p. 214.

prudence in a broader sense, the aim being to indicate the precedents already arrived at, and to set these against the international situation in which Hawaii finds itself.

However, notwithstanding this publication's title, the authors here do not seek to "force-feed" readers with their theses regarding Hawaii's legal status. Rather, by reaching out to a wide range of sources in international law as well as from history, they provide sufficient space for independent reflection and drawing of conclusions. In this regard, it would be interesting if few remarks were devoted to present-day relations between Hawaii and the rest of the USA, with a view to achieving a more-profound illustration of the state of this relationship. However, it might seem from the book's overall context that this was done deliberately so that the foundations of this unique dispute gain proper presentation. All is then augmented further by Part 3 – the collection of agreements and documents considered to sustain the main assumptions of the publication under review. Were I to force myself to point out any failure of the book to meet expectations, I would choose the cultural dimension. There is no way of avoiding an impression – only enhanced by cover-to-cover reading – that this publication is deeply rooted in the Hawaiians' sense of cultural and historical identity. So it would have been interesting to see the cultural dimension addressed, including through a more in-depth analysis of social awareness. At the very least, I have in mind here Article 27 UDHR, traditionally regarded as the source of the right to culture and the right to participate in cultural life. To be added to that might be Article 15 of the International Covenant on Economic, Social and Cultural Rights, as well as Article 27 of the International Covenant on Civil and Political Rights. While (as Boutros Boutros-Ghali noted in 1970) the right in question initially meant access to high culture, there has since been a long process of change that has seen an anthropological dimension conferred upon both culture and the right thereto. A component under that right is the right to a cultural identity⁸ – which would seem to be the key space in the Hawaiian context. The UN and UNESCO have in fact been paying a great deal of attention to this matter, with the key relevant documents being the 2005 *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* that in general links these issues with the human rights dimension as well as the *Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It* (1976).

So a deeply-rooted cultural-identity dimension would have offered an interesting complement to the publication's research material, all the more so as it would presumably reveal the attempts to annihilate that culture (thus striking not merely at statehood, but at national integrity of identity). An interesting approach would then have been to show in details whether and to what extent

8. See: Y.M. Donders, *Towards a Right to Cultural Identity?*, Intersentia 2002.

this is resisted by the USA (e.g. in regard to the upholding of symbols of material and non-material cultural heritage).

However, given the assumption the book is based on – i.e. the focus on state sovereignty (not the right of cultural minorities, but the right of a nation to self-determination), the above “omission” actually takes nothing away from the value of the research presented. However, the aspect of national identity – of which cultural and historical identity is a key component – may represent an impulse for further, more in-depth research.

In regard this publication as an exceptionally valuable one that systematises matters of the legal status of the Hawaiian Kingdom, taking up the key issues surrounding the often ignored topic of a difficult historical context occurring between Hawaii and the United States. The issue at stake here has been regenerated synthetically, on multiple levels, with a penetrating analysis of the regulations and norms in international law applying to Hawaii – starting from potential occupied-territory status, and moving through to multi-dimensional issues relating to both war crimes and human rights. This is one of the few books – if not the only one – to describe its subject matter so comprehensively and completely. I therefore see this work as being of exceptional value and considerable scientific importance. It may serve not only as an academic source, but also a professional source of knowledge for both practicing lawyers and historians dealing with the matter on hand. The ambition of those who sought to take up this difficult topic can only be commended.

Donders Y.M., *Towards a Right to Cultural Identity?*, Intersentia 2002.

Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom, ed. D.K. Sai, Royal Commission of Inquiry 2020.

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