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EDITORIAL

In the course of 2021, the scientific journal Central European Papers underwent gradual changes related to its content. The periodical will continue to be territorially tied mainly to the Central European area, but in terms of its factual focus it will focus primarily on public administration as a form of public power, in line with the efforts of the Faculty of Public Policies at Silesian University in Opava's activities related to its area of operation.

The editorial board of the journal and its management will strive to include contributions devoted to theoretical issues of public administration in general, but also contributions analyzing its crucial components, e.g. problems of state administration and territorial self-government in individual states of Central Europe, in their mutual comparison, highlighting common, different and specific aspects, but also by pointing out their position in the administrative area of the European Union.

However, public administration as the administration of public affairs realized in the public interest is part of the development of a democratic state and rule of law, which provides space for publishing contributions perceiving public administration in this broad complex, from a political, sociological, legal, socio-economic and international (Union) point of view. The issue of the Central European papers magazine, which falls into the hands of readers, is also conceived in this spirit.

Editors

ARTICLES

The genesis of the EU's rule of law mechanisms applied against Central European Member States

Ákos Bence Gát[1]

Abstract

European rule of law criticism towards some Central and Eastern European Member States led European institutions to put in place several instruments which aim at controlling EU countries in the name of the rule of law. The analysis of each instrument as well as of their interaction shows that their structure and workings differ depending on the institution which created them, and generally tend to increase the political and institutional power of the creating institution.

Keywords

rule of law, European Union, Central Europe, European institutions, institutional power

Introduction

During the last decade, European institutions have developed a wide range of tools which help them to exercise generalised control over Member States in the name of the rule of law. In this article I shall analyse the major institutional milestones of the creation of such European policy on the rule of law which have been mainly applied against Central European Member States.

On 6th March 2013, foreign ministers of Germany, Denmark, Finland and the Netherlands sent a joint letter to the President of the European Commission in which they asked for the creation a rule of law mechanisms in the EU.[2] In a resolution of 3rd July 2013, the European Parliament also requested the creation of a Union values monitoring mechanism.[3]

1 The author is researcher at Europe Strategy Institute of University of Public Service (NKE).

2 Letter from the German, Dutch, Finnish and Danish foreign ministers to the President of the European Commission, 6th March 2013.
https://www.eerstekamer.nl/eu/documenteu/_brief_nederland_duitsland/f=/vji8oh6slx9o.pdf
Accessed on 30th December 2020.

3 *European Parliament resolution of 3 July 2013 on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012).* Strasbourg, 2013
https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-315+0+DOC+XML+V0//EN
Accessed on 30th December 2020.

After such antecedents, the Commission presented its first rule of law mechanism in its communication entitled *"A new EU Framework to strengthen the Rule of Law"*, published on 11th March 2014.[4] Back then, the Council's Legal Service expressed serious legal concerns related to the mechanism recommended by the Commission.[5] The Council subsequently created its own alternative rule of law monitoring instrument, in the form of an annual "rule of law dialogue" between Member States. The European Parliament also voiced reservations about the Commission's Rule of Law Framework – although for different reasons. On the one hand it argued that the instrument recommended by the Commission was not ambitious enough, and on the other hand that it did not adequately minimise the risk of double standards being applied to various countries. The Parliament therefore produced a third recommendation for an EU rule of law mechanism, with its resolution of 25th October 2016.[6] On 17th July 2019,[7] the Commission came up with the idea of the creation of an Annual Rule of Law Report.[8] We can therefore identify several competing rule of law mechanisms or proposals for mechanisms in the European Union.

4 European Commission, Communication from the Commission to the European Parliament and the Council, *A new EU Framework to strengthen the Rule of Law.* Strasbourg, 11th March 2014.

5 Council of the European Union, Opinion of the Legal Service. *Commission's Communication on a new EU Framework to strengthen the Rule of Law: – compatibility with the Treaties.* Brussels, 27th May 2014
http://data.consilium.europa.eu/doc/document/ST-10296-2014-INIT/en
Accessed on 31st December 2020.

6 *European Parliament resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights,* Strasbourg, 2016
https://www.europarl.europa.eu/doceo/document/TA-8-2016-0409_EN.html
Accessed on 30th December 2020.

7 European Commission, communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Strengthening the rule of law within the Union. A blueprint for action,* Brussels, 17th July 2019
https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM%3A2019%3A343%3AFIN
Accessed on 31st December 2020.

8 European Commission press release, Strengthening the rule of law through increased awareness, an annual monitoring cycle and more effective enforcement rule of law cycle, 17th July 2019
https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4169
Accessed on 6th January 2021.

In the following, I shall complement existing literature on the EU's rule of law toolbox[9] by examining the above mentioned instruments in detail as well as their connections with each other and their application to Central European Member States. Before starting this analysis, however, it is important to make some preliminary reflexion about the notion of the rule of law which helps understanding how it could became the centre of a new European policy.

The vague political definition of the rule of law

For the sake of analysis, at the very beginning it is also crucial to state that the rule of law has no exact, generally accepted definition. The concept of the rule of law raises several issues, of which the two most challenging ones need to be emphasised.
The first challenge is that in the vernacular, the French "l'État de droit", the English "rule of law" and the German "Rechtsstaat" are considered to be translations into those languages of an identical notion. Nevertheless, the three terms have different legal meanings. The differences can be explained by the fact that historically each concept developed in a different legal system and in a different context.
Regarding the conceptual components of the English term, "rule of law", Albert Venn Dicey's work, published in 1885, is the standard reference.[10] According to Dicey, arbitrary power can only be contained by ensuring that law prevails over authority. In other words, one should ensure that people can only be judged on the basis of the law. Dicey's concept emphasises the importance of equality before the law and states that no person should be above the law. The concept of rule of law, based on the logic of common law assigns a significant role to courts and does not require a country to have a written constitution in order for the rule of law to prevail.[11]

9 Dimitry Kochenov–Amichai Magen–Laurent Pech, *Introduction: The Great Rule of Law Debate in the EU,* in *Journal of Common Market Studies,* 2016/5, pp. 1045–1049.
Ulrich Sedelmeier, *Political safeguards against democratic backsliding in the EU: the limits of material sanctions and the scope of social pressure,* In *Journal of European Public Policy,* 2016/3, pp. 337–351, p. 349.
Bernd Schlipphak–Oliver Treib, *Playing the blame game on Brussels: the domestic political effects of EU interventions against democratic backsliding.* In *Journal of European Public Policy,* 2016/3, p. 361.
Erzsébet Kardosné Kaponyi, *Az alapvető jogok és a jogállamiság védelmének aktuális kérdései az Európai Unióban 1. [Current issues in the field of fundamental rights and the rule of law in the European Union 1], In Köz-Gazdaság,* 2016/3, pp. 187–195 and.
Erzsébet Kardosné Kaponyi, *Az alapvető jogok és a jogállamiság védelmének aktuális kérdései az Európai Unióban 2. [Current issues in the field of fundamental rights and the rule of law in the European Union 2],* in *Köz-Gazdaság,* 2017/1, pp. 135–163.
Petra Lea Láncos: A Bizottság közleménye a jogállamiság erősítésének új, uniós keretéről. In: Pázmány Law Working Papers, 2014/5. szám.
Balázs Fekete: Alternatív kommentár az EUSZ. 7. cikkéhez. In: Közjogi Szemle, 2016/2. szám
Nóra Chronowski: Jogállamiság-kontroll az uniós közjogban: üveggyöngyjáték? Értelmezési lehetőségek az Európai Tanács költségvetési konklúziói apropóján. In: Jogtudományi Közlöny, 75:9, 2020.

10 *Report on the Rule of Law Adopted by the Venice Commission at its 86th plenary session (Venice, 25–26 March 2011)* Strasbourg, 4th April 2011, p.4
https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)003rev-e
Accessed on 18th January 2021 and.
András Zs. Varga, *From Ideal to Idol? The Concept of the Rule of Law* (Budapest: Dialóg Campus, 2019) p. 22.

11 Ibid.

By contrast, the German concept of the "Rechtsstaat" developed through written constitutions and focuses on the state itself, seeing legislative power as the primary guarantor of law enforcement.[12] As András Zs. Varga put it, Robert von Mohl, the main theoretician of the Rechtsstaat "thought that a state built on law (Rechtsstaat) is governed by reason; it sustains its legal order, gives its citizens the opportunity to attain their rational goals, and guarantees equality before the law and exercise of fundamental rights and freedoms."[13]

The French concept of "l'État de droit" also sets different criteria for the rule of law. On the one hand it places significant emphasis on the protection of fundamental rights, influenced by the 1789 Declaration of the Rights of Man and the Citizen.[14] On the other hand, because French constitutional thinking is strongly influenced by administrative law, l'État de droit presupposes the protection of citizens' rights not only by regular courts, but also by special administrative courts.

Therefore, even though the three concepts are close to one another, they differ in terms of content and criteria. This is not the only problem, however. The second issue related to the concept of the rule of law is that it can be approached in two ways: formally, in an approach based on positive law; and in a second, substantive approach. According to the formal approach, one should consider a state to be governed by the rule of law if the state subjects itself to the law it creates: if it respects its own laws. The advantage of this definition is that it is simple and can be measured by objective standards. Its significant disadvantage, however, is that under this definition an authoritarian regime that oppresses its citizens could be considered to be upholding the rule of law, provided that all its measures comply with its own legal system. By contrast, in a substantive approach to the rule of law the main criterion is whether in a given country there is guaranteed protection of an individual's fundamental freedoms. Thus in this second conception the emphasis shifts from a rules-based notion to individual freedoms. This transforms the question of the rule of law into a much more subjective issue.

However, the difficulties of the legal definition do not mean that the basic legal content of the rule of law cannot be identified. Both legal literature and the Venice Commission tried to draw together the main factors of a state based on the Rule of Law. In 2011 the Venice Commission listed the following rule of law criteria:

- "Legality, including a transparent, accountable and democratic process for enacting law
- Legal certainty
- Prohibition of arbitrariness
- Access to justice before independent and impartial courts, including judicial review of administrative acts
- Respect for human rights
- Non-discrimination and equality before the law."[15]

12 Venice Commission, *Report on the Rule of Law Adopted by the Venice Commission at its 86th plenary session (Venice, 25–26 March 2011.* Strasbourg, 4th April 2011, p. 4.

13 András Zs. Varga, *op. cit.* p. 23.

14 Venice Commission, *Report on the Rule of Law Adopted by the Venice Commission at its 86th plenary session (Venice, 25–26 March 2011).* Strasbourg, 4th April 2011, p. 4.

15 Venice Commission, *Report on the Rule of Law Adopted by the Venice Commission at its 86th plenary session (Venice, 25–26 March 2011).* Strasbourg, 10th April 2011, p. 14.

Since the basic legal content of the concept rule of law can be identified, the real problem is much more the fact that in European political debates, political bodies such as the European Parliament, the Commission or the Council define case by case on a political basis what situation should be considered as a breach of the rule of law.
Since the concept of the rule of law is very general, all actors wishing to use it politically are provided with the opportunity to interpret its content flexibly and according to their own taste – whether that interpretation is somewhat looser or somewhat stricter, depending on the situation at hand. In this way, everyone can support the "common rule of law project" in the hope of their own imagined political advantage (or avoidance of political disadvantage), without any clear agreement on the project's aims or objectives. If a clear rule of law concept with exactly defined political content existed, the interests of various players – and, above all, the contradictions between them – would come to the surface much sooner, and so it would be much harder to achieve the necessary political majority. If one needed to enact specific European legislation on the nature of laws on higher education, churches or the media in the Member States – or, to go even further, what Member States' constitutions should contain – it is likely that negotiations on that legislation would never even get started. In such a situation each country would protect its own practices and existing systems, which in these basic, constitutional areas could be quite different from one Member State to the next. As an example, one only has to think of an EU country where there is an official state religion,[16] while in another country the state and the church are rigidly separated.[17] When one refers to the rule of law in general terms, however, one can avoid all the difficulties posed by such specific cases. Furthermore, it may even allow one to criticise certain provisions in relation to "Country A", while considering the same to be acceptable in "Country B". A vague political concept of the rule of law is therefore one of the basic preconditions for a "political consensus" between different political actors, which is necessary for the continuous development of EU policy on the rule of law.[18]

16 "The religion of Malta is the Roman Catholic Apostolic Religion." Constitution of Malta, Article 2.
https://legislation.mt/eli/const/eng/pdf
Accessed on 3rd April 2021.
"The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ." Constitution of Greece, article 3.
https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf
Accessed on 3rd April 2021.
"The Evangelical Lutheran Church shall be the Established Church of Denmark, and as such shall be supported by the State." Constitution of Denmark, article 4.
https://fngeneve.um.dk/news/newsdisplaypage/?newsid=0dd0574f-ba8d-416b-aec3-a36eb60c82f7
Accessed on 3rd April 2021.
"The Evangelical Lutheran Church shall be the State Church in Iceland and, as such, it shall be supported and protected by the State." Constitution of Island, article 62.
https://www.government.is/library/01-Ministries/Prime-Ministrers-Office/constitution_of_iceland.pdf
Accessed on 3rd April 2021.

17 "La France est une République indivisible, laïque, démocratique et sociale." Consitution of France, article 1.
https://www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/texte-integral-de-la-constitution-du-4-octobre-1958-en-vigueur
Accessed on 3rd April 2021.

18 Michel Dobry, *Le jeu du consensus [The Nuclear Consensus Game],* in *Pouvoirs,* nr. 38, September 1986 pp. 47–66 http://www.revue-pouvoirs.fr/Le-jeu-du-consensus.html
Accessed on 7th January 2021.

The European Commission's Rule of Law Framework

To this day a defining element in European policy on the rule of law is the so-called *"new EU Framework to strengthen the Rule of Law"*, outlined in the Commission's communication of 11th March 2014 (hereinafter, the Rule of Law Framework of the Commission, or Rule of Law Framework). According to the Commission, the Rule of Law Framework had become necessary because of *"recent events in some Member States"*,[19] which had *"demonstrated that a lack of respect for the rule of law [...] can become a matter of serious concern."*[20] The communication made reference to the "public" and to the "requests" that the Council and the European Parliament had made to it; it presented the rule of law framework as a response to such expectations.

As was the case in the European Parliament's resolution on 3rd July 2013 and the mentioned joint letter from the German, Danish, Finnish and Dutch foreign ministers, the Commission's communication also argued that a new mechanism was necessary because there were *"situations [in Europe] where threats relating to the rule of law could not be effectively addressed by existing instruments"*;[21] thus, the Communication made an implicit reference to ongoing rule of law criticisms against Hungary at that time. Among existing rule of instruments mentioned in the communication were the EU's infringement procedures and Article 7 of the TEU. The Commission sought to complement these EU instruments and the *"existing mechanisms already in place at the level of the Council of Europe"*, in order to address and resolve a situation *"where there is a systemic threat to the rule of law"*.[22]

In essence the Commission's Rule of Law Framework comprises two instruments. The first instrument is the classic infringement procedure, which the Commission also intends to use in connection with issues related to the rule of law. Article 258 of the TFEU)[23] enables the Commission to initiate an infringement procedure against a Member State if the latter violates certain provisions of EU law. An infringement procedure is the usual legal instrument that the Treaties provide for the Commission to enforce European law as "the guardian of the Treaties". For example, if the Commission finds that a Member State is violating the EU's competition law or trade rules, it can use an infringement procedure to take action against that Member State.

Without going into too much detail about the EU's procedural law, in order to understand the following analysis it is important to recognise and bear in mind the functioning of infringement procedures. In essence, if the Commission considers a Member State to be violating EU law, it will reach out to the government of that Member State and initiate

19 European Commission, communication from the Commission to the European Parliament and the Council, *A new EU Framework to strengthen the Rule of Law,* Strasbourg, 11th March 2014.

20 *Ibid.*

21 *Ibid.*

22 *Ibid.*

23 Under Article 258 TFEU, *"if the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union."*

a dialogue to clarify the situation. There is a semi-official phase before the start of official procedures, in which the Commission notifies the Member State and seeks to remedy the problem within the framework of structured dialogue. If this fails to resolve the situation, an official procedure is initiated. The Commission sends a letter of formal notice including its suggestions and asking for information from the Member State within a given timeframe – usually within two months. If, having received the Member State's answers, the Commission still considers the latter to be violating EU law, the Commission will explain its position in a so-called "reasoned opinion" sent to the Member State, and repeat its call for the latter to remedy the situation. If within a given timeframe – which again is usually two months – the Member State does not provide a satisfactory answer, the Commission can bring the matter before the Court of Justice of the European Union to settle the dispute.[24] Such procedures are part of the European Union's daily routine, and in fact at present there are many underway against various Member States, concerning various areas of EU law. The majority of these procedures are technical in nature, of little interest to the public, and so in general one hears little about them. Incidentally, in terms of the number of infringement procedures initiated against it, Hungary used to be somewhere around the average among Member States.[25]

In some rule of law disputes the Commission was able to use an infringement procedure, because there were certain legal areas, also linked to the topic of rule of law, that at least partly fell within the remit of the European Union. For example, in 2012 the Commission had conducted investigations – via infringement procedures – into the independence of the Hungarian National Bank, the judiciary and the data protection authority,[26] and more recently into transparency requirements for civil society organisations receiving financial support from abroad[27] and regulations applying to the Central European University (CEU).[28] These cases all received a significant amount of attention in the rule of law debates surrounding Hungary.

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24 See Article 258 TFEU and the official description of the Commission on the following website:
https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure_en
Accessed on 31st December 2020.

25 See for example the number of ongoing infringement proceedings on 31st December 2016 in the 2016 Annual Report entitled *Monitoring the application of European Union law,* European Commission, Brussels, 2017, p. 29.
https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-370-F1-EN-MAIN-PART-1.PDF
Accessed on 31st December 2020.
or the relevant statistics in the Commission's 2018 Single Market Scoreboard
http://ec.europa.eu/internal_market/scoreboard/_docs/2018/infringements/2018-scoreboard-infringements_en.pdf
Accessed on 31st December 2020.

26 European Commission, press release nr. IP/12/24, 17th January 2012
https://ec.europa.eu/commission/presscorner/detail/en/IP_12_24
Accessed on 31st December 2020.

27 European Commission, press release nr. IP/17/1982, 13th July 2017
https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1982
Accessed on 31st December 2020.

28 European Commission, press release nr. IP/17/1952, 13th July 2017
https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1952
Accessed on 31st December 2020.

It is important to note, however, that the Commission may only initiate an infringement procedure on an issue that falls within the European Union's competence. And according to the principle of conferral laid down in article 5 of the TEU, the Union only has competence in areas conferred to it by Member States, as laid down in the Treaties. Every area in which the European Union has not been conferred competences remains within the competence of the Member States, and in such areas the European Commission cannot initiate infringement proceedings. The Commission admits the truth of this, albeit reluctantly, stating that *"There are situations of concern which fall outside the scope of EU law and therefore cannot be considered as a breach of obligations under the Treaties"*,[29] and therefore infringement proceedings are not applicable to them, *"but still pose a systemic threat to the rule of law."*[30]

In essence the Commission tried to override this division of competences between Member States and the European Union by creating its Rule of Law Framework. Through this mechanism it found a way to investigate issues in which it would not otherwise be competent to act. Bypassing Member States and interpreting the Treaties as it saw fit, the Commission invented a tool for itself which now allowed it to act not only in matters of EU competence, but in virtually any matter that it could somehow link to the topic of the rule of law.

The Commission needed this because in matters related to the rule of law falling outside the Union's competence, up until now it could only take action against a Member State under Article 7 of the TEU. Under this, however, the Commission is only allowed to initiate one of the two political procedures fixed in the Treaty: to ask Member States to determine either the "clear risk of a serious breach" of European values under Article 7(1), or the "serious and persistent breach" of those same values under Article 7(2). Under Article 7 the role of the Commission officially ends at that point. Today we know from the ongoing Article 7 proceedings against Hungary and Poland that the Commission has managed to remain present throughout the proceedings laid before the Council, even after activation of the Article. At this later stage, however, it can only influence the process with its expert opinions, as it has no official decision-making powers.

If Article 7 of the Treaty on European Union is activated, direction of the procedure is taken over by the European Council and the Council, with the European Parliament – which needs to give its consent – in a supporting role. In order for a Member State "accused" by the Commission to actually be subjected to sanctions at the end of an Article 7 procedure, exceptionally high voting thresholds must be achieved in the European Council and the Council. For this reason, there is a relatively low probability of the procedure ending with a decision that the Commission can truly consider a victory. Therefore until recently it has been in the Commission's political interest not to activate Article 7 of the TEU, but to use the threat of activating Article 7 tactically – as a "sword of Damocles" hanging over a Member State's head, forcing its government to change its policies.

29 Under article 5 TEU *"1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality. 2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States."*

30 European Commission, communication from the Commission to the European Parliament and the Council, *A new EU Framework to strengthen the Rule of Law.* Strasbourg, 11th March 2014.

The Commission created its Rule of Law Framework in order to increase its political leeway, which in practice meant the creation of a new procedural phase preceding initiation of Article 7. An idiosyncratic interpretation of Article 7 led it to claim the right to actively participate in debates on the rule of law. By claiming that it is among the institutions that can initiate Article 7, it has developed a completely new procedure preceding initiation of Article 7, in which the main role will hereafter be played by the Commission itself, and not the other European institutions. Below I shall explain in detail how the new Rule of Law Framework is a multi-step process dominated by the Commission, perfectly suited for applying political pressure on a Member State.

The Rule of Law Framework consists of three stages. As a first step, the Commission assesses whether there are any obvious signs of the rule of law being threatened in a Member State. *"This assessment can be based on the indications received from available sources and recognised institutions, including notably the bodies of the Council of Europe and the European Union Agency for Fundamental Rights. If, as a result of this preliminary assessment, the Commission is of the opinion that there is indeed a situation of systemic threat to the rule of law, it will initiate a dialogue with the Member State concerned, by sending a 'rule of law opinion' and substantiating its concerns, giving the Member State concerned the possibility to respond."*[31] The Commission informs the public about the initiation of the procedure but at this point keeps the contents of the proceedings and hearings confidential, in order to make it easier to find a compromise and a successful solution together with the Member State. If no solution satisfactory to the Commission can be reached at this stage, the procedure enters a second phase.

In the second phase the European Commission gives more publicity to the ongoing dispute with the Member State. It addresses a so-called "rule of law recommendation" to the Member State, the main elements of which are also made public. "In its recommendation the Commission will clearly indicate the reasons for its concerns and recommend that the Member State solves the problems identified within a fixed time limit and informs the Commission of the steps taken to that effect. Where appropriate, the recommendation may include specific indications on ways and measures to resolve the situation."[32]

The third stage is the "follow-up to the Commission's recommendation", in which "the Commission will monitor the follow-up given by the Member State concerned to the recommendation addressed to it. This monitoring can be based on further exchanges with the Member State concerned and could, for example, focus on whether certain practices which raise concerns continue to occur, or on how the Member State implements the commitments it has made in the meantime to resolve the situation. If there is no satisfactory follow-up to the recommendation by the Member State concerned within the time limit set, the Commission will assess the possibility of activating one of the mechanisms set out in Article 7 TEU."[33]

The newly created mechanism was not met with universal acclaim. Legal experts from the Council argued that in introducing this new procedure in the European Union

31 *Ibid.*

32 *Ibid.*

33 *Ibid.*

the Commission had exceeded its competences and acted without the required authorisation. The Commission tried to pre-empt any criticism by stating from the start in its communication that it had not created a new EU instrument, but had merely augmented its own internal procedures in order to fulfil its obligations under Article 7 of the TEU.

If one examines the question from a political scientific point of view, however, it immediately becomes clear that the new Rule of Law Framework cannot be considered merely an internal procedural issue within the Commission. Analysis of the structure of the Rule of Law Framework quickly reveals that in reality the Commission increased its own capacity to exercise political pressure in areas in which, under EU law, it would otherwise have no power to intervene.

With its Rule of Law Framework the Commission essentially took control of the European rule of law policy. This is despite the fact that legally the Commission cannot force its own will onto a Member State in any of the stages of the new Rule of Law Framework, with the latter being able to accept or refuse the Commission's rule of law opinion or recommendations. Ostensibly, the fact that the Commission may initiate Article 7 after the completion of the Rule of Law Framework does not represent a bigger threat to Member States either, since it had the power to do that anyway, without the Rule of Law Framework. In practice, however, the Rule of Law Framework has significantly increased the powers of the Commission, since it has created a new political theatre of operations for that body's dealings with Member States, which by its design favours the Commission. Using the new Rule of Law Framework, the Commission has gained the ability to steer Member States into a political arena in which it has an inbuilt advantage.

For example, unlike earlier EU practice, the new procedure allows the Commission to drive the development of protracted European and international debate on whether or not a Member State is violating European values. This in itself constitutes a significant degree of power, as such a dispute can be used to isolate a country in European and international arenas. By their nature, accusations regarding the rule of law are extremely damaging, because they directly seek to undermine political trust in the targeted country. They can create prejudices against a country that make cooperation with its European and international partners more difficult, even in questions unrelated to the rule of law. This is well reflected by newspaper titles one can read about some Central and Eastern European Member States in international media.[34]

Incidentally, the Commission is using the Rule of Law Framework in direct attempts to mobilise the maximum possible number of international actors. According to its communication on the Rule of Law Framework, the Commission may, for example, "seek advice and assistance from members of the judicial networks in the EU, such as the networks

34 "Is it time the EU took on Hungary and Poland over 'illiberal democracy'?", The Week, 19th November 2020. https://www.theweek.co.uk/108714/is-it-time-european-union-took-on-hungary-poland-illiberal-democracy Accessed on 18th May 2021.
„The Guardian view on Poland and Hungary: obstacles to progress … again", The Guardian, 17th November 2020. https://www.theguardian.com/commentisfree/2020/nov/17/the-guardian-view-on-poland-and-hungary-obstacles-to-progress-again
Accessed on 18th May 2021.
„Poland and Hungary Use Coronavirus to Punish Opposition", The New York Times, 22nd April 2020. https://www.nytimes.com/2020/04/22/world/europe/poland-hungary-coronavirus.html
Accessed on 18th May 2021.

of the Presidents of Supreme Courts of the EU, the Association of the Councils of State and Supreme Administrative Jurisdictions of the EU or the Judicial Councils".[35] It may also involve the European Union Agency for Fundamental Rights, the Council of Europe, the Venice Commission and other external experts. In practical terms this means that the Commission may rapidly trigger an unpleasant international chain reaction against an EU country if it does not agree with that country's political leadership.

The Commission is also the "timekeeper" for the Rule of Law Framework. Timing is just as important in politics as it is in competitive sport. This is why it is so advantageous for the Commission to have created its own arena, where it can play on its home turf and set its own agenda. It can freely decide whether or not to initiate a rule of law investigation against a Member State, and when to move the procedure forward and to which stage. Since the communication from the Commission presenting the Rule of Law Framework does not set exact procedural deadlines, these can be determined by the Commission at its own discretion. According to its own interests, it can keep a dispute on a given Member State's supposed failings in terms of the rule of law on the agenda for as long as it chooses to, and it can shape the scenario as it pleases.

The structure of the Rule of Law Framework shows many similarities with classic infringement procedures. The exertion of pressure through structured dialogue is a feature of both, and the Commission is a "grandmaster" in this technique. Statistics show that in the majority of classic infringement procedures the Commission manages to persuade the Member State in question to change the criticised measures during the initial negotiation phase.[36] Only a fraction of infringement procedures go before the Court of Justice of the European Union. So whenever the Commission can initiate a structured dialogue it acquires significant influence; and this is also true for the Rule of Law Framework.

Two important distinctions must be made between the Rule of Law Framework and infringement procedures, however. The first is that if the Commission and the Member State cannot come to an agreement in an infringement procedure, the dispute is settled by the relevant judicial body: the Court of Justice of the European Union (CJEU). This element is entirely missing from the Commission's Rule of Law Framework, in which the CJEU plays no role whatsoever. Within the Rule of Law Framework, if the Commission and the Member State cannot come to an agreement the Commission does not have the option of bringing the matter to the CJEU – but it can activate Article 7 of the TEU. In other words, it does not bring the matter before a judicial body, but under Article 7 it can refer it to the Council or the European Council – and in part to the European Parliament, which in such cases has the power to give or withhold consent. A huge difference is that while one can at least assume the independence and impartiality of the CJEU as a judicial body, this is not even theoretically true for the Council, the European Council or the European Parliament, which are all political institutions comprising politicians. This is another reason for not considering the EU's rule of law procedures as objective and apolitical.

The other main difference between infringement procedures and the Rule of Law Framework

35 European Commission, communication from the Commission to the European Parliament and the Council, *A new EU Framework to strengthen the Rule of Law.* Strasbourg, 11th March 2014.

36 European Commission, information on infringement proceedings:
https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure_en#financial-penalties
Accessed on 2nd January 2021.

is in the sanctions applicable at the end of the procedure. In infringement procedures the CJEU may impose a financial penalty,[37] either in the form of a lump sum or a daily fine. Therefore such proceedings may have direct financial ramifications. The aforementioned letter of 6th March 2013 of the Danish, German, Dutch and Finnish foreign ministers suggested that the prospective EU rule of law mechanism should make provision for the imposition of financial penalties – in the form, for example, of suspension of payment of EU funds to the country in question. However, such penalties were not mentioned in the Commission's 2014 communication on the Rule of Law Framework. Establishing a link between EU funding and the rule of law became a political topic only after 2 May 2018 when the Commission presented a proposal for a regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States.[38] At this point, it is worth underlying that any attempt that would enable cutting EU funds because of alleged rule of law violations, could potentially have a much more negative impact on Central and Eastern European countries than on their Western European counterparts. The main beneficiaries of these funds are the Central and Eastern European countries, which acceded to the Union relatively recently, and so revocation of such funding would primarily affect those countries. In this way, the introduction of such sanctions within policy on the rule of law would be asymmetrical in nature: in practice it would represent a much bigger threat to Central European Member States than to Western European ones. In the absence of financial sanctions in the Rule of Law Framework, the only threat the Commission may make to a Member State is activation of Article 7 of the TEU at the end of the procedure. For this reason, the real power of the Rule of Law Framework is not derived from formal sanctions, but from the protracted exertion of political pressure in the European and international arenas.

37 *Ibid.*

38 European Commission, *Proposal for a regulation nr. 2018/0136 (COD) of the European Commission on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States,* 2nd May 2018
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018PC0324
Accessed on 2nd January 2021.

The "rule of law dialogue" of the Council

Other European institutions also felt compelled to react to the Commission's Rule of Law Framework presented on 11th March 2014. The Council's Legal Service[39] has produced a detailed legal critique of the new mechanism.[40] According to the Legal Service, the Commission had neither the legal basis nor the competence to create the new mechanism described above.

The Legal Service of the Council pointed out that "According to Article 5 TEU, 'the limits of Union competences are governed by the principle of conferral'". Its consequence is that "competences not conferred upon the Union in the Treaties remain within the Member States". (Clause 15) According to the expert opinion "Article 2 TEU does not confer any material competence upon the Union but, similarly to the Charter provisions, it lists certain values that ought to be respected by the institutions of the Union and by its Member States when they act within the limits of the powers conferred on the Union in the treaties, and without affecting their limits. Therefore, a violation of the values of the Union, including the rule of law, may be invoked against a Member State only when it acts in a subject matter for which the Union has competence based on specific competence-setting Treaty provisions. (Clause 16) [...] Respect of the rule of law by the Member States cannot be, under the Treaties, the subject matter of an action by the institutions of the Union irrespective of the existence of a specific material competence to frame this action, with the sole exception of the procedure described at Article 7 TEU." (Clause 17).

In other words, the Legal Service of the Council clearly determined that the Commission had created its Rule of Law Framework in breach of the bases of EU law, since it sought to act in an area in which the European Union has no competence whatsoever. As I have presented earlier, the Commission's main counterargument to this was that it had not created a new European procedure, but had come up with an internal decision-making mechanism, which now allowed it to properly weigh the activation of Article 7 of the TEU against a Member State. The Commission also emphasised that its recommendations made within the context of the proceedings were not binding. The Legal Service was not convinced by this argument, however. According to the Legal Service, "the non-binding nature of a recommendation does not allow the institutions to act by issuing such type of acts in matters or subjects on which the Treaties have not vested powers on them." Furthermore, "even if recommendations are not intended to produce binding effects and are not capable of creating rights that individuals can rely on before a national court, they are not without any legal effect. (Clause 19) The Legal Service added that "to build a permanent mechanism for a rule of law study and proposal facility operated

39 This body, part of the General Secretariat of the Council, gives opinions to the Council in order to ensure that its acts are lawful and well-drafted both in form and content. The Legal Service also represents the Council in judicial proceedings before the European Court of Justice, the General Court and the Civil Service Tribunal. https://www.consilium.europa.eu/en/general-secretariat/
Accessed on 2nd January 2021.

40 Council of the European Union, Opinion of the Legal Service, *Commission's Communication on a new EU Framework to strengthen the Rule of Law: – compatibility with the Treaties.* Brussels, 27th May 2014
http://data.consilium.europa.eu/doc/document/ST-10296-2014-INIT/en
Accessed on 2nd January 2021.

by the Commission on the combined bases of Article 7 TEU and Article 241 TFEU[41] would undermine the specific character of the procedure of Article 7(1) – particularly concerning the way it can be initiated." (Clause 21).

The Legal Service came to a conclusion that was clearly rather uncomfortable for the Commission: "there is no legal basis in the Treaties empowering the institutions to create a new supervision mechanism of the respect of the rule of law by the Member States, additional to what is laid down in Article 7 TEU, neither to amend, modify or supplement the procedure laid down in this Article. Were the Council to act along such lines, it would run the risk of being found to have abased its powers by deciding without a legal basis." (Clause 24).

The Legal Service only left open a small legal window to allow for more emphasis to be put on the state of rule of law in Member States inside the Union. According to its expert opinion, the only solution consistent with the Treaties would be if "Member States – and not the Council – agree on a review system of the functioning of the rule of law in the Member States, which may allow for the participation of the Commission and of other institutions if necessary". (Clause 26) Therefore the Legal Service thought that any kind of European Union procedure for auditing Member States in terms of the rule of law can only be created with an intergovernmental agreement, and not on the basis of current European law.

Following the opinion of the Legal Service, the Council also developed its own rule of law control mechanism, which was far more moderate than the Commission's Rule of Law Framework. In a press release on 16th December 2014 the Council announced that in order to promote and protect the rule of law it would organise political dialogue between Member States every year. It underlined that "this dialogue will be based on the principles of objectivity, non-discrimination and equal treatment of all Member States". It also stated that its mechanism "will be without prejudice to the principle of conferred competences, as well as the respect of national identities of Member States inherent in their fundamental political and constitutional structures, [...] and their essential State functions".[42]

From the Council's statement one can also deduce that it did not find the Commission's Rule of Law Framework to be an adequate instrument for control of the rule of law. According to the statement, the "dialogue established by the conclusions [of the Council] complements the existing means which the EU might use in the field of rule of law, namely the infringement procedure in the case of a breach of EU law and the so-called article 7 procedure of the Lisbon Treaty". From the above it is clear that the Council did not consider the Commission's new rule of law framework to be one of the European Union's legitimate rule of law instruments.

Not surprisingly, the advocates of a more ambitious European rule of law policy were quite sceptical about the Council's moderate, diplomatic proposal. This proposal, according

41 Under Article 241 of the TFEU, the Council, acting by a simple majority, may request the Commission to undertake any studies the Council considers desirable for the attainment of shared objectives, and to submit to it any appropriate proposals. If the Commission does not submit a proposal, it shall inform the Council of the reasons.

42 Council of the European Union, *Press release nr. 16936/14, 3362nd Council meeting, General Affairs.* Brussels, 16th December 2014, p. 21
http://data.consilium.europa.eu/doc/document/ST-16936-2014-INIT/en
Accessed on 3rd January 2021.

to which the Member States would engage in general consultation with one another on the rule of law year by year, is much less suited to exerting political pressure than the Commission's lengthier solution targeting one country at a time. At the same time, rule of law dialogue should not be underestimated, as with it the Council joined the line of institutions which have introduced regular, permanent mechanisms for monitoring the rule of law. No matter how moderate the Council's rule of law dialogue might seem originally, it has been a further element in the developing, comprehensive European rule of law policy.[43] What is more, since 2019, this instrument has also developed towards a more specific rule of law control targeting Member States.[44] This tendency has started during the Finnish Presidency of the Council and has been institutionalized during the German Presidency, which made the Commission's Annual Rule of Law Report the basis of the exchanges of views in the Council.[45]

The European Parliament's rule of law mechanism proposal

While the Legal Service of the Council felt that the Commission went too far with its Rule of Law Framework, the European Parliament declared that the Commission's solution was not comprehensive enough, and started work on its own, third, rule of law mechanism. On 25th October 2016 the European Parliament adopted a resolution comprising recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights.[46] The resolution was prepared by Sophia in 't Veld, Vice-President of the European Parliament's ALDE Group (Alliance of Liberals and Democrats for Europe).[47]

In this resolution the Parliament put forward its own ideas on the European rule of law policy. Unlike earlier reports, such as the one submitted by Rui Tavares and voted on 3 July 2013, it does not censure a particular EU Member State, but – seemingly regardless of political developments in Member States – maps out a general European rule of law mechanism which is theoretically applicable to all Member States. Therefore the text does not mention

43 Pech Laurent: The Rule of Law in the EU: The Evolution of the Treaty Framework and Rule of Law Toolbox. Reconnect, Working Paper No. 7, 30th March 2020
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3608661
Accessed on: 4th August 2021.

44 Presidency Conclusions – Evaluation of the Annual Rule of Law Dialogue. Brussels, 19th November 2019
https://www.consilium.europa.eu/media/41394/st14173-en19.pdf
Accessed on: 5th August 2021.

45 Wahl, Thomas: Council Launches Rule of Law Dialogue. Eucrim, 8th December 2020
https://eucrim.eu/news/council-launches-rule-law-dialogue/
Accessed on: 5th August 2021.

46 *European Parliament resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights,* Strasbourg, 2016.

47 Sophia in 't Veld, *Report with recommendations to the Commission on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights. European Parliament, Committee on Civil Liberties, Justice and Home Affairs.* Brussels, 2016
https://www.europarl.europa.eu/doceo/document/A-8-2016-0283_EN.pdf?redirect
Accessed on 3rd January 2021.

Hungary or Poland by name, and one only finds some indirect references to "recent developments in some Member States" and "some Member State governments". The text explicitly stresses that the new mechanism should prevent the rule of law instruments being "perceived as politically motivated or arbitrary and unfairly targeting certain countries".
By avoiding reference to specific countries, this resolution shows that, five years after the debates in connection with Hungary that erupted in 2011, the rule of law has become an independent European policy topic. This more cautious approach, avoiding direct confrontation with specific countries, contributed to the report garnering support not only from left-wing politicians, but also from the majority of the European People's Party.[48] This more neutral approach helped to lure the European right into accepting the rule of law policy platform, which was devised and constructed by the European left, and systematically used by it against governments of the right.
The Parliament envisaged "a comprehensive Union mechanism for democracy, the rule of law and fundamental rights" in the form of an "interinstitutional agreement" until there is "a possible Treaty change". By doing so, it also partially admitted that development of the mechanism is legally constrained by current EU Treaties; nevertheless, it saw a loophole for the mechanism, in the form of an interinstitutional agreement.
As with the Commission's Rule of Law Framework proposal, the Parliament's mechanism would be the precursor to an Article 7 TEU procedure, and would acknowledge and complement both the Commission's Rule of Law Framework and the Council's rule of law dialogue. At the same time, the resolution emphasised "the key role that the European Parliament and the national parliaments should play in measuring the progress of, and monitoring the compliance with, the shared values of the Union, as enshrined in Article 2 TEU", as well as in "maintaining the necessary continuous debate [...] on democracy, rule of law and fundamental rights". In contrast to the Commission's Rule of Law Framework, the Parliament's mechanism would in theory not only conduct rule of law audits of Member States, but also of European institutions such as the Parliament itself, the Commission and the Council. This position reveals itself to be more nuanced, however, when one notices that the resolution only emphasises and gives detailed explanation of action against Member States.
A further difference in comparison to the Commission's framework is that the rule of law mechanism proposed by the Parliament would not only be activated "when necessary", i.e. for individual cases against certain countries, but every Member State would be audited annually. In other words, according to the Parliament, all EU Member States should be monitored continuously. The Parliament decided that this would avert a situation in which a specific Member State felt it was being discriminated against. The Parliament saw the key to neutrality as establishing an *"expert panel on democracy, the rule of law and fundamental rights"* (the Expert Panel). According to the resolution, the Expert Panel would prepare the analyses necessary for reports on democracy, the rule of law and fundamental rights (DRF) and for country-specific recommendations.

48 See the results of the plenary session by name in *report nr. A8-0283/2016*
http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+PV+20161025+RES-RCV+DOC+WORD+V0//EN&language=EN
Accessed on 3rd January 2021.

It is worth noting at the outset that the Parliament's proposal would involve a massive mechanism, the realisation of which would require significant increases in human and financial resources. The Parliament set itself the goal of summarising the Union's various instruments on fundamental rights and the rule of law within a rule of law policy that is unified and politically more consequential.

The first stage of the mechanism suggested by the Parliament – the same way as the Commission's Rule of Law Framework – would consist of an assessment of the situation. However, the assessment of the situation would not only take place if the Commission considered this to be necessary for a given country, but – similarly to the European Semester[49] – it would have to be conducted automatically every year and for every Member State. With this measure, the Commission would lose its wide discretionary autonomy regarding the political situation of Member States. Firstly, it would no longer be in a position to decide whether or not to launch an investigation. Secondly, the assessment would first have to be done by the independent Expert Panel, to whom the Commission would only provide assistance.

The national parliaments of the Member States would each nominate an independent expert to sit on the Expert Panel. Such people would have to be "qualified constitutional court or supreme court judges, not currently in active service". In addition, the European Parliament would also nominate ten other experts by a two-thirds majority, using a method that would in reality grant significant influence to various international organisations and civil society networks. The resolution lists the organisations which would be empowered to draw up the list of candidates on behalf of the Parliament. These organisations with powers to nominate candidates would be the following: the federation of All European Academies (ALLEA); the European Network of National Human Rights Institutions (ENNHRI); the Council of Law and Bar Societies Europe (CCBE); the Venice Commission of the Council of Europe; the Group of States against Corruption (GRECO) created by the Council of Europe; the Council of Europe Human Rights Commissioner; the Council of Europe's European Commission for the Efficiency of Justice (CEPEJ); the United Nations (UN); the Organization for Security and Co-operation in Europe (OSCE); and the Organisation for Economic Cooperation and Development (OECD).

The influence of international and civil society organisations would also be increased by the fact that, in order to evaluate the situation of the rule of law in various countries, the Expert Panel would need to rely on material prepared by them. According to the Parliament's resolution, on the one hand the Expert Panel would have to rely on representatives from civil society, such as experts, scientists, civil society organisations and professional and sector-specific organisations of judges, lawyers and journalists.

49 The European Semester is a system for the coordination of economic and fiscal policies of the Member States within the EU. Its focus is on the 6-month period from the beginning of each year, hence its name: "semester". Within the framework of the Semester the Member States receive EU-level advice ("guidance"), and then submit their policy plans to be assessed at EU level. After evaluation of these plans, the Member States are given individual, "country-specific recommendations" for their national budgetary and reform policies. The Member States are expected to take into account these recommendations when they define their budget for the following year and when they take decisions related to their economic, employment, education and other policies.
https://www.consilium.europa.eu/en/policies/european-semester/
https://www.consilium.europa.eu/en/policies/european-semester/how-european-semester-works/
Accessed on 4th January 2021.

On the other hand, the Expert Panel would have to use as a starting point the indicators and benchmarks developed by NGOs. In addition, they would have to use documents prepared by the Venice Commission, GRECO, the Congress of Local and Regional Authorities of the Council of Europe, the CEPEJ, the UN, the OSCE and the OECD. The Expert Panel would also need to use documents prepared by European institutions. According to the resolution, they would have to take into consideration "all resolutions or other relevant contributions by the European Parliament", as well as documents issued by the European Union Agency for Fundamental Rights (FRA) and the European Fundamental Rights Information System (EFRIS), along with the official documents issued by "other specialised agencies of the Union, in particular the European Data Protection Supervisor, the European Institute for Gender Equality (EIGE), the European Foundation for the Improvement of Living and Working Conditions (Eurofound), and Eurostat". They would also have to keep in mind "the case-law of the Court of Justice and of the European Court of Human Rights and of other international courts, tribunals and treaty bodies". Another source to be used for analysis mentioned in the resolution would be the "contributions from the Member States authorities regarding respect for democracy, the rule of law and fundamental rights". Even though this phrasing is very vague, it probably refers to various state agencies for the protection of rights, rather than institutions or ministries that might represent governmental views.

All this demonstrates that the dominant input for the Expert Panel's rule of law assessments would come from international organisations and NGOs. By contrast, in the early stages of the mechanism there would be practically no room for a given country's official governmental position. Therefore Member State governments could only "defend their credentials" at a later stage, since their point of view would not be included from the beginning.

Even though in several places the Parliament's resolution emphasises that the rule of law mechanism should be neutral, that neutrality would be hard to achieve without the involvement of official national sources of information. The mechanism's political neutrality is also called into question by the fact that several political institutions would be influencing the procedure from the very beginning, even though classic players in national politics (such as Member State governments, opposition representatives, political parties etc.) would not be officially participating in the assessment's first stage. As we have seen, when making their rule of law assessment of the situation the Expert Panel would build upon the Parliament's political resolutions and would also closely cooperate with the Commission – a body that at that time was labelled as a political body by its own President, Jean-Claude Juncker.[50] Even though they do not carry out any political activities in the classic sense of party politics, the professional and civil society organisations listed above – who play a key role in the mechanism – cannot be considered to be neutral either, since each and every one of them represents certain interests. Furthermore, in the debates surrounding the rule of law in Hungary it became apparent that numerous Hungarian and international NGOs, which have significant influence in European decision-making,

50 Jean-Claude Juncker, opening statement in the European Parliament plenary session in Strasbourg, *A new start for Europe,* 15th July 2014.

consistently represent an anti-government position. All these aspects of the Parliament's proposal would result in the players representing national government policy being at a disadvantage from the beginning of the mechanism's procedure.

At the end of the assessment stage the Commission would prepare its report and country-specific recommendations, based on the drafts prepared by the Expert Panel. Following this there would be parallel debates in the European Parliament and the Council. At the end of its debate the European Parliament would adopt a resolution. The debate in the Council would take the form of a year-long dialogue on the rule of law, which would end with the Council's conclusions.

Depending on the results of the investigation, the mechanism could lead to a variety of subsequent procedures. If the report found a Member State to be in compliance with rule of law requirements, the procedure would be terminated and no further measures would be taken. If shortcomings were found, however, the procedure would continue in one of several ways.

One option would be that, "on the basis of the European DRF Report, in consultation with the European Parliament and the Council, the Commission may decide to submit a proposal for an evaluation of the implementation by Member States of Union policies in the area of freedom, security and justice under Article 70 TFEU".

A second option would involve the Commission deciding to launch a so-called "systemic infringement action" under "Article 2 TEU and Article 258 TFEU, bundling several infringement cases together". Thirdly, if a Member State were found to display one or more shortcomings, the Commission could initiate dialogue with it. Fourthly, the European Parliament, the Council and the Commission would decide whether to invoke Article 7(1) of the TEU, "if the country-specific recommendation on a Member State includes the assessment by the expert panel that there is a clear risk of a serious breach of the values referred to in Article 2 TEU". Finally, if the Expert Panel were to determine that "there is a serious and persistent breach – i.e. increasing or remaining unchanged over a period of at least two years – of the values referred to in Article 2 TEU", the aforementioned EU institutions could decide on the activation of Article 7(2) TEU.

The Parliament's resolution does not give detailed information on the type of sanctions applicable if the above procedure determined that a particular Member State was violating the rule of law; indeed the Parliament itself actually admits that the current Treaties do not clearly allow for financial sanctions. The resolution expressly requests, in the event of a Treaty change, specific description of the type of Member State rights – in addition to voting rights – that could be suspended if a Member State is found to be endangering the rule of law. It mentions as examples financial sanctions or the suspension of EU funding.

The rule of law mechanism proposed by the Parliament has never materialised in this form. The reason for this is its rejection by the Commission, the support of which is needed by the Parliament in order to create such a mechanism. In the next point, I shall explore the background to this in detail, and we shall also discover other interesting relationships which determine EU policy on the rule of law.

Practical and theoretical questions raised by the first rule of law instruments

The approaches to the issue of EU-level control of the rule of law in Member States adopted by the European Commission, the Council and the European Parliament differ from one another on matters of principle. For this reason, European policy on the rule of law has embraced several mutually contradictory instruments that have, in practice, proved to be incompatible. In 2019 the Commission announced an innovation: from 2020 it would launch an annual rule of law report, for which it would monitor the rule of law situation in all the Member States every year. At the end of the article, I shall examine the consequences of this new development as well.

Returning to the situation in 2014, neither the critical legal expert report issued by the Legal Service of the Council, nor the official conclusions of the Council prevented the Commission from implementing its Rule of Law Framework in practice. The serious legal concerns raised in connection with the Commission's Rule of Law Framework were outweighed by the increasingly popular political view that it was imperative to act against certain Member States.

If we consider the Council's legal argumentation, the Commission created its "rule of law protecting" instrument by distorting EU law – absurdly, therefore, itself violating the EU's rule of law. This paradox has arisen several times in connection with EU policy on the rule of law, and can be explained by the fact that the EU institutions' rule of law mechanisms are procedures which are primarily not legal in their nature, but political. The relatively new European legal order, which has only existed for half a century and is constantly changing, is unable to form the kind of barrier against political will that is provided by nations' centuries-old, firmly-established constitutional legal systems. For this reason legal provisions such as Article 7, which have not yet been subject to interpretation, can be easily moulded by prevailing political will – even in contradiction of their spirit and letter. More recently, the debate on the adoption of the "Sargentini Report"[51] in September 2018 provided us with an example of legal uncertainty in the Union. With no comparable precedent, there were contradictory interpretations of how voting ratios in the European Parliament should be calculated when launching an Article 7 procedure. Hungary took the matter to the Court of Justice of the European Union, since adoption of the report submitted by Judith Sargentini and initiation of the Article 7 procedure against Hungary were effectively due to the way the voting had been calculated.[52]

Returning to the Commission's Rule of Law Framework, we have also been able to observe its practical application in relation to Poland. Debates on the situation of the rule of law in Poland arose, after the Law and Justice Party (PiS) entered office, in connection with

51 *European Parliament resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL)).*

52 About Hungary, *Justice Minister: "Deceitful" Sargentini report was pushed through by the EP's "pro-migration majority"*, 29th June 2020
http://abouthungary.hu/news-in-brief/justice-minister-deceitful-sargentini-report-was-pushed-through-by-the-eps-pro-migration-majority/
Accessed on 5th January 2021.

the composition of Poland's Constitutional Court and changes to the law on the country's public service broadcaster. On 13th January 2016 the College of Commissioners announced that it held an orientation debate on the situation in Poland.[53] Following this, several consultations took place between the Commission and Polish authorities, and a visit to Poland was made by Frans Timmermans, First Vice-President of the Commission in charge of Better Regulation, Inter-Institutional Relations, the Rule of Law and the Charter of Fundamental Rights. On 1st June 2016 the Commission announced that it had adopted a rule of law opinion regarding Poland. With this measure the Commission's Rule of Law Framework formally began.[54]

In its opinion the Commission raised concerns over the rule of law in Poland in three areas. Firstly, it examined the appointment of constitutional judges, and the execution of the judgements in connection with this issue made by the Polish constitutional court (Constitutional Tribunal) between 3rd and 9th December 2015. Secondly, it analysed the Act of 22nd December 2015 amending the Act on the Constitutional Tribunal, together with the Constitutional Tribunal's decision of 9th March 2016 on the unconstitutionality of this Act, and also how decisions taken by the Constitutional Tribunal after that date had been implemented. Finally, it examined the effectiveness of constitutional control over new laws, including the media law, and called on the Polish authorities to remedy the concerns expressed in the opinion within a reasonable timeframe.

Barely two months after issuing its opinion, the Commission determined that Poland had not adequately remedied the situation, and therefore on 27th July 2016 it moved the procedure into the second phase by adopting a rule of law recommendation.[55] The Commission formulated recommendations regarding the aforementioned issues, also taking into consideration that on 22nd July 2016 a new law on the Constitutional Tribunal was adopted in Poland. It underlined that Polish authorities should refrain from any actions and public statements which could undermine the legitimacy and effectiveness of the Constitutional Tribunal.

Since disagreements between the Commission and Poland did not stop there, the Commission adopted a second rule of law recommendation on 21st December 2016.[56] It noted that even though Poland had managed to find solutions to certain problems, other issues had remained unresolved, and new threats to the rule of law had since arisen.

It is worth noting that by issuing a second, "complementary" rule of law recommendation,

53 European Commission, press release, *College Orientation Debate on recent developments in Poland and the Rule of Law Framework: Questions & Answers.* Brussels, 13th January 2016.

54 European Commission, press release, *Commission Opinion on the Rule of Law in Poland and the Rule of Law Framework: Questions & Answers.* Brussels, 1st June 2016
http://europa.eu/rapid/press-release_MEMO-16-2017_en.htm
Accessed on 5th January 2021.

55 European Commission, press release, *Rule of Law: Commission issues recommendation to Poland.* Brussels, 27th July 2016
https://ec.europa.eu/commission/presscorner/detail/en/IP_16_2643
Accessed on 5th January 2021.

56 European Commission, press release, *Rule of Law: Commission discusses latest developments and issues complementary Recommendation to Poland.* Brussels, 21st December 2016
https://ec.europa.eu/commission/presscorner/detail/en/IP_16_4476
Accessed on 5th January 2021.

the Commission deviated from the procedure it had itself laid down in its 2014 communication in connection with the Rule of Law Framework. According to that document, the opinion on the rule of law and the rule of law recommendation should have been followed by a follow-up phase, and finally by activation of Article 7. The Commission, however, was apparently in no hurry to activate Article 7. If one were to suppose that the Commission was afraid of initiating an Article 7 procedure, one might consider this a sign of weakness. But one could equally interpret it as the Commission keeping alive the prospect of a negotiated settlement with Poland for as long as possible. A third interpretation might be that, in line with my earlier observation, prolongation of the procedure with the deferred threat of activation of Article 7 was in the Commission's political interest, as it kept the rule of law debate within its own remit and the parameters of its own Rule of Law Framework for as long as possible. Such a tactic might be the best way of enabling it to exercise its own political influence over the Polish government.

Despite all this, the dispute between Poland and the Commission could still not be resolved a year and a half after the first orientation debate. On 19th July 2017 First Vice-President Frans Timmermans delivered a strongly-worded address on the situation in Poland. In this he emphasised that he wanted to send a clear political message, and menacingly stated that recent developments had led the Commission to come *"very close to triggering Article 7"*.[57] Finally, he announced that the Commission would issue a third recommendation on the rule of law in Poland – something which would simply prolong the procedure even further.

The recommendation of 26th July 2017 concerned four Polish legislative Acts which the Commission claimed were increasing the systemic threat to the rule of law and the independence of the judiciary: the new Act on the Supreme Court; the Act on the National Council for the Judiciary; the Act on the Organisation of the Ordinary Courts; and the Act on the National School of Judiciary.[58] The Commission highlighted its particular concern over the potential dismissal of Supreme Court judges. It urged the Polish authorities not to implement such measures, otherwise it would be obliged to immediately activate against Poland the mechanism set out in Article 7(1) of the TEU. On this occasion the Polish authorities had one month in which to comply with the Commission's requests. Furthermore, the Commission also announced that it would initiate a standard infringement procedure in relation to the Act on the Ordinary Courts. Finally, on 20th December 2017, the Commission announced that, after two years of attempting "to pursue a constructive dialogue", it had concluded that there was a clear risk of a serious breach of the rule of law by Poland.[59] Its statement included the assertion that Polish courts had come under

57 Opening remarks of First Vice-President Frans Timmermans: *College readout on grave concerns about the clear risks for independence of the judiciary in Poland,* 19th July 2017
http://europa.eu/rapid/press-release_SPEECH-17-2084_en.pdf
Accessed on 5th January 2021.

58 European Commission, press release, *European Commission acts to preserve the rule of law in Poland.* Brussels, 26th July 2017
https://ec.europa.eu/commission/presscorner/detail/en/IP_17_2161
Accessed on 5th January 2021.

59 Opening remarks of First Vice-President Frans Timmermans, *Readout of the European Commission discussion on the Rule of Law in Poland.* Brussels, 20th December 2017
https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_17_5387
Accessed on 5th January 2021.

the rule of the governing majority. Therefore it decided to trigger an Article 7(1) procedure against Poland, simultaneously issuing its fourth rule of law recommendation. It also noted, however, that it would offer the Polish government a further three months to clarify the situation and, depending on the result of this, it would be ready to review its decision on launching an Article 7 procedure.

From a legal point of view it is not clear how the Commission could have revoked its decision to trigger an Article 7 procedure, since under the Treaties the matter had already been transferred to the competence of the Council. This gesture by the Commission may have been a demonstration of its flexibility, but it also indicated that the Commission wanted to remain part of the rule of law process regarding Poland, even after activating the Article 7 procedure. This is something it has managed to achieve: the Council regularly invites the Commission to its meetings on Poland within the Article 7 procedure. However, all this is only partially due to the lobbying power of the Commission. In reality, it also makes the life of the Council – a body composed of the Member States of the Union – easier if it can continue to share with the Commission part of the diplomatically uncomfortable tasks in connection with the examination of a given Member State. In spite of this, the final decision will have to be made by the Member States.

While the Commission has used the Polish case to inaugurate its Rule of Law Framework, the rule of law mechanism proposed by the Parliament has still not been realised. The reason for this is that in the legal system of the European Union only the Commission has the right of legislative initiative. Unlike the practice in national legal systems, the European Parliament cannot initiate legislation, but can only debate proposals that the Commission puts forward. This system is somewhat modified by the fact that the Parliament may adopt a so-called "own-initiative report", in which it calls on the Commission to submit a legislative proposal on a given topic. In such reports the Parliament can define in detail the type of proposal it would like to see from the Commission. Nevertheless, the Commission is not obliged to actually put forward such a proposal. Therefore the expression "own-initiative report" tends to be misleading, since it does not provide the Parliament the real power to initiate, but only allows it to exert political pressure on the Commission.[60] The rule of law mechanism proposed by the Parliament in 2016 was also in the form of such an initiative, and so its entire fate depended on the Commission.

In its resolution of 25th October 2016 the Parliament called on the Commission to submit the rule of law mechanism proposal presented in the resolution's annex before September 2017. Without even waiting for the deadline to expire, on 17th January 2017 the Commission announced that it was refusing the request on the legislative proposal. The following quotation from the Commission's answer is a good illustration of the tensions between the two institutions:

"The Commission has serious doubts about the need and the feasibility of an annual Report and a policy cycle on democracy, the rule of law and fundamental rights prepared by a committee of 'experts' and about the need for, feasibility and added value of an inter-institutional agreement on this matter. Some elements of the proposed approach, for

60 For more detailed information on legislative competences see the website of the European Parliament: https://www.europarl.europa.eu/about-parliament/en/powers-and-procedures/legislative-powers Accessed on 5th January 2021.

instance, the central role attributed to an independent expert panel in the proposed pact, also raise serious questions of legality, institutional legitimacy and accountability. Moreover, there are also practical and political concerns which may render it difficult to find common ground on this between all the institutions concerned.
The Commission considers that, first, the best possible use should be made of existing instruments, while avoiding duplication. A range of existing tools and actors already provide a set of complementary and effective means to promote and uphold common values. The Commission will continue to value and build upon these means."[61]
In other words, to date the Parliament's rule of law mechanism has been a failure. The Parliament has not given up on influencing the European rule of law policy, however. On 17th May 2017 it adopted a new resolution on the situation in Hungary, in which it tasked the Committee on Civil Liberties, Justice and Home Affairs (LIBE) to prepare a report that would enable the Parliament to trigger Article 7(1) TEU against Hungary.[62] Judith Sargentini, a Dutch Green politician was tasked with preparation of the report. Having lost its battle against the Commission by failing to ensure that the rule of law policy took the form of the mechanism it had proposed, the European Parliament turned to a good old solution: it put the issue of the rule of law in Hungary back on the agenda. This enabled the Parliament to once again become the centre of attention of EU policy on the rule of law. After the Commission had initiated Article 7 against Poland, certain forces in the Parliament felt justified in thinking that their turn had come to activate Article 7 against Hungary.
In triggering Article 7 against Hungary, however, the Parliament was also playing its highest political trump card.[63] With the activation of Article 7 the case was passed over to the Council, in which Member States had sole competence in making a decision on Hungary. From this stage on, the Parliament's role was limited to giving its consent to the Council's decision, the contents of which it could no longer officially influence. For MEPs trying to build the rule of law policy this was not necessarily an advantageous position, since they thus lost their decision-making power. For this reason, the Left in the Parliament started intensively lobbying the Council to allow MEPs to participate in Council meetings dealing

61 European Commission, *Follow up to the European Parliament resolution with recommendations to the Commission on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights, adopted by the Commission on 17 January 2017*. Brussels, 17th January 2017 http://www.europarl.europa.eu/oeil/spdoc.do?i=27630&j=0&l=en
Accessed on 5th January 2021.

62 *European Parliament resolution of 17 May 2017 on the situation in Hungary,* Strasbourg, 2017 https://www.europarl.europa.eu/doceo/document/TA-8-2017-0216_EN.pdf?redirect
Accessed on 5th January 2021.

63 This might be the reason, two months after triggering Article 7 against Hungary, for the Parliament adopting a new resolution on 14th November 2018, in which it reiterated its request for the Commission to present a proposal for a comprehensive EU Mechanism on Democracy, the Rule of Law and Fundamental Rights.
European Parliament resolution of 14 November 2018 on the need for a comprehensive EU mechanism for the protection of democracy, the rule of law and fundamental rights
https://www.europarl.europa.eu/doceo/document/TA-8-2018-0456_EN.html
Accessed on 5th January 2021.

with the ongoing Article 7 procedure against Hungary.[64] Incidentally, this attempt was very unusual, because current practice dictates that, as a competing legislator, the Parliament can never participate in the Council's meetings.

The Article 7 procedure initiated by the Parliament against Hungary has once again created a paradoxical situation in the European Union, showing the difficulty the Union has in objectively using legal standards to assess the situation of the rule of law in Member States. What we now see is that the Commission and the Parliament have each felt justified in activating an Article 7 procedure against a different Member State. While it is true that both EU bodies had the right to enforce Article 7, if they had used a neutral set of criteria as the basis of their action, there would not have been such inconsistencies in terms of the country targeted and the reasons for activation. This created a paradoxical situation: the Parliament initiated an Article 7 procedure against Hungary without the Commission seeing grounds for such an activation, or even auditing the country with its Rule of Law Framework; by contrast, the Commission monitored Poland through its Rule of Law Framework for two years before deciding on activation of Article 7.

Thus there are two countries currently under an Article 7 procedure, against which the procedure has been initiated in two different ways. The "boosters" of the rule of law policy will have to take account of the fact that the two countries will show solidarity to each other in the resultant political situation. This will be decisive if in the future the European Council votes on whether these Member States have been seriously and persistently breaching the rule of law. This is because Article 7(2) states that the vote will only be successful, and the Union will only be able to impose sanctions, if there is unanimity among the Member States. Legally speaking, a single dissenting Member State is enough for the vote to fail: Poland could veto the vote against Hungary, and vice versa. The forces backing EU policy on the rule of law have already had the idea of trying to merge the procedures against the two countries, in order to prevent them from exercising their veto rights. The logic behind this attempt to circumvent the veto would be to handle the two cases together and vote on the two Member States simultaneously in one round. Such a process would be complete legal nonsense, as it is not allowed for in the Treaties. As a result of the aforementioned EU rule of law paradox, however, some actors are concerned that EU law might be reinterpreted in this case also – even though it would contradict Treaty provisions.

Interactions between European institutions on the topic of the rule of law also clearly illustrate the complexity of the political system within the European Union. In this complex political system, it is not always clear who is influencing whom in a certain matter. Political pressure from certain Member States and the European Parliament surely had an influence

64 See, for example, Judith Sargentini's speech in the European Parliament on 30th January 2019, during the debate entitled *"The rule of law and fundamental rights in Hungary, developments since September 2018"*, in which she demands that the Council invite her to debates on Article 7:
http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20190130+ITEM-020+DOC+XML+V0//HU&language=HU&query=INTERV&detail=1-099-000
Accessed on 5th January 2021
EU Observer, EU action on Hungary and Poland drowns in procedure, 13 November 2018
https://euobserver.com/political/143359
Accessed on 5th January 2021.

on the Commission developing its own Rule of Law Framework. After having developed a rule of law tool it considered to be the right one, however, the Commission categorically rejected any further guidance from the Parliament. Similarly, while certain Member States had clearly requested the Commission to introduce an EU-level rule of law control over Member States, the Council – consisting of Member States – did not want to recognise the Commission's Rule of Law Framework. Instead it created its own, more moderate, instrument in the form of a rule of law dialogue.
All this leads to conclude that the institutional competition that had characterised the European Union since the Treaty of Lisbon's entry into force in 2009 also had a strong influence on EU policy on the rule of law in the 2014 – 2019 legislative term. To a certain extent, both Hungary and Poland have been victims of this power struggle between EU institutions.

The Commission's Annual Rule of Report

In 2019 the European Commission announced its plan to establish an "Annual Rule of Law Review Cycle", with an "Annual Rule of Law Report" at its core. It published its first Annual Rule of Law Report in 2020.[65] Since that time, the official communications of the Commission have referred to the Annual Review Cycle as the "Rule of Law Mechanism". This is a new milestone in the evolution of the European rule of law policy, which suggests that the rule of law debate will remain at the centre of the European political agenda in the 2019-2024 legislative term also.
By the creation of the Annual Rule of Law Report the Commission monitors the situation of the rule of law every year in each Member State. The 2020 report comprises several documents. The first is a 27-page communication on "The Rule of Law Situation in the European Union".[66] This document presents the context and the aim of the first Annual Rule of Law Report of the Commission. It then gives an overview of its assessment of the situation in the European Union in the four identified fields. The document is organised by topic and seeks to give a synopsis of the overall European situation, highlighting some practices from Member States as examples to illustrate its overall assessment. The second document is a 32-page abstract summarising the country-specific reports.[67] This document is organised by country, each one the subject of a one-page abstract describing the Commission's main findings. The third of the documents contains

65 European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions; 2020 Rule of Law Report; The rule of law situation in the European Union, COM/2020/580 final*. Brussels, 30 September 2020 https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1602583951529&uri=CELEX%3A52020DC0580 Accessed on 6th January 2021.

66 *Ibid.*

67 European Commission, *Rule of Law Country Reports 2020* https://ec.europa.eu/info/sites/info/files/rule_of_law_2020_country_reports_2_web.pdf Accessed on 8th January 2021.

the detailed country-specific reports,[68] the lengths of which vary considerably depending on the country under examination. The report on Luxembourg, for example, is only 14 pages long, while that on France covers 15 pages. Meanwhile the reports on Poland and Hungary are 26 and 28 pages long respectively, which suggests that these countries were examined more thoroughly than the others.

Analysing the country abstracts leads to the conclusion that the chapters on Hungary and Poland are by far the most negative. In this regard, there is no departure from the trend of the past decade: these two countries clearly remain the focus of European policy on the rule of law. Many international media outlets have also confirmed this tendency. Although all Member States received criticisms, their nature and gravity are not comparable to those levelled against Hungary and Poland. Most of the serious concerns raised in the report relate to corruption and the situation of the media and the judiciary in Hungary and Poland – and, to a less extent, in some other "new" Member States that joined the European Union in or since 2004.[69] The country abstract on Hungary, for example, contains only one positive sentence, acknowledging that "as regards efficiency and quality, the justice system performs well in terms of the length of proceedings and has a high level of digitalisation."[70] All the remaining comments express negative assessments and concerns.

A careful reading of the country abstracts also shows that a great deal depends on the wording. For example, the section on Hungary observes with concern that "the independent National Judicial Council faces challenges in counter-balancing the powers of the President of the National Office for the Judiciary in charge of the management of the courts."[71] This is conspicuously at odds with the preceding section on Luxembourg, where no such judicial council even exists. Nevertheless, Luxembourg's judicial system is described as displaying a high level of independence, with a further positive development being that "a constitutional reform is being discussed in Parliament to further strengthen judicial independence […] by establishing a council for the judiciary."[72]

The Rule of Law Mechanism created by the Commission with a report regularly assessing

68 2020 Rule of Law Report – communication and country chapters
https://ec.europa.eu/info/publications/2020-rule-law-report-communication-and-country-chapters_en
Accessed on 8th January 2021.

69 For example, Le Figaro, *Bruxelles sonne l'alerte sur l'État de droit dans l'UE [Brussels sounds the alarm on rule of law in the EU],* 30th September 2020
https://www.lefigaro.fr/international/bruxelles-sonne-l-alerte-sur-l-etat-de-droit-dans-l-ue-20200930
Accessed on 8th January 2021.
or politico.eu, *Commission report finds many EU nations fall short on rule of law,* 30 September 2020
https://www.politico.eu/article/european-commission-report-finds-many-eu-nations-hungary-poland-malta-bulgaria-falling-short-rule-of-law/
Accessed on 8th January 2021.

70 European Commission, *Rule of Law Country Reports 2020, Abstract – Hungary,* p. 21
https://ec.europa.eu/info/sites/info/files/rule_of_law_2020_country_reports_2_web.pdf
Accessed on 8th January 2021.

71 *Ibid.*

72 *Ibid., Luxembourg,* p. 20
https://ec.europa.eu/info/sites/info/files/rule_of_law_2020_country_reports_2_web.pdf
Accessed on 8th January 2021.

the situation in all Member States is clearly similar to the EU Mechanism on Democracy, the Rule of Law and Fundamental Rights proposed by the European Parliament in 2016. Both mechanisms have at their core the idea of the continuous monitoring of all Member States in the name of the rule of law. It is important to recall that this idea was first mooted by the Parliament, and categorically rejected by the Commission in 2017.

Within a few years the Commission had undergone a conversion. In its first Annual Rule of Law Report it states that its new "rule of law mechanism further reinforces and complements other EU instruments that encourage Member States to implement structural reforms in the areas covered by its scope, including the EU Justice Scoreboard and the European Semester, and now the Next Generation EU instrument. […] Other elements in the EU's rule of law toolbox will continue to provide an effective and proportionate response to challenges to the rule of law where necessary".

Yet one should not rush to the conclusion that in establishing the Annual Rule of Law Report the Commission had yielded to the demands of the European Parliament. If we take a closer look at the Parliament's earlier proposal for a mechanism and compare it with the Commission's Annual Rule of Law Report, we can observe some fundamental differences. The Parliament's 2016 proposal called for the establishment of an inter-institutional agreement that would have given it much greater prominence. This inter-institutional agreement would have given a major role to an independent expert panel, tasked with assessing the situation of the rule of law in the Member States. In such a setup the Commission would have had much less freedom in assessing the situation in Member States. The Parliament, on the other hand, could have had more influence over the evaluation procedure, since it would have nominated several members to the Expert Panel. Such an expert body does not feature in the Commission's design for the Rule of Law Mechanism. On this point the Commission remained consistent with its previous position by keeping the task of evaluation for itself, thus continuing to play the central role in the European rule of law policy – and even extending its power.

One might logically suppose that the European Parliament would not be completely satisfied with this new solution from the Commission. Fortunately we did not need to wait long to learn the Parliament's position. On 7th October 2020, one week after the first Annual Rule of Law Report of the Commission was released, the European Parliament once again adopted a resolution on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights. This time the rapporteur was an MEP from Slovakia, Michal Šimečka, one of the vice-presidents of the European parliamentary group Renew Europe.

In this resolution, the European Parliament "welcomes the Commission's work on its annual Rule of Law Report", and the fact that "corruption and media freedom is part of the annual assessment." It notes, however, that the Commission's annual report "fails to encompass the areas of democracy and fundamental rights". The Parliament "particularly regrets that freedom of association and the shrinking space for civil society are not part of the annual assessment; underlines with concern that vulnerable groups, including women, persons with disabilities, Roma, LGBTI persons and elderly persons, continue not seeing [sic] their rights fully respected in some Member States and are not fully protected from hate and discrimination, in breach of Union values as provided for in Article 2 TEU". In consequence, "it recalls that Parliament has repeatedly called

for a monitoring mechanism to cover the full scope of Article 2 TEU". It also reiterates "the need for an objective and evidence-based monitoring mechanism enshrined in a legal act binding the three institutions to a transparent and regularised process, with clearly defined responsibilities, so that the protection and promotion of all Union values becomes a permanent and visible part of the Union agenda." The Parliament also underlines that the EU's Rule of Law Mechanism "should contain country-specific clear recommendations, with timelines and targets for implementation, to be followed up in subsequent annual or urgent reports", and that "failure to implement the recommendations must be linked to concrete Union measures".

The Parliament suggests establishing a mechanism that "should consolidate and supersede existing instruments to avoid duplication, in particular the Commission's annual Rule of Law Report, the Commission's Rule of Law Framework […]". It does not abandon the idea of establishing an independent expert panel, designed to advise the three institutions and the working group established by them. According to the draft inter-institutional agreement suggested by the Parliament, the Expert Panel should "identify the main positive and negative developments in each Member State". Even though the Commission would draft the annual report, if its assessment "diverges from the findings of the panel of independent experts, the European Parliament and the Council may request the Commission to explain its reasons to the Working Group".

In its Annual Rule of Law Report published on 30th September 2020, the Commission stated that it looked forward to "following up on the European Parliament resolution currently under preparation". The European Parliament resolution presented above makes it clear that there is still considerable divergence between the concepts of these two institutions.

Finally, there is one interesting idea that was mentioned in the European Parliament's 2016 resolution, which is missing both from the Commission's Annual Rule of Law report and the latest European Parliament resolution. In 2016 the European Parliament recommended that "the EU Pact for DRF [democracy, the rule of law and fundamental rights] include preventative and corrective elements, and address all Member States equally as well as the three main Union institutions." Although at the time the resolution did not develop it in detail, the idea of subjecting the three main European institutions to rule of law monitoring appeared in the text. In 2020 neither the European Parliament nor the Commission mentions such an idea in their documents, although it would be relevant. As the Legal Service of the Council also underlined in 2014, the values enshrined in Article 2 of the TEU are primarily binding upon the European institutions. In consequence, the European rule of law policy should first of all monitor EU institutions' respect for the rule of law. Such a mechanism should be able to effectively address the concerns that arise over the functioning of European organs. The first Annual Rule of Law Report of the Commission foresees that "it will be complemented by a set of upcoming initiatives including the European Democracy Action Plan, the renewed Strategy for the Implementation of the Charter of Fundamental Rights." It remains to be seen whether the Commission will take the opportunity to address the lawful functioning of European institutions in these initiatives.

Conclusion

During the 2010s, European institutions have put in place several instruments which aim at controlling Member States in the name of the rule of law. These instruments have developed in a context of EU criticism formulated against some Central and Eastern European Member States. This article first made a reflexion about the notion of the rule of law referring to which European institutions have put in place a completely new political toolbox. Than it analysed in detail the European Commission's 2014 Rule of Law framework applied against Poland, the rule of law dialogue of the Council, the European Parliament's proposal for an EU mechanism on democracy, the rule of law and fundamental rights, as well as the Commission's Annual Rule of Law Report introduced in 2019. The detailed examination of each instrument as well as of their interaction showed that their structure and workings differ depending on the institution which created them, and generally tend to increase the political and institutional power of the creating institution. Paradoxically, although these instruments label themselves as "rule of law protecting instruments", their legal basis is uncertain and therefore their existence is questionable from the very perspective of the rule of law as it has also been voiced by the Legal Service of the Council.

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Territorial State Administration of the Visegrad Countries (V4)

Zoltán HEGYESI

Abstract

This article analyses the territorial state administration of the V4 Countries (Czech Republic, Poland, Hungary and Slovakia), with trying to highlight some important features about the task-performing system of the chosen countries in a comparative perspective.[1] Besides analysing similarities and singularities of the current task-performing systems, the article also gives a short summary about the current ruling trends and tendencies of public administration development in V4 countries. This additional topic is necessary and can not be avoided because of the countinous changing of territorial state administration generated by the policy makers. In order to give a comprehensive image of the task-performing systems, we applied institution-based approach as a method.

Keywords

comparative public administration V4 countries, territorial state administration, organizational system, trends in public administration

Introduction: Comparative Law and Comparative Public Administration

From the point of view of our subject, it is important to distinguish between comparative administrative law and comparative public administration. In the practice of comparative administrative law, the starting point is directly related to the legal institution, the legal norm or at least the specific regulatory issue under review. This also means that such researches typically move and draw conclusions within the framework of legal interpretation.[2]
Parallel to these, it can be stated the subject of the comparative public administration is the public administration itself. Naturally, this also implies that the understanding of the public administrations' functioning cannot be separated from positive law.

1 A study on a similar subject was published in 2019 in hungarian: HEGYESI, Zoltán: A visegrádi országok területi államigazgatása. [Territorial State Administration in V4 Countries]. in: *Új Magyar Közigazgatás*, 2019, 3.

2 See, for example: RENÉ, Seerden J.G.H. (ed.): *Administrative Law of the European Union, its Member States and the United States, A Comparative Analysis, 3rd Edition*, Cambridge 2018., GERENCSÉR, Balázs Szabolcs (ed.): *Összehasonlító és Európai Uniós közigazgatási jog [Comparative Administrative Law and Administrative Law of the European Union]*, Budapest 2015. The following work: ROSE-ACKERMAN, Susan – LINDSETH, Peter – EMERSON, Blake (eds.): *Comparative Administrative Law, 2nd Edition*, Cheltenham, Northamton 2017 uses a methodology different from the classical approach, which is actually a cultural comparative work.

Therefore, during the scientific examination of public administration, law is a determining, but not an exclusive factor. The comparative administrative works are usually reflect an interdisciplinary or multidisciplinary approach.[3] At this point, we have to mention Zoltán Magyary – an internationally renowned practitioner of the Hungarian public administration science – who attempted to synthesize public administrative law and public administration science in his work entitled to *Magyar Közigazgatás (Hungarian Public Administration)*.[4]

Applied Methodology

This comparative public administrative study uses the tool of spatial comparison for the examination.[5] However, it poses a challenge to select countries for this comparison. In order to determine this, at first it is necessary to consider the following aspects: 1) similar historical-political-cultural traditions; 2) example-following administration – mainly German, and French in a lesser extent; 3) 'Euro-conform' public administration.[6] With all these in mind, the Visegrad Countries (Czech Republic, Poland, Hungary[7] and Slovakia) have been selected from the Central European, post-socialist countries.[8]
A further question is that how and by what criteria the comparison itself can be made and a valid conclusion can be drawn. The subject of the study is the territorial level of state administration and the system of state administrative tasks. Examining this issue is far from being untroubled, as the administrative structure and functioning of each country are different, and the regional governments and settlement-level municipalities created through decentralization play a decisive role in the performance of state administrative tasks, while

3 See, for example: CHANDLER, J. A. (ed.): *Comparative Public Administration, 2nd Edition*, London 2014., KUHLMANN, Sabine –WOLLMANN, Hellmut: *Introduction to Comparative Public Administration. Administrative systems and reforms in Europe,* Cheltenham, Northamton 2014., KUHLMANN, Sabine –WOLLMANN, Hellmut: *Introduction to Comparative Public Administration. Administrative systems and reforms in Europe*, Second edition, Cheltenham, Northamton 2019.; ONGARO, Edoardo (ed.): *Public Administration in Europe. The Contribution of EGPA*, New York, 2019., TEMESI, István: *Regionalizmus és regionalizáció [Regionalism and Regionalization],* Pécs 2006. https://ajk.pte.hu/files/file/doktori-iskola/temesi-istvan/temesi-istvan-vedes-ertekezes.pdf (Accessed: 11.06.2021).

4 MAGYARY, Zoltán: Magyar Közigazgatás [Hungarian Public Administration], Budapest 1942, 6.

5 Lajos Lőrincz, a prominent representative of Hungarian public administration science, distinguishes two dimensions of comparison: spatial and temporal comparison. "In the case of spatial comparison, the same phenomena and institutions can be compared on the basis of their different geographical location and occurrence, usually at the same time. Temporal comparison primarily follows changes over time in the same phenomena in the same area." See in: LŐRINCZ, Lajos: Összehasonlítás a közigazgatásban [Comparison in Public Administration], in: *Magyar Közigazgatás*, 1999, 1, 225–230.

6 All EU member state's administrations are euro conform. LŐRINCZ, Lajos (ed.): *Közigazgatás az Európai Unió tagállamaiban [Public Administration in the Member States of the European Union]*, Budapest, 2006, 18.

7 For more information about the hungarian public administration in english see: PATYI András – RIXER Ádám (eds): *Hungarian Public Administration and Administrative Law*, Passau 2014.

8 For a description of post-socialist countries as independent models, see: SZAMEL – BALÁZS – GAJDUSCHEK – KOI (eds.) op. cit. Another classification, based on EIPA research, also distinguishes Eastern European and South Eastern European traditions. See in: HALÁSKOVÁ, Martina: Public Administration in EU Countries. Selected comparative approaches. *Central European Review of Economic Issues.* 2015, 18, 45-58. https://www.ekf.vsb.cz/export/sites/ekf/cerei/cs/cisla/vol18/vol18num1/dokumenty/VOL18NUM01PAP04.pdf (Accessed: 11. 06. 2021).

in other member states the general authority responsible for the territorial representation of the Government has most of the functions and powers of the state administration.[9] It would be better for the research if there would be a territorial state administration body with general competence in each of the selected countries. In the absence of such in the Czech Republic,[10] it is appropriate to examine how the performance of state administrative tasks is carried out at regional and local level.

Therefore, the first task is to determine whether the given country has a mid-level state administration body with general competence in the territorial representation of the central administration (Government), which thus provides a coherent structure for handling most of the state administrative matters. Based on this, the study examines the organizational structure of the territorial state administration, including the legal status, functions and powers of the territorial representative of the state, the additional territorial administration bodies, and the role of decentralized administration in the performance of state administrative tasks. It is also a part of the methodology that the present work essentially seeks to highlight the specialties of the countries examined. Its main purpose to provide relevant information on the current system of administrative tasks and the relationship between deconcentration and decentralization in the Visegrad Countries after the New Public Management (NPM), by evaluating the results. A further question is that whether the domestic changes in the territorial state administration of recent years and their directions – re-centralization, concentration of functions and powers, organizational integration – can be detected in other countries, or it is an exclusively Hungarian specialty.

Organizational System of Territorial State Administration

Hungary, Poland and Slovakia have dual public administration systems, which means that state administration and local administration are separated. In contrast in the Czech Republic, which is included in monist models, the key actors of the state administrative tasks are the municipal authorities, established through decentralization (on NUTS 3 level), and the settlement-level municipalities. In organizational terms, Poland has the most stable territorial state administration. In a taxative way, the Polish legislation in force[11] taxative defines the bodies which have autonomous state administrative functions and powers in the area of Vojvodina (NUTS 2 region):

- the voivode,
- integrated state administrative bodies under the control of the voivode, including the heads of integrated services, surveillances and the Voivodeship Police,

9 BALÁZS, István: Az államigazgatási hatósági szolgáltatások közigazgatás-szervezési modelljei [Models of Public Administration Organization of Public Administration Services]. in: *Új Magyar Közigazgatás*, 2015, 3, 2–13.

10 See: http://eastr-asso.org/fiches-pays (Accessed: 11. 06. 2021).

11 Act on Voivode and Government Administration in the Voivodeship of 23 January 2009.

- non-integrated territorial state administrative bodies,
- the head of the district administration,[12] acting in the state administrative power of the stratosta,
- territorial and local self-governments (at regional, district and municipal level) and their bodies, and their associations by legislation or agreement.

In Hungary and in Slovakia, the government's territorial state administration body with general competence is on NUTS 3 level. The common feature of the two countries is that the legislator has reorganized and redrawn the organizational system of the state administration several times since the regime change. This continuous organizational change did not show a downward trend in this decade either.[13] In other words, from a structural point of view, the territorial state administration is unstable in these countries. Another common feature is that the changes of recent years have resulted in a high degree of organizational integration of territorial state administration. The complete review of this deconcentrated body scope also supports this statement, which resulted in the elimination of the vast majority of regional (district, in the case of Slovakia) and local state administrative bodies, and their functions and powers has been integrated into newly established bodies with general competences[14] (this process is also called as external integration).[15]

12 The starosta is the head of the executive body of the district's self-government, the district board. For his position in the organizational system of the territorial administration, see: SAKOWICH, Marcin: Rebirth of Local Government in Poland: 25 years of Decentralization Reform, in: *The Palgrave Handbook of Decentralisation in Europe*, RUANO, José Manuel – PROFIROIU, Marius (ed.): Palgrave Macmillan, Springer 2017, 336–340.

13 See in: KLIMOVSKÝ, Daniel: *Inter-municipal Cooperation in Slovakia. The Case of Regions with Highly Fragmented Municipal Structure*, Novo Mesto 2014, 51–90.

14 For details on the directions of public administration development in Hungary and the integration of the territorial state administration, see: BALÁZS, Isván: *A közigazgatás változásairól Magyarországon és Európában a rendszerváltástól napjainkig [Changes in Public Administration in Hungary and Europe Since the Change of Regime until Today]*, Debrecen 2016.

15 In the case of Slovakia, as a first step, 64 district-level bodies – including land, education offices, education offices, environmental authorities, transport authorities and forestry directorates – ware abolished, as well as regional state administration offices, which in some cases also have territorial representation of the state. This reform did not only concern the deconcentrated bodies with special powers, but also the universality of the territorial state administrative bodies with general powers, abolishing or reorganizing the district offices. For the position of the relevant bodies in the public administration, see: MARIŠOVÁ, Eleonóra –PÉTERI, Gábor: *Administrative Law*, Nitra 2012. 30–33.; MASÁROVÁ, Jana – KOIŠOVÁ, Eva – HABÁNIK, Jozef: Public Administration in the Territory of the Slovak Republic after 1990, in: *Sociálno Ekonimická Revue*, 2017, 1, 52–64. https://fsev.tnuni.sk/revue/papers/178.pdf (Accessed: 11. 06. 2021).

The objectives of the Public Administration Reform Programmes (ESO – Effective, Reliable and Open PA; Effective Public Administration 2014-2020, National Reform Programme of the Slovak Republic 2018) in Slovakia are partly related to the former New Public Management (NPM) and Good Governance public administration development trends. [16]However, as in Hungary, it sees the guarantee of an adequate level of performance of state administrative tasks in the state administrative bodies organized through centralization and deconcentration.[17]

The Status and the Most Important Functions and Powers of the Territorial Representative of the State

We can found many similarities in the mandate of the state territorial representative for Poland, Slovakia and Hungary. For example, each countries regulations require citizenship, legal capacity and impunity as conditions of appointment. In addition, it can be noted that the territorial representatives are considered as political leaders, and their mandate is obtained from the Prime Minister (or from the Government, in the case of Slovakia), on the proposal of a Minister.

In Poland, the territorial representation of the central state is the responsibility of the voivodes (16 people).[18] In addition to the above, the Polish legislation requires 3 years of experience in personal matters, but good reputation is also required. At the same time of his appointment, the voivode grants a guarantee that he will perform his tasks on the appropriate level during his term of office. Nevertheless, he is considered as a political leader, not as an administrative professional.[19] The mandate of the voivode is for an indefinite period, and he may be withdrawn from duty or may be dismissed at any time without reasoning by the decision of the head of the Government. Despite the indefinite appointment, they are typically replaced when a new government is established.[20]

The functions and powers of the voivode are determined by law based on the Polish Constitution in force. Accordingly, Article 3 of the Law on the State Administration of the Vojvodina[21] concludes that the voivode is the representative of the Council

16 RANDMA-LIIV, Tiina – DRECHSLER, Wolfgang: Three decades, four phases: Public administration development in Central and Eastern Europe, 1989-2017, in: *International Journal of Public Sector Management*, 2017, 6-7, 595-605. https://doi.org/10.1108/IJPSM-06-2017-0175.

17 Comp.: JACKO, Tomáš – MALÍKOVÁ, Ľudmila: Public Administration in Slovakia – One Step forward, Two Steps back? in: *The Past, Present and the Future of Public Administration in Central and Eastern Europe*, VINTAR, Miro – ROSENBAUM, Allan – JENEI, György –DRECHSLER, Wofgang, Bratislava 2013, 227–250.; DUDINSKÁ, Irina – CIRNER, Michal: Crucial Legislative Reforms in Public Administration in Slovakia Since 1990. *Hungarian Journal of Legal Studies*, 2016, 1, 25–41. https://akademiai.com/doi/abs/10.1556/2052.2016.57.1.3 (Accessed: 11. 06. 2021).

18 https://www.eastr-asso.org/fiches-pays (Accessed: 11. 06. 2021).

19 On the territorial representation of the state in Europe in comparative aspects, see: TEMESI, István: Az állam területi képviselete Európában [Territorial Representation of the State in Europe], in: *Pro Publico Bono – Magyar közigazgatás*, 2016, 3.

20 https://www.eastr-asso.org/fiches-pays (Accessed: 11. 06. 2021).

21 Act on Voivode and Government Administration in the Voivodeship of 23 January 2009.

of Ministers,[22] and in accordance with the decisions of the Government, he coordinates and facilitates the territorial execution of the governmental tasks. In relation to the latter, he manages and coordinates the activities of the joined administrative bodies operating under his subordination, and he also monitors the performance of state administrative tasks delegated by law or contracted out by self-governments in terms of legality, efficiency and expediency. As a body with general competence, its functions and powers are not limited to a single administrative sector, but it is extended to all administrative matters in the Voivodeship that are not expressively referred by law to another body's competence. In statutory cases, he is acting as a court of first instance,[23] and in most state administration cases as a general forum of legal remedy In addition to the handling of state administration matters, it is important to mention that within his area of competence, he is also responsible for interpreting the rules of state administrative proceedings. Furthermore, he also oversees the lawfulness of self-governments,[24] and – as the representative of the State Treasury – he oversees the management of state assets within the area of the voivodeship.

The working organization of the voivode is the Voivodeship Office, which is made up of departments and main departments. It is also important to mention the *wojewódzka administracja zespolona,* (integrated administrative bodies) under the control of the voivode, which have autonomous functions and powers. At present, there are 14 integrated state administrative bodies, such as the Regional Police, the State Fire Service, the monument protection agency, the pharmaceutical authority and the commercial authority. As a general rule, the organizational and operational rules are determined jointly by the voivode and the Voivodeship Office. In the absence of contrary provisions of law, the integrated administrative bodies carry out their tasks with the help of the Voivodeship Office. The voivode, who has political responsibility for their activities, provides them the conditions to perform their tasks effectively. Accordingly, the voivode, on the one hand checks, and on the other hand, coordinates their operation. However, it is important to highlight that – despite their common features – the legal status of each body is different. Examples of this are the leaders of the Regional Police and the State Fire Service, who – unlike in the case of other bodies – are not appointed or dismissed by the voivode, and who, in addition, are members of the Advisory Board of the Voivodeship by law.[25] However, it would be difficult to imagine an efficient, citizen-centered delivery of tasks if the integrated public administration organized at regional level did not have subordinate unites. For this reason, some bodies, such as police stations and fire departments also have district-level units. These bodies have their own management, autonomous functions

22 Consequently, he also entitled to represent the Voivodeship, for example in the case of diplomatic visits. The significance of this is appreciated in the context of the Voivodeship municipality. For an analysis of potential conflicts between the voivodeship and the Marshal, see: BARANYAI, Nóra: *A kormányzás területi, történeti és társadalmi dimenziói [The Territorial, Historical and Social Dimensions of Governance]*, Pécs 2013, 100–110. http://www.rkk.hu/rkk/publications/phd/baranyai_ertekezes.pdf (Accessed: 11. 06. 2021).

23 For example, passport administration and procedures for approving railway track construction.

24 See more in: KULESZAD, Michał – SZEŚCIŁO, Dawid: Local Government in Poland, in: *Local Government in the Member States of the European Union: A Comparative Legal Perspective*, MORENO, Angel-Manuel (ed.), Madrid, 2012, 491.; About the contents of the supervisory power, see: PAWŁOWSKI, Slawomir: Administrative Law, in: *Handbook of Polish law*, DAJCZAK, Wojciech – SZWARC, Andrzej J – WILIŃSKI, Paweł (eds.), Warszawa 2011, 261–262.

25 See more in: SZAMEL – BALÁZS – GAJDUSCHEK – KOI (eds.) op. cit., 685.

and powers, but are under the control of the stratostra, who, among other things, exercise staffing powers over the leaders of the body.

Compared to these, the Hungarian characteristics can be summarized as follows. In Hungary, the appointment of a Government Commissioner is linked to the Prime Minister's mandate, which means that his legal relationship ends at latest when the Prime Minister's mandate ends. The Government Commissioner is the head of the Government Office. The seat of a county government office is in the country seat, and the seat of the Government Office of the Capital City Budapest and the seat of the Government Office of Pest County are in Budapest. The government office is made up of departments and district offices run directly by the Government Commissioner. The branch-offices of the Government Office are the district offices and the metropolitan district offices.[26] They have differentiated functions and powers.[27]

District offices have independent functions and powers, and most first instance administrative matters are handled at this level.[28] The branch-offices of the district offices are the government windows (one-stop shops).[29] It should be noted that the internal organizational units and the district offices do not have separate functions and powers. In organizational terms, this means decisive influence and total subordination, but the decisional right of the head of the body is not absolute, it can be exercised within a legal framework. The system developed as a result of internal and external organizational integration in recent years raises questions in the field of the enforcement of administrative aspects. On the one hand, with the end of the professional management power, the legal instruments needed to ensure a uniform level of law enforcement have been narrowed down at the central sectoral level. On the other hand, the transformation of the forum system of legal remedies (the general redress procedure available upon request has become the administrative actions instead of appeal procedures) led to a new particular situation in which the courts should play the role of the former authorities of second instance, enforcing specific administrative interests, too.

The central territorial units of Slovakia are the districts (79), which are of particular importance for the current state administration system. In the two largest cities – the capital, Bratislava and Kosice – several district-level municipalities have been established. This is important, because the number of governmental administrative bodies with general competence is 72, thus – unlike the other countries examined – the system is only partially adapted to the territorial structure of the country. Unlike in the case of Hungary and Poland, their constitution does not mention district offices established in 1st October 2013, or the territorial representation of the state. The rules concerning the organization

26 The districts, as territorial units (on LAU 1 level) are therefore primarily linked to the territorial administration.

27 For details, see: HEGYESI, Zoltán: A járások szerepe az államigazgatási hatósági feladatok ellátásában [The Role of District Offices in Performing State Administrative Tasks]., in: *Pro Publico Bono – Magyar Közigazgatás*, 2019, 1, 4–21. https://folyoiratok.uni-nke.hu/document/nkeszolgaltato-uni-nke-hu/WEB-PPB_2019_1---004-021_Hegyesi.pdf (Accessed: 11. 06. 2021).

28 However, this does not mean exclusivity, see for example the role of the clerk in performance of state administration tasks.

29 See: Act CL of 2016 on the Code of General Administrative Procedure, Section 37 (1) about the subbmission of th eapplication: „*The application may be submitted to the authority having territorial competence or, unless precluded by an Act or government decree, to a government window.*"

are determined by Government Decree 180/2013 on local state administrative bodies and certain related amendments. A unique feature is that the management powers of the central public administration are diverse towards the territorial state administration. Partly as a consequence, management, leadership, organization, functions and powers of the district offices with general competence are also special in a certain way.
The heads of department are appointed and exercised by the registrar on the proposal of the head of the central public administrative body, who carries out administrative activities in the given (same) sector. The explanation of this complex system is that the heads of department – deviated from the Hungarian practice – have autonomous functions and powers, and accordingly the district office is under double (shared) management. It is organically managed by the Ministry of Interior, while its professional management is carried out by specialized central state administrative bodies. This latter of paramount importance for the enforcement of administrative aspects. For example, in the context of each administrative tasks, a statutory professional controlling body responsible for the given sector may carry out audits in term of professionalism and efficiency. On the basis of shared management, the Ministry of Interior, in agreement with the professional governing bodies, determines the regulation of organization and operation procedures of the district offices. The aforementioned departments are responsible for various sectoral tasks. District offices are divided into two groups, according to their functions and powers, i.e. they are not uniform. The functions and powers of each district office include, for example, civil protection and environmental and land registry procedures. The other group includes the priority district offices (42), in addition to which there is a department responsible for trade, transport authority, administration, agriculture, forestry, hunting and landscaping.[30]
As a result of the organizational integration of recent years, the coordination activity of the territorial state administration body with general competence has also changed, its main function is not this, but to ensure unified administration through integrated customer services.[31] The head of the district office at the eight district (kraj) seat has special status; in fact, they are entitled to the general rights of a territorial representative of the state. In this context, it should also be emphasized that in Slovakia, the legal supervision of local governments is not linked to the executive power but to the prosecution.[32]

30 For details, see: MARIŠOVÁ, Eleonóra – MALATINEC, Tomáš – GREŠOVÁ, Lucia: The Europeanization of the Slovak Administrative Law and Current State Administration Reform in the Agriculture, Forestry and Land Sector, in: *Agrárne právo EÚ*, 2013, 2, 72–80. https://content.sciendo.com/view/journals/eual/2/2/article-p72.xml (Accessed: 11. 06. 2021).

31 Comp.: KLIEROVÁ, Martina – KÚTIK, Jan: From Old Public Administration to the New Public Service, in: *Social & Economic Revue*, 2017, 2, 86–93. https://fsev.tnuni.sk/revue/papers/170.pdf (Accessed: 11. 06. 2021).

32 For more, see: FAZEKASNÉ PÁL, Emese: *A törvényesség biztosítása a közigazgatásban, különös tekintettel a helyi önkormányzatok törvényességi felügyeletére [Ensure Legality in Public Administration, with Particular Emphasis on Supervising the Legality of Local Governments]*, Pécs 2019, 90-91. https://ajk.pte.hu/files/file/doktori-iskola/fazekasne-pal-emese/fazekasne-pal-emese-vedes-ertekezes.pdf (Accessed: 11. 06. 2021).; MIHÁLIK, Jaroslav – ŠRAMEL, Bystrík: Supervision of public prosecution service over public administration: the case study of Slovakia, in: *Public Policy and Public Administration*, 2018, 2, 192–202. https://www3.mruni.eu/ojs/public-policy-and-administration/article/view/4563 (Accessed: 11.06.2021).

Further Bodies of Territorial State Administration

In Poland, in addition to the integrated state administrative bodies, there are other sector-controlled, deconcentrated bodies – the so-called non-integrated state administrative bodies (wojewódzka administracja niezespolona) – such as statistical and tax and customs authorities, water and forestry directorates, border management agencies. The creation of such bodies is possible only in justified cases, in the form of a law. Their name also implies that they are organizationally independent from the voivode, and they are usually subordinate to the head of a ministry or a central state administration body. The Act on Voivode and Government Administration in the Voivodeship defines the scope of these bodies in detail.[33] It can be read from the law that the majority of the given public administrative bodies are of a particular competence, entrusted with official authority, and their powers do not necessarily correspond to the territory of the given voivodeship.[34] It is important to emphasize that the voivode, as the territorial representative of the state, coordinates their activities, and as a general rule, he exercises staffing powers. In addition, the heads of the deconcentrated bodies report annually to the competent voivode on their activities.[35] Further complicating the system of administrative tasks – as in the case of state administrative bodies – certain non-integrated state administrative bodies also have district offices.[36]

Compared to these, it is a difference that in Hungary the Government Commissioner does not exercise staffing powers over other bodies of the territorial state administration. Legal standard stipulates that the territorial bodies of central state administrative bodies, and other organs and persons with territorial competence in the exercise of their state administrative powers and in relation to the state administrative functions they perform – with the exception of law enforcement agencies and the National Tax and Customs Administration – are subject to the supervisory powers of the Government Office.[37] The activities of these bodies are coordinated by the Government Commissioner. Examples of such territorial state administrative bodies that are not involved in the integration with the Government Office are the County Directorates of the Hungarian State Treasury, the Directorates of the Integration and Asylum Office and the Water Directorates.[38]

It follows from the above that in Slovakia, the territorial bodies of central administrative bodies not involved in integration are still operating – though in a relatively small number. The control and coordination powers of municipal district registrars extend to the territorial state administrative tasks related to the given district. It cooperates with other territorial

33 Act on Voivode and Government Administration in the Voivodeship of 23 January 2009, Article 56.

34 Such state administrative bodies with multi-voivodeship competence (so-called inter-territorial bodies) are for example the district mine inspectorates.

35 See more in: MOŻDŻEŃ-MARCINKOWSKI, Michał: I*ntroduction to Polish Administrative Law, Second Revised Edition*, Warsaw 2012, 97.

36 On this basis, official veterinarians also operate at district level.

37 Act CXXV of 2018 on Governmental Administration, Section 42.

38 For details, see: BARTA, Attila: Messze-e a távol? Pillanatkép területi államigazgatásunk aktuális rendszeréről és ügyfélszolgálati megoldásairól ["How Far is Afar?" – The Current System and Customer Service Solutions of Hungarian Territorial State Administration at a Glance], in: Új Magyar Közigazgatás, 2018, 4, 13–14. http://kozszov.org.hu/dokumentumok/UMK_2018/4/02_tanulmanyok_Allamigazgatas.pdf (Accessed: 11. 06. 2021).

and local public administration bodies, but its powers are weak.[39] It is also true for Slovakia that the territorial bodies of the central public administration show a diverse picture, which is noticeable not only in the nature of the tasks, but also in the area of operation of these bodies. These are, among others, the territorial bodies of police, fire and rescue services, mining authorities, territorial employment offices and veterinary and food chain inspection agencies.[40]

Involvement of Local Governments in State Administrative Tasks

Significant differences can be observed among the examined countries, which are also present at the conceptual level, depending on the role of their local government system in the performance of state administrative tasks. It can be stated that among the V4 countries, the Czech Republic has the largest involvement of local self-governments in the performance of state administrative tasks. The reason for this is that the state administration and the local government administration are not separate. Consequently, in addition to their own functions, the self-governments at district and municipal level are largely responsible for the implementation of state public administration.[41] In addition, some deconcentrated bodies of central state administrative bodies with special powers are involved in the performance of state administrative tasks.[42] Currently, there are a very large number of 6,249 settlements in the Czech Republic.[43] The situation is complicated by the fact that the functions and powers of the settlement-level municipalities are not the same, and on the basis of this, they can be divided into further groups.[44]

39 See in: KOVÁČOVÁ, Eleonóra: *The System of Public Administration in the Slovak Republic*, Bratislava, 2015, 70–71.

40 About this, see: NEMEC, Juraj: *Public administration characteristics and performance in EU28: Slovakia,* Brussels European Commission 2018, 891.; And about the structure of a sector – the labour administration – see: BARCZI, Dávid: The administration of employment in Slovakia, in: *Cadernos de Dereito Actual*, 2016, 4, 83–95. http://www.cadernosdedereitoactual.es/ojs/index.php/cadernos/article/view/102 (Accessed: 11. 06. 2021).

41 For details on the legal status of self-governments, see: POSPÍŠIL, Petr - LEBIEDZIK, Marian: Some of the theoretical basis of local self-government in the Czech Republic, in: *DANUBE: Law, Economics and Social Issues Review*, 2017, 1, 31–43. https://content.sciendo.com/view/journals/danb/8/1/article-p31.xml (Accessed: 11. 06. 2021).

42 For instance, branches of employment offices, statistical offices, directorates of tax offices. See more in: ŠPAČEK, David – NEMEC, Juraj: *Public administration characteristics and performance in EU28: The Czech Republic*, Brussels 2018, 181–182.

43 http://www.smocr.cz/en/important-info/structure-of-territorial-self-government.aspx (Accessed: 11. 06. 2021).

44 See om: HLADÍK, Jan – KOPECKÝ, Václav: Public administration reform in the Czech Republic, Association for International Affairs, Research Paper 3/2013. https://www.amo.cz/wp-content/uploads/2015/11/amocz-RP-2013-3.pdf, 114. (Accessed:11. 06. 2021).

From the point of view of the subject, according to the delegated exercise of state administrative functions and powers, the following three groups can be distinguished:
- Type III municipalities with extended powers (*obce s rozšířenou působností*) (205)
- Type II municipalities with a designated office (*obce s pověřeným obecním úřadem*) (388)
- Type I municipalities (*obce* – all municipalities). [45]

The types listed above are based on the system of administrative tasks. Accordingly, Type III municipalities have most of the delegated state administrative functions and powers, including those at Type I and Type II levels. The exclusive responsibilities of the 205 municipalities with extended powers include, for example, the issuance of identity cards, passport management, forestry, hunting and fisheries management and child services functions – in parallel, its area of competence is similar to that of previous districts. Type II municipalities are responsible for, among other things, field guarding and other environmental protection functions, and, for example, all municipalities are responsible for traffic control. The system is further complicated by the fact that the construction authority tasks belong to 1036 settlement-level municipalities. District or provincial self-governments, for example, have the functions and powers of protection of monuments and statutory civil protection tasks.[46] The Ministry of Interior oversees the legality of local self-governments in the Czech Republic. In contrast, in the exercise of delegated sate administrative functions and powers, the relevant sectoral body has supervisory powers.[47]

In Poland, the otherwise three-tiered municipalities are also involved in a significant number of state administrative tasks. Local authorities (or their bodies) are act as first instance state administrative authorities[48] in matters such as personal data and address registration, self-employment issues, civil status and land registry procedures or personal taxi service licensing, or in determining the mental health care fee.[49] The district and Voivodeship municipalities have fewer state administrative functions and powers, which can be explained by the principle of subsidiary.[50] Related to this, the tasks are different in nature, as at these levels, there are more public service organizing tasks and less authority tasks compared to the municipal level. In Slovakia, similarly to the other countries, decentralization became the major trend in public administration development in the 2000s. Accordingly, a large number of state administrative functions and powers have been delegated by legislation to local self-governments, for example, a part of road administration, construction authority and environmental authority tasks and matters of civil register.[51] Given the fragmented

45 KADEČKA, Stanislav: *Local Government in the Czech Republic, in: Local Government in the Member States of the European Union: a Comparative Legal Perspective*, MORENO, Angel-Manuel (ed): Madrid 2012, 114.

46 ŠPAČEK - NEMEC op. cit. 182.

47 FAZEKASNÉ PÁL, op. cit. 90.

48 In depth analysis of the current Polish legislation in: MULAWA, Marta: Classification of the Tasks of Local Governmental Units in Poland in the Light of Fundamental Legal Acts – Discussion of Selected Aspects, in: *Barometr Regionalny. Analizy i prognozy*, 2013, 2, 33–42.

49 Comp.: SAUER, Adam: The System of the Local Self-Governments in Poland. Association for International Affairs, Research Paper 6/2013, 11–12. https://www.amo.cz/wp-content/uploads/2015/11/amocz-RP-2013-6.pdf (Accessed: 11. 06. 2021).

50 For details of the delegated functions and powers of the district and voivodeship governments, see: SAUER, op. cit. 12–13.

51 For more, see: NEMEC, Juraj: Public Administration Reforms in Slovakia: Limited Outcomes (Why?), in: *NISPAcee Journal of Public Administration and Policy*, 2018, 1, 127. https://content.sciendo.com/view/journals/nispa/11/1/article-p115.xml (Accessed: 11. 06. 2021).

settlement structure of the country, carrying out the tasks at the appropriate level has been a heavy burden for many smaller municipalities, even though their own financial resources (theoretically) not affected. To solve this problem, the legislator made it possible to set up joint municipal offices. There are currently 233 such offices in the county.[52] A central government body, the Government Office of the Slovak Republic exercise effective control over the devolved state administration functions and powers of local self-governments.[53]
In 2009, nearly 10 million first instance state administrative cases were handled by municipalities – especially clerks – in Hungary in their competence of state administration.[54] From 2010, the directions of public administration development changed, emphasizing the need for a stronger state public administration – in connection to our topic, the organizational integration of the territorial state administration – and the related review of the state administration tasks performed by the local governments.[55] As a result, a mixed system was created. A significant part of the devolved state administrative tasks was transferred to the district offices created in 2013,[56] but the clerk continued to exercise a large number of important state administrative powers.[57]

Summary

In the Czech Republic, the principle of decentralization clearly dominates the exercise of state administrative functions and powers. This is explained by the fact that it has a unified organizational system of public administration – integrated, in this approach – so the sharp separation of the subsystems of state administration and self-government is not implemented, unlike in the case of the other Visegrad countries.
The territorial state administration systems of Hungary, Slovakia and Poland are interconnected in many other areas besides the establishment of dual public administrations, and in some respects, the current processes point in the same direction, with basic country specifics.
As a result of the permanent organizational integration that has taken place in recent years, the number of territorial state administrative bodies has decreased significantly in Slovakia and Hungary, and in parallel, the functions and powers of territorial authorities with general competence have increased. We can say about the territorial state administration of both countries that there is a high degree of organizational integration, and in recent

52 For more details, see: FRANZKE, Jochen – KLIMOVSKÝ, Daniel – PINTERIČ, Uroš: Does Inter-Municipal Cooperation Lead to Territorial Consolidation? A Comparative Analysis of Selected European Cases in Times of Crisis, in: *Local Public Sector Reforms in Times of Crisis. National Trajectories and International Comparisons.* KUHLMANN, Sabine –BOUCKAERT, Geert, Palgrave Macmillan, 2016, 81–98.

53 Statute of the Government Office of the Slovak Republic. 162/2007. Approved by the Gov. Article 4. (1) 5.

54 About 70% of the municipal clerks' tasks were state administration tasks. See more in: BALÁZS, István (eds.): Helyi önkormányzatok [Local Governments], Third, revised edition, Debrecen 2014, 68–71.

55 Magyary Zoltán Közigazgatás-fejlesztési Program 11.0 és 12.0 [Zoltán Magyary Public Administration Development Program 11.0 and 12.0].

56 Among other tasks, guardianship, environmental protection and DMV tasks.

57 Among other things, birth certificate issues, succession proceedings, tax administration, child welfare and social benefits, certain building authority cases, etc. See more in: BALÁZS, István et al., op. cit., 71–72.

years, the directions of public administration development are directed towards the further development of single window administration, in addition to e-administration. It is interesting that in Hungary, local self-governments – contrary to the initial ideas – continue to be involved in the performance of state administrative functions, which have not been clearly separated from local government functions, and even parallels are present. Another important difference is that the internal organizational units of government and district offices do not have separate functions and powers, which raises the problems detailed above.

The Polish territorial state administration is also integrated. This integration can be interpreted partly in organizational, but even more in operational sense, since voivodes also have strong powers towards territorial state administrative bodies not concerned by integration. After all, recent administrative reforms have resulted in the strengthening of the bodies of the state administrative subsystem, while at the same time the content of local democracy and self-government has been changed, mainly as a result of the concentration of functions and powers that have taken place.[58] This statement is confirmed by the Report CG36 (2019) 13 of the Congress of Local and Regional Authorities of Europe.[59] In conclusion, although local governments perform a significant number of state administration tasks – however at a decreasing rate – in parallel, an increase in the tasks of the system of state administration can be observed. Thus, the current tendencies towards decentralization mean a stronger emphasis on the principles of centralization and deconcentration.

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58 See: WENDT, Jan A.: Problems of Local Government in Poland, in: *Kent Yönetiminde Yeni Yaklaşımlar ve Etkin Belediyecilik Uygulamaları*, MECEK, Mehmet – PARLAK, Bekir - ATASOY, Emin (eds.),, Ankara 2018, 27–33.https://www.researchgate.net/publication/330369735_Problems_of_Local_Government_Development_in_Poland (Accessed: 11.06.2021.). and KASIŃSKI, Michał: Ethical and political dilemmas of local self-government in Poland in the course of systemic transformations (1990–2018), in: *Annales. Ethics in Economic Life*, 2018, 7, 7–26. http://www.annalesonline.uni.lodz.pl/archiwum/2018/2018_7_kasinski_7_26.pdf (Accessed: 11. 06. 2021).

59 See in: 36th Session, Report CG36 (2019) of the Congress of Local and Regional Authorise, https://rm.coe.int/local-and-regional-democracy-in-poland-monitoring-committee-rapporteur/1680939003 (Accessed: 11. 06. 2021).

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CHALLENGES AND POSSIBILITIES IN THE DEVELOPMENT OF TERRITORIAL STATE ADMINISTRATION THE HUNGARIAN EXAMPLE

Attila BARTA

Abstract

The study focuses on the presentation and evaluation of the processes affecting territorial state administration. Although the primary aim of the work is to describe the characteristics and development in Hungary, I use an international perspective at several points in the study as well. I also pay special attention to the description of defining trends such as neo-Weberian. The study is accordingly composed of three major parts. After the description of the historical features, special attention is paid to the description of the current Hungarian regulations and the presentation of international processes.
Public administration institutions tend to periodically renew, and the various megacrises make this renewal indispensable. At the beginning of the 21st century, it is now apparent that the various economic or social tensions and the environmental or healthcare challenges cannot be overcome without an active public administration system. The Hungarian methods of reforming territorial state administration are both interesting and educational; after all, legislation managed to substantially transform several aspects of the public administration system while still remained operational in the process. I can confidently state that Hungarian territorial state administration system is following a path of development which is carved by global challenges but is also strongly formed by local circumstances.

Keywords

Public administration, state administration, Hungary, territorial representation of Hungarian Government, neo-Weberian principle

Introduction: The Reasons and Topicality of Researching Territorial State Administration

This study focuses on Hungarian territorial state administration, due to several professional reasons. Firstly, the ongoing research of territorial state administration is justified by the constant changes of the public administration system and its sub-systems. These changes are due to various societal, economic and ecological phenomena that constantly transform the roles of public administration, often generating conflicting impulses

(or challenges) for the system. These impulses, in my opinion, are also worthy to investigate. Secondly, the territorial level of Hungarian state administration is specifically an executive level – that is, a sub-system which has a pivotal role in enforcing the will of the central government on a territorial level.[1] As such, the functionality (or the lack thereof) of this sub-system has a large impact on the overall efficiency of the public administration system. Another important reason is the research of the impacts that the major world events of the past decade had on public administration. The successful management of the various global crises (such as the financial crisis of 2007, illegal migration, international terrorism or the COVID-19 pandemic) and their fallout required the radical rethinking of the roles and tools of public administration in many countries. Albeit crises management many times resulted only in measures that could be considered quick fixes only, they have still resulted in a reflection period for the development of public and state administration from the beginning of the 21st century.[2] Thanks to the related scientific discourse, this tendency has resulted in several public administration concepts, many of which either contradict or mutually stimulate each other. Such concepts include, among others, the idea of the networked and multi-level government; the e-Administration and m-Administration efforts; the concept of the efficient state, or the neo-Weberian approach. Despite their differences, these concepts still have one thing in common: they are all meant to offer effective solutions for the issues affecting modern states superseding the New Public Management (NPM) approach.

In the overview section of this study, I will put special emphasis on discussing the neo-Weberian (or post-NPM) approach as one of the potential future trends of public administration.[3] This approach calls for a benevolent, acting government that would inherit certain (proven) solutions of NPM, and would fuse them with a renewed model of the traditional Weberian system of bureaucracy.[4] In this philosophy, the reinforcement of the state and the recovery of legality would be guaranteed by two fundaments: the "rediscovery" of public authority tools, and the increased activity of the public administration system. As postulated by the neo-Weberian approach, no public administration could be efficient and benevolent without these fundaments.

Restricting the study's scope specifically to Hungarian state administration, it could be argued that its territorial level is an especially good candidate for deeper analysis, as it saw especially widespread changes in the past three decades. The development of this administrative sub-system has been characterized by a constant series of reforms since the democratic transition, all of which culminated in an avalanche of changes in the past

1 HEADY, Ferrel: Public Administration, A comparative perspective. Taylor & Francis Group, 2001. 182.

2 BOHNE, Eberhard – GRAHAM, John D. (ed.): Public administration and the modern state. Assessing trends and impact. Houndmills, Basingstoke, Hampshire; New York, 2014. 75. and 88.

3 RANDMA-LIIV, Tiina: New Public Management versus Neo-Weberian State in Central and Eastern Europe. NISPAcee Journal of Public Administration and Policy, 2008/2009, 2, 69–82. DRECHSLER, Wolfgang: "The Re-emergence of „Weberian" Public Administration after the Fall of New Public Management: The Central and Eastern European Perspective". Halduskultuur, 2005, 1, 98.

4 G. FODOR, Gábor – STUMPF, István: Neoweberi állam és jó kormányzás, Nemzeti Érdek, 2008, 7, 5–23.

decade.[5] As many of these administrative changes raise just as many professional questions as the number of potential societal-economic advantages they can usher in, I found it worthy to discuss them in more detail.

As such, this study consists of the following major sections:

- Firstly, I summarize the major challenges and potential solutions for the development of the Hungarian public administration systems preceding the Democratic Transition of 1989.
- After that, I focus on the unique characteristics of post-Transition Hungarian territorial state administration. Due to the page limit of this paper, this section puts special emphasis on the key post-2010 changes of the territorial sub-system.
- Finally, I draw some general conclusions regarding the analysed changes considering both the local Hungarian peculiarities and the international tendencies as well.

The Antecedents, or the Place and Role of Hungarian Territorial State Administration in the History of Hungarian Public Administration

Typically, the history of Hungarian territorial state administration is considered to have two major eras prior to the Democratic Transition of 1989–1990, by which its various historic topics are examined: the so-called burgeois era and the council-based administration of the Soviet era. Although the state administration systems of these eras were fundamentally different, they were still dominant within their respective government, and their territorial levels have received special attention from a development perspective as well – something that did not clearly characterize post-Transition state administration. The reasons of this are summarized in the following sub-sections.

The state administration of 1867–1949

In Hungary, the turbulent expansion of deconcentrated state administration concluded in the last quarter of the 19th century, resulting in an organisationally dual territorial level by the turn of the century. This resulted in a new, strongly heterogeneous organisational conglomerate to appear on the territorial level besides the former (somewhat municipal) basic institution of territorial public administration (the so-called vármegye, or "castle county"). This new conglomerate, however, was struggling with major disproportions and notable operational and organisational deficiencies.

The preference of the territorial level is best indicated by the fact that its problems remained a topical area of research and professional discussion well up until the 1950s, mostly because of political, economic and efficiency considerations. For example, Gyula Szapáry (a later Prime Minister) called for the radical settlement of mid-level public administration a mere seven years after the Austro-Hungarian Compromise of 1867, by proposing a drastic

5 By now, there have been more than half a hundred government resolutions enacted in this topic, which means that on average, the various governments have enacted roughly two such resolutions each year since the Democratic Transition. As such, it is clear that the issue has always been kept on the agenda.

reduction in the number of administrative organisations (essentially cutting their numbers in half). Although his proposal (along with many others), was not followed upon, the topic remained on the agenda for the decades to come. In 1914, the Magyar Jogász Egylet [Association of Hungarian Barristers] discussed the territorial problems of contemporary Hungarian public administration in its public administration inquest. At the onset of the First World War, numerous public administration thinkers (like István Ereky or Győző Concha)[6] and politicians (like István Tisza) called for reforming the lower-mid level of public administration. Although their opinions were diverse, they still followed a common pattern: most of the experts supported a bottom-up approach to reform public administration, with the emphasis on establishing the cooperation of the municipal level (specifically the cities) and their agglomerations, revising territorial assignments and exclusions, and eventually redrawing county borders as well.[7] In short, there clearly was no shortage in ambitions within the professional community to reinvent the middle level of public administration, along with its territorial state administration system.

It is impossible not to refer to Zoltán Magyary as well at this point. Being one of the most influential figures of Hungarian public administration, he was well aware of all the defects plaguing the burgeois administrative system prior to 1949, and while he never focused specifically to the territorial level itself (being more interested in the global aspects of the organisation), many of his statements proved to be relevant even until nowadays regarding that level.

As such, he pointed out the following ascertainments:

- State administration is a complex system. As such, Hungarian public administration is comprised by all its organisations together, not just its various sub-systems, like state administration or the municipalities.
- Appropriate territorial assignments and regulated administrative powers are indispensable to an efficient public administration system.
- The development and rationalisation of the executive branch should not be a one-time effort. Instead, it must be a systemic, plan-driven process based on scientifically sound fundaments.

Unfortunately, many elements of his legacy were never put into practice, as contemporary Hungarian politics did not dare undertaking a drastic transformation of the era's public administration system. Thus, even though Magyary diagnosed the issues of the system accurately, no substantial actions followed his ascertainments; his pinpointed issues were only partly resolved, due to the pressures of the contemporary world events.

Following the Second World War, the efforts to reform public (and in particular, territorial) administration were reinvigorated, and up until 1949, there was a general ambition to introduce a bottom-up delimitation of the system, primarily with the existing municipal relationships in mind. This decentralization concept was first suggested by Ferenc Erdei and István Bibó, whose so-called városmegye [city county] concept has been a topic of discussion for a long time.

6 CSIZMADIA, Andor: A magyar közigazgatás fejlődése a XVIII. századtól a tanácsrendszer létrejöttéig. Budapest, 1976. 281–288.

7 HAJDÚ, Zoltán: Magyarország közigazgatási földrajza. Budapest-Pécs, 2001, 161–163.

Still, the burgeois era is best characterized by a lack of any unified development concepts; apart from the work of Magyary, Hungarian public administration (including its territorial state administration system) did not receive any permanent development centres or intellectual workshops. The narrow path of challenges and possibilities never saw any consistent whole-of-government logic walking down its trails – it was instead dominated by contemporary political goals and the pursuit of achieving permanent centralisation. More radical reform ideas could only blossom in the wake of high-impact international conflicts, like the two world wars.

The main characteristics of territorial state administration between 1949–1989/90

The chartered constitution of the Hungarian People's Republic came into effect in 1949, and immediately broke with the preceding administrative structure of the burgeois era. The so-called tanács [soviet council] appeared as the fundamental institution of socialist state-building efforts, while also being an integral part of the political apparatus striving for the achievements of the Soviet system under the same constellation. It was a completely monolithic administrative structure, one that was closely channelled into the political sphere on every level. The new political system also meant a new set of possibilities and developmental goals: namely, scrapping the principle of the separation of powers, and striving for democratic centralism and the unification of state administration. As such, all administrative development efforts were characterised by organisational fusion, and the increasing duties of mid-level public administration.[8] Considering the power relations within the system itself, this essentially resulted in the increased influence of the county- and capital-level of state administration.[9]

As the Soviet administrative system was adapted to the Hungarian administrative environment in a rather mechanical fashion, it did not take long to reconsider its actual implementation. Just two years after the Second Act on the Councils (Act X of 1954) was passed, the need for mid-level territorial rearrangement already arose. This reform, however, proposed a completely opposite logic compared to the concepts that characterized the interbellum: redrawing the counties took precedence over rearranging the lower levels of the administrative system.[10] Both of these aspirations pointed towards integration, meaning a reduced number of expanded organisational units. However, these aspirations never came to fruition due to the Hungarian Revolution of 1956.

The 1970s saw clear efforts to reinforce the independence and municipal characteristics of the soviet councils. Almost 20 years after 1956, as part of the careful dissolution of centralisation, the concept of territorial administration saw a rebirth in the work of István Bibó, based on his earlier 'city county' concept. However, to maintain the framework

8 It is worthy to mention though that the differentiation in the roles of the various councils started already in the 1950s. By the 1980s, this resulted in the substantial differentiation of the territorial level, as several deconcentrated organisations and specialised institutions have been founded there besides the various councils. Cf. FEITL, István: Tanácsrendszer, tanácsigazgatás, településfejlesztés 1956 után. in: Megértő történelem. Tanulmányok a hatvanéves Gyarmati György tiszteletére, BARÁTH Magdolna - BÁNKUTI Gábor - RAINER M. János (eds.), Budapest, 2011, 371.

9 Ibidem, 376.

10 HAJDÚ, Zoltán: Magyarország közigazgatási földrajza. Budapest-Pécs, 2001, 201.

of the system, contemporary politics was not interested in the radical rework of the territorial level (that is, the county-level apparatus of state administration). The first pieces of comprehensive criticism on Soviet-era Hungarian state administration were eventually published only in the 1980s, mainly by experts such as György Szoboszlai, György Wiener, Gábor Vági, Pál Bánlaky or Pál Beluszky.[11] However, these criticisms could not trigger any profound changes – instead, it was eventually the Democratic Transition of 1989 that fundamentally changed the public administration system.

The Effects of the Democratic Transition on Territorial State Administration and the Major Developments of the 2010s

The inception of disintegrated territorial state administration

The end of the 1980s saw the inception of a significant will to sort out the pressing issues of both territorial state administration and the Hungarian public administration system as a whole. This aspiration rooted in the negative connotations toward the former dominance of state administration and mid-level public administration in the executive branch: thus, during the Democratic Transition, most decision makers considered them an unwanted administrative-historical legacy of the previous era. To break away from said Soviet legacy, parts of the former administrative system were consciously counterbalanced, eventually favouring the municipalities over state administration and the municipal level over the territorial level. Because of this, Hungarian public administration (itself being both a goal and a prerequisite of a successful democratic transition) got not just renewed, but also disintegrated by the 1990s.

The above contrarian tendencies resulted in several fundamental issues: the organisational proportions in mid-level public administration turned upside down, while the disappearance of the former county councils left behind a vacuum of duties and responsibilities. This latter vacuum was started to be filled out with the various specialised administrative agencies formed out of the former councils – however, this was done without any real whole-of-government logic, eventually resulting in a unique organisational proliferation within territorial state administration, and an irregular organisational conglomeration of its system. And although the aspirations and the professional concepts were always there for the comprehensive settlement of this administrative sector, the various transformation attempts always failed, either due to political or economic reasons. However, in 2010, the situation fundamentally changed.

11 See the studies of the MSZMP KB Társadalomtudományi Intézet [MSzMP Central Committee, Institute of Social Studies].

(Re)integration steps in territorial state administration between 2010–2015

Following the change of government in 2010, the new political forces coming to power started to rethink the role of the state by the neo-Weberian principles.[12] One of the most important elements of this process was the renewal of state administration, and specifically, the increased integration of the centralised and hierarchized state administration under government control – both in an operational and organisational sense.[13] The main goal was to operate a national public administration system that meets contemporary challenges: one that is not just faster and more efficient in handling the increased number of responsibilities, but is also cheaper to operate. As such, most of the changes affecting public administration were of integrational and correctional nature, aiming to reinforce the role of the state in the public administration system and improving its efficiency.

The emerging public administration reform differed from earlier attempts in that it was based on strong political support and a strict approach of governmental execution. Its main goal was to remedy the various dysfunctions of the executive branch (and in particular that of territorial state administration), based on the rationale that the new state must have more influence on the various socio-economical tendencies that can be best realised through the public administration system.[14] It is because of this aspiration that Hungarian territorial state administration has been in a constant state of transformation for 10 years.

The most notable effects of this transformation are as follows:

- To ensure the coordinated operation of the various public administration bodies and to control its related fields more efficiently, the government established the so-called "top ministries".
- The government reinforced its territorial representation in mid-level public administration.[15]
- Municipal legislation saw substantial modifications.[16]
- Regulations related to public administration officials also saw a multi-stage change.[17]
- Electronic administration (e-Administration) became more widespread.
- The járási rendszer [district system] was reintroduced after 29 years as the lowest level of state administration.
- The stipulations of administrative procedural law and justice related to the various administrative authorities were recodified.[18]

12 http://revcurentjur.ro/old/arhiva/attachments_201201/recjurid121_6F.pdf (Download date: 2019. 07. 10.).

13 OECD (2015), Hungary: Reforming the State Territorial Administration, OECD Public Governance Reviews, OECD Publishing, Paris. http://dx.doi.org/10.1787/9789264232921-en (Download date: 2021. 05. 15.).

14 BALÁZS, István: A közigazgatás változásairól Magyarországon és Európában a rendszerváltástól napjainkig, Debrecen, 2011.

15 KOVÁCS, Éva – HAJNAL, György: A magyar központi államigazgatás változásai a rendszerváltástól 2015-ig. In: JAKAB, András – GAJDUSCHEK, György (ed.): A magyar jogrendszer állapota. MTA Társadalomtudományi Kutatóközpont JTI, Budapest, 2016.
NAGY, Marianna–HOFFMANN, István (ed.): A Magyarország helyi önkormányzatairól szóló törvény magyarázata, Budapest, 2014.

16 NAGY, Marianna–HOFFMANN, István (ed.): A Magyarország helyi önkormányzatairól szóló törvény magyarázata, Budapest, 2014.

17 See Act CXCIX of 2011 on the Public Service Officials and Act LII of 2016 on State Officials. Also see ÁRVA, Zsuzsanna – BALÁZS, István – BARTA, Attila – VESZPRÉMI, Bernadett: Közigazgatás-elmélet, Debrecen, 2017.

18 BALÁZS, István: A közigazgatás változásairól Magyarországon és Európában a rendszerváltástól napjainkig, Debrecen, 2016.

Clearly, the transformation going on since 2010 has affected most elements of public administration (including its duties, organisation, personnel and operation as well).[19] However, analysing all these aspects in detail goes beyond the scope of this study, therefore I focus only on the major milestones of the developments in territorial state administration from this point on. I consider this level especially important – after all, most citizens interact predominantly with the territorial/municipal level of public administration, and as such, this is the level where the effects of the ongoing reform are the most immediate.

One of the most prevalent effects of the current reform is that (similarly to earlier historical examples)[20] the central government started transforming and representing its own will on the lower levels of public administration through various institutions founded specifically for this purpose. This approach is not a novel one – many states in continental Europe have long-standing traditions in this regard. The French Préfet system or the Swedish governmental institution (Landsshövding) grew out of such efforts, just like the Austrian Landeshauptsmann or the Polish Voïvode.[21] In contemporary Hungary, the prime territorial articulator of the government's will proved to be 20 so-called Fővárosi, Megyei Kormányhivatal ("capital and county government office"; hereafter: government office) and their leaders, the so-called Kormánymegbízott ("governmental commissioner"; hereafter: KMB).

While the history of government offices is brief, it has already proven to be surprisingly eventful.[22] They were founded on January 1, 2011 from the fusion of 15 deconcentrated state administration bodies (while the other 11 so-called 'candidate territorial state administration bodies' kept their organisational independence, but continued operating under strong operational integration control). The KMBs of these government offices received prominent authorities to coordinate high-priority projects in terms of national economic interests. The network of government offices also saw a large expansion on January 1, 2013, when 175 district offices and 23 capital district offices were also moved under their umbrella. Through the government offices (which became the only set of deconcentrated administrative bodies to be specified in The Fundamental Law of Hungary),[23] the government primarily aimed to increase its presence in the middle level of public administration, complemented by a set of integrated client centres (whose number has risen close to 300 throughout the years).[24]

19 For more details, see BARTA, Attila: The Next Generation of Capital and County Government Offices. Developments in Hungarian Middle-Level State Administration Since 2011. Public Governance, Administration and Finances Law Review in the European Union and Central and Eastern Europe 2016, 1. http://real.mtak.hu/123855/1/PGAF2016_02_1_Barta.pdf (Download date: 2021. 03. 19.).

20 GLADDEN, Edgar Normann: A History of Public Administration. From earliest times to the eleventh century. Volume I-II. London, 1972.

21 TEMESI, István: Az állam területi képviselete Európában. Pro Publico Bono – Magyar Közigazgatás, 2016, 3, 106–137.

22 BARTA, Attila: A területi államigazgatást érintő 2015. évi integrációs folyamatok. Új Magyar Közigazgatás 2015, 3, 14–20.

23 Article 17., Paragraph (3) of The Fundamental Law of Hungary specifies the capital and county government offices as the "organs of the Government with general territorial state administration competence".

24 See Act XCIII of 2012 on Forming Districts and the Amendment of Certain Related Acts of Parliament.

The government offices saw substantial growth a couple years after their foundation already, which is best illustrated with the headcount changes of the Government Office of Hajdú-Bihar County (hereafter HBMKH).[25] In January 2013, the HBMKH already had a staff of 1762, making it a mid-range office when it comes to its workforce: the largest headcount was present at the capital government office with 4433 employees, while the Government Office of Nógrád County had the smallest staff of 849. On a side note, the 1762 people working for the HBMKH was almost double the staff employed by the former Ministry for National Economy back then, and approximately one and a half times more than the workforce of the former Ministry of Public Administration and Justice.[26] The 20 territorial government offices of that time had a combined staff of approximately 36,000, which amounted to one-third of the entire Hungarian public administration personnel.

Like other government offices, the HBMKH also had a dual structure consisting of a district level and a county level, the latter of which employing 821 officials (most of them working for either the pension insurance or the public health departments), while the 10 district offices of the former level employing 941 officials at the beginning of 2013. This comprised more than half of the entire workforce of the government office, with the largest district office being the one situated in the county seat. It is important to note here that the amount of district offices was different for each government office – their numbers typically ranged from 10 to 14 in a given county (except Budapest, which had 23, corresponding to the number of districts in the capital).

The government offices have also been substantial budgetary units from the get go. In 2012, the basic budget of the government office in Debrecen was almost 6 billion HUF for the incomes and expenses for that year. However, in 2013, the central budget saw an increase in the available funds, resulting in an annual budget of 124 billion HUF for the entire government office network (including all its capital-, county- and district-level offices). To put it into perspective, this value was more than a quarter of the annual operating costs of the entire territorial state administration apparatus.[27]

Due to their extensive sphere of jurisdiction and responsibilities, government offices solved approximately 19 million cases in 2015 (in comparison, Hungary had a population of 9.8 million that year).[28] However, this number (along with all other reference numbers listed above) changed substantially later, as legislation merged additional organisations into the government offices on April 1, 2015, followed by another decision to re-delegate additional duties and personnel to them at the turn of 2016/2017.

25 As described in KIM Order 3/2013. (I. 18.) on the Organisational and Operational Regulations of Capital and County Government Offices.

26 Cf. Gov. Decree 1166/2010. (VIII. 4.) on the number of employees in the Prime Minister's Office, ministries, and the administrative bodies or bodies performing administrative activities of central budgetary institutions.

27 Act CCIV of 2012 on the 2013 Central Budget of Hungary.

28 https://www.ksh.hu/docs/hun/eurostat_tablak/tabl/tps00001.html (Download date: 2017. 02. 21.).

Reinforcing the district office system from 2016

Over the course of 2016 and 2017, the government made several changes in the territorial state administration system that primarily aimed to reinforce the capital and countryside district offices. The process started with the transformation and abolition of the central administration offices and the support organisations of the ministries, and then spiralled onto the middle level of public administration as well, where legislation assigned the duties and authorities of the aforesaid bodies first to the capital and county government offices, and then to their district offices. The volume of these administrative changes is best illustrated with the fact that approximately 1000 administrative duties were transferred from higher-level administration (mostly from the county-level government offices) to the districts.[29]

Filling the corpus of the district level as such inevitably resulted in a differentiation of duties among the various district offices, and although the situation has changed since then, it is still worthy to take a closer look at how this differentiation looked like. Essentially, the various duties and responsibilities were classified into three different sets as follows:

- A stable set of duties were generally available for administration in every district office. Such duties included, for example, judicial and consumer protection tasks.
- A set of "priority" duties was also designated, which was delegated to certain district offices with a jurisdiction over 2–3 districts for these cases. Such duties included, for example, pension insurance.
- Finally, there was also a distinct set of duties that could only be administered by county seat district offices. Such restricted duties included, for example, forestry or environment protection cases.

The increasing number of responsibilities assigned to the lower-mid level of territorial administration necessitated structural and personnel changes as well during 2015. Thus, approximately 25,000 officials[30] (70% of the entire staff of the government office system) were transferred from the county level to the district level.[31] After that, in 2016, their legal status also changed: as per the stipulations of Act LII of 2016 on State Officials, they became a separate group of officials, whose members had, inter alia, a different promotion and remuneration system from the previous staff regulations. They also had to comply with special training requirements and, if necessary, specific employment rules. However, legislation aimed to extend this legal state to additional personnel as well: following the staff of the district offices, efforts were made to reclassify the workforce of the county government offices and central state administration offices as state officials, too. This aspiration, however, could not be achieved eventually – instead, a different solution came to effect.

The aforesaid duty, organisational and personnel changes were all in line with the goals of the Közigazgatás- és Közszolgáltatás-fejlesztési Stratégia [Public Administration

29 http://jarasinfo.gov.hu/jarasokrol (Download date: 2020. 05. 05.).

30 Based on MvM Order 5/2018. (II. 6.) and the staff of the various offices.

31 The changes in the number of officials can be easily tracked with the spreadsheet of the following website as well: http://kozepszintuallamig.blogspot.hu/2017/05/tisztviselok-letszama.html (Download date: 2020. 04. 29.).

and Public Service Development Strategy], calling for a multi-functional role set for the district offices.[32] However, the new organisation did not remain untouched for long, the reasons of which will be provided in the next section.

A shift of emphasis within the goverment offices

One of the important milestones of the public administration reform in progress since 2010 has been Act CXXV of 2018 on the Governmental Administration (hereafter: Kit.) which proved to be especially decisive from a personnel and organisational perspective. The major legislative rationale behind the act was to:

- Improve the competitiveness of the public administration system.
- Decrease bureaucracy and increase administrative efficiency.
- Improve the material appreciation of the public administration staff.
- Reward and support government officials who raise children or are starting a family.

The contents of the Kit. are complex, addressing both institutional and personnel-related matters and essentially regulating the entire state administration system (that is, both its central and territorial levels). The Kit. also merged in most of the stipulations of the preceding act that had previously regulated the legal state of the government offices, and by extension, (being their departments with sovereign powers) the district offices as well. Finally, it also superseded the above-mentioned 2016 stipulations that had been specifically regulating the special state official legal state of district office employees. Due to these changes, the Kit. has become the backbone of the organisational and personnel legislation pertaining to state administration by now. However, the process of transformation did not stop here.

This is because 2019 and 2020 saw several important legislative changes in Hungary regarding the government offices and their districts, mostly due to their shifting duties, the ongoing changes in procedural law, and because of the challenges of the COVID-19 pandemic. Some of these corrections were stipulated by acts, while others via the government decrees issued under the national state of emergency declared in 2020. In general, while these corrections also played an important role in the history of territorial state administration, their directions were somewhat the opposite of the former development tendencies.

For the steps of the latest reform, legislation set up several key deadlines (namely, January 1, 2020; March 1, 2020; and July 1, 2020) to schedule their execution. Out of these, the most important changes were as follows:

- Some former permitting procedures were reclassified as notifiable procedures (such as the operational authorization of family service departments, or medical expert activities).
- Due to the changes in the system of legal remedies, some corrections overturned certain earlier regulations (for example, in the acts on consumer protection and the registration tax).
- Building and construction-related administrative duties that were previously delegated to the head of the administration of the local self-governments have been reassigned to the government offices.

32 Public Administration and Public Service Development Strategy, 51.

- At the same time, some responsibilities have been re-delegated from the government offices and their district offices to other public administration organisations. For example, the utilization of caves and cave sections became a jurisdiction of the Minister of Nature Conservation. At the same time, the governance of private entrepreneurs (including their reportings and declarations of changes) has been moved to the National Tax and Customs Administration.
- In some cases, certain responsibilities were assigned to organisations outside of the public administration system. For example, the duty of issuing gas-fitter licences was assigned to the Hungarian Chamber of Engineers, while the specification of the use rights for district heating provider thermal centres has been moved from the district offices to the courts, as per the changes in the act on district heating.
- Some deregulation changes were also passed. For example, the stipulations on the head of the administration of the local self-governments' powers in regulating building and construction matters have been removed from Act XX of 1991 on the Tasks and Scope of Authority of the Local Governments and their Organs, of the Commissioners of the Republic, and of Certain Centrally Governed Organs.
- Finally, additional clarifications were passed for several specialties. For example, in the act on social administration and benefits, the entitlement to personal public health care services was raised from two years to four years, while the entitlement to normative health care services was raised from one year to two years.

In my opinion, the latest reforms described above point to an entirely different development direction from the perspective of the government offices and their district offices, compared to the developments in progress since 2010. With these recent changes, the government did not aim to increase internal or external integration, but rather focused on reassigning certain duties and responsibilities from the district offices to the county level, or from the government offices to other administrative bodies. In light of the earlier developments, it is not difficult to see that the most recent changes of 2020 somewhat reverted the legal standing of the district offices to the state it was back in 2015/2016. This, however, inevitably raises the question of whether the capital and county government offices actually reached the limits of their growth?

Final considerations

At the beginning of the 21st century, it is now apparent that the various economic or social tensions and the environmental or healthcare challenges cannot be overcome without an active public administration system. However, in my opinion, by now the question is not what approach should drive the ongoing developments of the public administration system (that is, the classic Weberian theory, the revised neo-Weberian approach, the original New Public Management, or rather its reincarnated variant).[33] The reason of this is that neither NPM, nor the increasingly dominant neo-Weberian approach is a panacea for successful public administration reforms by itself. While both of these theories have their own advantages, none of them are universal absolutes that would work well for any administration system.[34]

Although the constraints on the length of this study prevented a detailed overview of the above topic, I am confident that my analysis still summarized its most important aspects – including the fact that Hungarian public administration mainly utilised the neo-Weberian approach. In my opinion, the Hungarian methods of reforming territorial state administration are both interesting and educational; after all, legislation managed to substantially transform several aspects of the public administration system while still remained operational in the process. Of course some disruptions in day-to-day administration tasks were inevitable, but thanks to the committed staff of civil servants, most of these problems could be bridged during the transformation process.

It is also undoubtable that the recoding of the administration system should be done with care to prevent the various changes (employed for increased efficiency) reverse in effect, at the expense of the democratic needs. In my professional opinion, the avalanche of reforms concerning Hungarian public administration were driven not just by the various contemporary megacrises, but were also due to the need to clarify the role of the state in this sector – something that failed to happen earlier. Thanks to the extension of political control, public administration became easier to oversee, and the various reforms (such as the latest top-down modernisation initiative) were also executed swiftly and successfully. In my opinion, the recentralization of public administration and the reinforcement of deconcentrated state administration within territorial state administration were the surface manifestations of the efforts in reinforcing the role of the state and increasing its integrity within public administration.

In this context, organisational and operational integration is important not just because of efficiency, but also because it reduces the number of participants and the potential conflicts in the system, (typically) increasing the speed of decision making due to the reduced

33 DRECHSLER, 102, 104. According to the author, the public administration developments of the 2000s are mostly driven by an approach based on the Weberian traditions and certain elements of the NPM. However, this approach is more than just a mere mixture of classic public administration and NPM. It should be emphasized though that a concurrent theory argues for the continuation of NPM. See DAN, Sorin – POLLITT, Cristopher: NPM Can Work. An Optimistic Review of the Impact of New Public Management Reforms in Central and Eastern Europe. Public Management Review, 2014. http://www.tandfonline.com/doi/full/10.1080/14719037.2014.908662#.U1-Oj6LyRol (Download date: 2021.02.07.).

34 Haynes, Paul: The Return of New Public Management? (September 30, 2011). Available at SSRN: http://ssrn.com/abstract=1935909 or http://dx.doi.org/10.2139/ssrn.1935909 (Download date: 2021. 04. 04.).

number of actors. Although some path dependency is obviously present, I still think that the only acceptable solution is a balanced and pragmatic approach of development. Every country should choose a development direction that would focus on realizing their own unique public administration needs, and moves along the lines of their own possibilities.
Public administration institutions tend to periodically renew, and the various megacrises make this renewal indispensable.[35] And although the problems that the various public administration systems must tackle during times of depression are similar to that of those megacrises, various international examples show that there are no universal administrative solutions to said problems. Albeit contemporary administrative structures all bear their national characteristics, large public administration systems operate essentially independently (within their reasonable limits, at least).[36]
Overall, when defining the development trends of the coming years, privatisation of the public administration system is just as viable as the continuing efforts to increase efficiency and general administrative performance. The increasing aspirations for partnership and cooperation, or the expansion of e-Administration are also among the general goals of transformation. This latter aspiration is important not just for the citizens, but also for increasing the efficiency of the system as well: based on the related statistics, such efforts in Hungarian public administration have saved approximately up to 12 billion HUF so far. The development of the special-duty administrative systems, on the other hand, is getting important because recent transformations have resulted in organisations that are larger and more complex than ever before – with their duties and responsibilities increasing often on a weekly basis. Clearly, the public administration system of the information society should utilize not just traditional solutions, but also contemporary tools as well – otherwise, it would become unsuitable to solve contemporary challenges.
The Hungarian government had a comprehensive plan for public administration development up until 2020, and the government offices remained a pivotal part of that plan. The main aspiration was to establish such basic service provider units within mid-level public administration that would allow the management of most public proceedings. Developing client contact points is an indispensable part of this effort, which would strive to achieve one-stop shop client care as much as possible. Besides extending the network of said client contact points as much as possible, there are also ideas about providing additional services at these one-stop shops besides the administration of public proceedings (such as postal services, stock sales, or maintaining customer care services for public service providers).
Based on the above analysis, I can confidently state that Hungarian public administration (and its territorial state administration system) is following a path of development which is carved by global challenges but is also strongly formed by local circumstances. However, to correctly rethink the place and role of all components of our public administration, we must consider not just the accomplishments of previous reforms, but also the currently outstanding shortcomings as well. Only by considering both of these factors will we be able to set the right course for further developments and choose adequate tools for upcoming reforms.

35 RANDMA-Liiv, Tiina – SAVI, Riin: Introduction to the Special Issue: The Impact of the Fiscal Crisis on Public Administration. Administrative Culture 2014, 1, 4–9.

36 PETERS, B. Guy – PIERRE, Jon (ed.): The SAGE Handbook of Public Administration, 2012. 508.

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HATE CRIME ELIMINATION INSTRUMENTS IN HUNGARY

Matúš Vyrostko

Abstract

Extremism is an undesirable anti-social phenomenon, belief or behavior that most societies naturally try to eliminate, or at least mitigate its negative effects. The horrors of the Second World War significantly contributed to the understanding of the seriousness of the radicalization of society, which can lead to the targeted murder of groups of the population on the basis of nationality, race, religious beliefs, or sexual orientation, etc.
The aim of the article is to evaluate the relevance of legal measures against extremism and to point out the current problem areas of the fight against extremism in Hungary on the basis of a brief analysis of the Hungarian Criminal Code and the currently identified number of hate speech and hate acts in Hungary. In the parts of the article we refer to the comparison with the Criminal Code no. 300/2005 as amended (Criminal Code of the Slovak Republic). To meet the goal of the article, we use mainly qualitative scientific methods of deduction, induction, analysis, synthesis and comparison.

Keywords

extremism, hate crime, Hungary, criminal law

Introduction

If we talk about legal tools to eliminate extremism, or in the case of Hungary hate crimes, we mean the legal regulation of offenses, or hate crimes in particular. In the first place, it is possible to point out more serious extremist acts and manifestations, and it may be a criminal offense under the Hungarian Criminal Code when fulfilling the required facts. Last but not least, in the article we deal with other aspects regarding fight against hate crimes and point out the relevant current problem areas in Hungary.

Hate crimes in Hungary[1]

In this context, it is possible to talk about the following crimes:
- § 142 of the Criminal Code of Hungary (genocide),
- § 143 of the Criminal Code of Hungary (crimes against humanity),
- § 144 of the Criminal Code of Hungary (apartheid),
- § 215 of the Criminal Code of Hungary (violation of freedom of faith and religion),
- § 216 of the Criminal Code of Hungary (violence against the community),
- § 332 of the Criminal Code of Hungary (incitement against the community),
- § 333 of the Criminal Code of Hungary (public denial of the Nazis and communist crimes),
- § 334 of the Criminal Code of Hungary (blasphemy of the national symbol) a
- § 335 of the Criminal Code of Hungary (use of symbols of totalitarianism).[2]

According to § (alternatively section) 142, the crime of genocide is committed by anyone who, for the purpose of complete or partial destruction of a national, ethnic, racial or religious group; murder their members, cause them serious physical or mental injury, put the group in living conditions that endanger the existence of the group or some of its members, take steps to prevent the group from reproducing, abduct children and place them in another group. The perpetrator of the crime of genocide faces the penalty of imprisonment for ten to twenty years, or a life sentence. The legislator also explicitly regulates the preparation for genocide, which is punishable by imprisonment for two to eight years.
A crime against humanity is committed by any person who commits murder in an extended or systematic manner, forces the civilian population to live partly or wholly in conditions threatening the extinction of that population or some of its members, directs or orders the displacement of the civilian population from its place of legal residence trafficking in human beings or exploitation through forced labor, depriving another person of personal liberty or administering his abduction, forcing another person to commit or tolerate sexual violence, prostitution, the birth of a child or unlawful abortion, causing serious bodily or mental injury to others, or deprives others of fundamental rights by reason of their association with a group on the basis of political opinion, nationality, ethnic origin, culture, religion, gender or any other reason. Under Section 143 of the Hungarian Criminal Code, an offender can be sentenced to ten to twenty years' imprisonment or life imprisonment. As in the case of the crime of genocide, in the case of the crime against humanity, preparation for the crime is a criminal offense. In this case, the offender faces the penalty of imprisonment for two to eight years. Last but not least, the provision of § 143 par. 3, according to which an offender under the Hungarian Criminal Code commits a criminal offense even if he commits the above-mentioned conduct with the aim of implementing or facilitating the policy of the state or organization.

1 Some neighboring states (eg Slovakia) prefer the use of the term extremism and exhaustively state and explicitly regulate extremist behavior and manifestations in the Criminal Code. However, this fact does not mean that it is not possible to identify such crimes in the Hungarian Criminal Code, the fulfillment of which may reveal extremist acts in the form of hate crimes.

2 Act C of 2012. The Criminal Code of Hungary, as amended.

According to § 144 par. 1 of the Criminal Code of Hungary, the crime of apartheid [3]is committed by anyone, forcing a group or groups of a certain race to live in conditions endangering their existence to any extent, even partially or murdering members of a racial group or groups. However, in order to fulfill the substance of apartheid under this provision, it is necessary to fulfill one or a combination of two of the defined objectives. The first objective is to act in order to establish domination and maintain the domination of a group of people of one race over another group of another race. The second is the goal of systematic repression of another racial group or groups. The offender faces a prison sentence of ten to twenty years or a life sentence. In the case of another apartheid crime, a person is punishable by imprisonment for five to fifteen years. If the commission of such an offense also has particularly serious consequences, the lower and upper sentences of imprisonment are postponed to ten to twenty years or to life imprisonment. As in the two previous cases, preparation for the crime of apartheid shall be punishable by a term of imprisonment of five to ten years in the cases referred to in paragraph 1, and two to eight years in the case referred to in paragraph 2.

The following crime, which can be classified as a hate crime (or a form of extremism), is a violation of freedom of faith or religion. Pursuant to Section 215, this offense is committed by any person who restricts another person's freedom of faith by violence or the threat of the use of violence, or prevents another person from freely carrying out activities connected with religion by violence or the threat of the use of violence. The potential sentence of imprisonment in this case does not exceed three years.

The same sentence of imprisonment, up to three years, threatens an offender who commits the criminal offense of violence against a member of the community under § 216. The proceedings are characterized by manifestly anti-social behavior towards others because they are in fact or presumably part of national, ethnic, or a religious group, or a particular social group based on disability, gender identity, or sexual orientation. The purpose of the proceedings is to cause panic or scare others. If, under the same conditions, the offender attacks or forces such a person, or threatens to use violence, he or she will be punished by imprisonment for one to five years. The perpetrator faces a higher sentence, two to eight years, if he uses violence against a member of the group by carrying or displaying a deadly weapon, causing serious injury, torture as part of a gang, or in criminal contact with accomplices. If the offender is legally convicted of preparing for such an act, he faces a term of imprisonment not exceeding two years.

According to § 332, anyone who incites hatred against the Hungarian nation, any national, ethnic, racial or religious group or social groups on the grounds of disability, gender identity or sexual orientation commits the crime of inciting violence against the community. The sentence of imprisonment for committing such an offense shall not exceed three years.

The Hungarian legislature also expresses its interest in prosecuting persons who publicly deny Nazi or communist crimes. Anyone who, under Section 333, publicly denies the crime of genocide, crimes against humanity committed by the Nazi and communist regimes,

3 According to § 144 par. For the purposes of paragraphs 2 to 3, "other apartheid offenses" means apartheid offenses as defined in Article II (a). a) / ii), a) / iii), c), d), e) and f) of the International Convention for the Suppression and Punishment of the Crimes of Apartheid, adopted on 30 November 1973 by the United Nations General Assembly in New York, promulgated by Decree-Law No. 27 of 1976.

or seeks to justify or facilitate such acts, is guilty of committing this crime, punishable by up to three years' imprisonment.
The penultimate crime that can be classified as a crime of extremism is the so-called blasphemy of the national symbol according to § 334 of the Criminal Code of Hungary. It is committed by a person who, in front of the general public, uses terms that disgrace or devalue the national anthem, flag, coat of arms, the Hungarian crown, or commit a similar act. If this proceeding did not result in the fulfillment of the factual basis of a more serious criminal offense, the offender shall be punished by a term of imprisonment not exceeding one year.
As part of the criminal offense of using the symbols of totalitarianism, it is considered criminal in Hungary to publicly display, distribute or use in front of the general public a swastika, SS insignia, dart cross, scythe and hammer, five-pointed red star or any symbol depicting the above, to undermine public peace in a way that offends the dignity of the victims of totalitarian regimes and their right to justice. If he does not fulfill the factual basis of a more serious crime, according to § 335 it is also possible to impose a penalty of imprisonment of an unspecified length.
Last but not least, in Hungary it is possible to take into account an exceptionally harmful intention or motive in selected criminal offenses, the basic fact of which is not directly related to extremism, when determining the amount of punishment for the offender.[4]
In terms of content, the calculation of hate crimes in Hungary appears to be sufficient and comparable with other European countries. It can be stated that the Hungarian legislator respects Council Framework Decision 2008/913 / JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. Nevertheless, we believe that it is possible to point out a number of problem areas and other issues in the fight against extremism in Hungary.[5]

State of detected hate crimes in Hungary[6,7]

In the next part, with regard to the subject and purpose of the article, we deal with the current state and number of detected hate crimes in Hungary according to available official data.

4 BIHARIOVÁ, Irena et al., Hate crimes. Legislation and instruments for reporting hate crime in Europe. Bratislava: Man in Danger, 2018.

5 According to Art. 1 par. 1 letter (a) to (d), each Member State shall take measures to criminalize intentional acts of public incitement to violence or hatred against a member or group of persons on grounds of national or ethnic origin, religion, gender, color or race. The public dissemination of such materials, as well as the public approval, denial or facilitation of crimes of genocide, against humanity and war crimes, should also be considered criminal.

6 We base the identification of detected crimes on official data, but according to several experts, they do not correspond to the real structure and number of hate crimes.

7 At the time of writing, official data from 2021 were not yet available. The Organization for Security and Cooperation in Europe (OSCE) did not have data for 2021 at the time of writing. This fact also applies to the following data provided by the OSCE Office for Democratic Institutions and Human Rights, which collects and publishes data on hate crimes obtained in cooperation with the relevant authorities in the individual states of the European Union.

Table 1 „Number of detected hate crimes in Hungary between 2015 and 2020"

Year	Number of identified crimes	Number of prosecutions	Number of convictions
2015	-	-	-
2016	33	33	39
2017	233	-	-
2018	194	52	-
2019	132	39	-
2020	100	12	-

Source: Own processing according to: OSCE (Hungary) 2020.

According to the crime statistics of the OSCE Office for Democratic Institutions and Human Rights, we can see in the table above that in Hungary the number of detected hate crimes increased from 2013 to 2018. Between 2013 and 2014, the Hungarian authorities recorded an increase of 36 crimes, of which less than half were prosecuted. The highest number of recorded crimes was in 2017, which was also the highest year-on-year increase compared to last year, from 33 crimes to 233. It can be positively assessed that all 33 recorded crimes in 2016 were also prosecuted and 39 crimes in he was convicted this year. We believe that the above data may also indicate inaccuracies in the reported data and correspond to Hungary's criticism of the insufficient collection and disclosure of data on hate crimes. In 2018, 194 crimes of extremism and crimes with a racial motive were recorded in Hungary, a year-on-year decrease of 39 crimes. Only about a quarter of the crimes recorded in 2018 were prosecuted. The number of detected crimes in 2019 decreased by 62, while 39 crimes were prosecuted. In 2020, 100 crimes were detected, with 12 prosecuted. The available databases do not record the number of convictions for 2014, 2015, 2017, 2018, 2019 and 2020.

Furthermore, it can be stated that Hungary does not specify the recorded crimes according to the type of hatred for statistical purposes. According to the OSCE Office for Democratic Institutions and Human Rights, there were 194 of these unspecified hate crimes by type in 2018 and 132 in 2019. For comparison, the older Amnesty International (2010) survey found that Hungary has the highest number of crimes from hatred against the Roma national minority.[8]

The European Union Agency for Fundamental Rights argued similarly in 2013.[9]

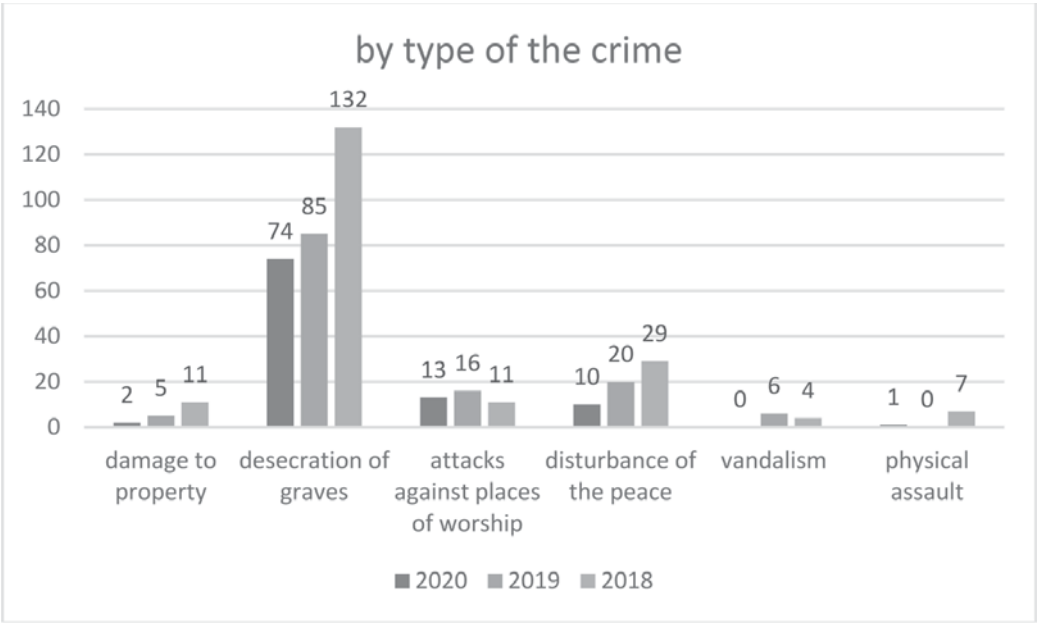
According to Halmai (2005), the Hungarian extremist scene has 2 primary target groups against which it shows hatred: the Roma national minority and Jews.[10]

8 Amnesty International, Violent Attacks Against Roma in Hungary. Time to Investigate Racial Motivation. London: Amnesty International. 2010, 47.

9 European Union Agency for Fundamental Rights. Racism, Discrimination, Intolerance and Extremism: Learning from Experiences in Greece and Hungary. Luxembourg: Publications Office of the European Union, 2013, 58.

10 HALMAI, Gábor: Violent Radicalization in Hungary, in: Fundamentum, 9, 2005, 5, 85–93.

Graph 1 „Crimes recorded in Hungary by type of crime in 2018,2019,2020"



Source: Own processing according to: OSCE (Hungary) 2020.

According to the type of crime, graves were most often desecrated in Hungary in 2018 as part of hate crimes. There were up to 132 of these crimes. The second most common type is disturbance of peace. Attacks on places of worship (eg churches, mosques) appeared in 2018 in 11 cases. The same number of crimes were recorded in the case of property damage, with physical attacks occurring in seven cases and only four cases of vandalism.
In 2019, according to the detected crimes, graves were desecrated in 85 cases with 11 less cases detected in 2020.

Other aspects and problem areas of the fight against extremism in Hungary

Ad 1/
Unlike in the Slovak Republic, where the socially less seriously perceived extremist acts are qualified as a misdemeanor (not criminal offences), in Hungary such misdemeanors cannot be clearly identified. One of the reasons is, of course, the difference in the terminology used (extremism, hate crimes, hate speech), both in criminal and administrative law. If we take into account these facts, an offense with an extremist character can be considered e.g. Section 174 of Act II of 2012 on Offenses, Procedure and their Registration, as amended - Participation in the activities of a dissolved association. Like the other states analyzed,

in Hungary, the basic protection against discrimination as well as the freedom of expression derives from its regulation directly in the Hungarian Constitution.[11,12]

Ad 2/
As can be pointed out in the example of the Federal Republic of Germany,[13] where one of the legislative proposals was to change the Criminal Code to clearly emphasize the prohibition of discrimination against the majority society - Germans, one of the regularly recurring issues is the protection of the majority society by criminal norms of extremism. In this context, we think it is interesting to point out that the reference to "any social group" may also include members of the majority society. In addition, however, one of the controversial aspects is the specific inclusion of the Hungarian people among the groups protected against incitement to hatred. In this context, most authors agree that a person's belonging to a majority Hungarian group is not an element of a person's identity that would place him or her in an endangered or vulnerable position, which requires a separate provision.

Ad 3/
Criticism of the professional public often leads to insufficient attention of public authorities to the issue of protection of national minorities and ethnic groups, which is reflected in a kind of formal "undersizing" of hate crimes compared to the expected reality. The professional public also perceives the situation of registration of hate crimes in the Republic of Poland. We believe that these concerns may also stem from the political situation in Hungary, which in recent months and years has been considered unfavorable for national minorities and ethnic groups by both the European Union institutions and most representatives of the individual Member States of the European Union.[14]

Ad 4/
The absence of regularly updated policy documents dealing with measures against extremism, as well as the collection and publication of data on hate crimes, can be assessed negatively.
As Perry, Dombas and Kozáry (2018) state in this context, neither the National Crime Prevention Plan nor other action plans contain any specific measures against extremism or hate crimes. According to the authors, it is not clear whether the increase in officially presented cases of hate crimes is due to more precise data collection or a change in the practice of their census. The research also shows that special emphasis, co-financed by the European Union and provided by the National University of Public Service in Budapest, is placed on educating students and existing police forces in the form of various courses and programs on how to deal effectively and without secondary victimization while clarifying hate crimes.[15]

11 The Overseas Security Advisory Council. Hungary 2018 Crime & Safety Report. 04.04.2018.

12 National Hate Crime Report: Hungary. 07.07.2017.

13 VYROSTKO, Matus: Legal instruments to eliminate extremism in the Federal Republic of Germany, in: Theory and practice of public administration: a peer-reviewed collection of papers from the 5th year of the scientific conference of doctoral students 6.2.2020. Košice: Pavel Jozef Šafárik University in Košice, 2020, 375–385.

14 Ibid.

15 PERRY, J., DOMBAS, T. a KOZÁRY, A. Connecting on hate crime data in Hungary. 2018, 24.

Ad5/
However, it is possible to assess positively the fact that in 2019 the police issued an instruction on the uniform application of police tasks in the fight against hate crimes (Instruction No. 30/2019 (VII.28). In detecting and investigating criminal offenses, law enforcement authorities must take into account various factors of prejudice bias in order to eliminate various forms of intolerance. Examples of such factors (indicators) also appear in the document. There are also examples of protection for victims in the form of peaceful and objective communication. Under no circumstances should police officers accuse victims, use inappropriate words and phrases related to the victim's behavior, culture or community. Special attention should be paid to the specific needs of the victim. Mentors should be appointed in each police department to facilitate the detection of hate crimes, and the regional (main) police department should designate at least one contact point for hate crimes, whose identity and contact details will be reported to the local police authority.[16]

Conclusion

The fight against hate crimes in Hungary can be viewed from several angles. Two have recently come to the fore – political and legal.
From a legal point of view, it is possible to identify the existing hate crimes contained in the Hungarian legal system. It can be stated that the Hungarian Criminal Code fulfills and respects in terms of content Council Framework Decision 2008/913 / JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.
From a political point of view, Hungary faces longer-term criticism from senior European Union politicians for the lack of protection of national and sexual minorities and the suppression of fundamental human rights and freedoms. However, it is a sensitive and complex political and social situation, which deserves separate research for objective conclusions.
Last but not least, the creation of an online space has allowed the free dissemination of ideas and beliefs, including disinformation and conspiracy theories, which can lead to hate speech. We believe that in the near future it will be the priority task of individual states and their representatives to respond to these facts in the form of an amendment to the Criminal Code, including an assessment of the readiness of their institutional arrangements.

16 OSCE. Hungary. 2021.

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CRIME AND THE SOCIALIZING IMPORTANCE OF PUBLIC SPACES AND THE ENVIRONMENT

Hana Vykopalová

Abstract

The article focuses on the environment and its importance for man and his socialization. The environment is a bearer of cultural values and acts as a factor of interaction. For a person, public space and its characteristics play an important role. Public space influences emotions and behavior. An important element of public space is urbanism and architecture, which influences feelings and how one feels in certain places. Given that the majority of the population currently lives in urban settlements, the characteristics of urban public spaces and the perception of urban public spaces and its rules are important. Due to industrialization, specific urban spaces, known as brownfields, are created, which also modify behavior and affect feelings of safety. The Chicago School and its sociology of the city were the first to deal with the relationship between man and the elements of the environment. This school pointed out the influence of marginality and ethnic segregation, dealt with juvenile delinquency, drug problems, alcoholism and its effects on crime. The study points to a number of theories dealing with the causes of crime in relation to the environment, ie spatial crime. Another issue that the Chicago School has dealt with and which is still very topical is the so-called high-risk neighborhoods, referred to as excluded localities. These localities strongly influence spatial segregation and residential mobility and feelings of safety. The case comparative study points to the development of the urban environment from the point of view of comparing selected industrial centers that have a very close historical development. The way of solving brownfields and crime is monitored. The global population explosion places demands on urban spaces and their adaptation to new requirements. Gentrification, ie the adaptation of brownfields for high-income residents, offers a solution, which significantly affects feelings of safety and the level of crime.

Keywords

crime, perception, environment, public space, socialization

Introduction

The existence of man is inextricably linked and conditioned by the environment and its functioning, especially its social and material aspects, which significantly affect the functioning of the human psyche and human behavior in the environment. Urban

elements of the environment in the form of settlements, which are towns and villages and their functionality, mediate the social integration of man into society and participate in the implementation and satisfaction of some social needs, as well as the influence of architecture, which is an expression of aesthetic or artistic processing of individual residential elements and significantly affects the inner experiential area of man. Man and his personality is highly individual, the formation of which is determined not only genetically, but to a large extent precisely by the influences of the environment in which man moves during his life and which influences him.

Public space and environment and their socialization potential

Public space is understood as a place intended for meetings and communication on all levels, including the physical nature of this space. It is therefore a space that is open to all and is intended for the public.

The environment and its character are the bearers of cultural values that determine what forms of behavior are acceptable in this type of environment. Each environment contains a number of meanings that form interactive communication rules and a cognitive framework. Each environment contains

- fixed feature space
- semi-fixed feature space
- non-fixed feature space [1]

"The mutual representation and interconnection of these individual elements of the environment creates its character and influences perception".[2]

The character of public spaces and the character of urban elements in it influence the character of the behavior of the inhabitants. However, the behavior of the population is also influenced by mutual interaction elements, communication, emotions, cultural influences, traditions, etc. Each environment is still evolving and has its own space-time dimension called the chronotop.[3] This element becomes an important part of a number of criminological theories linking a specific crime scene with a certain type of crime which is the basis for a number of other theories seeking to explain the causes of crime based on individual characteristics and local influences[4] and depending on place and time.

1 RAPOPORT, Amos:The Meaning of the Built Environment: A Nonverbal Communication Aproach. The University of Arizona Press, 1990.

2 RAPOPORT, Amos: The Meaning of the Built Environment: A Nonverbal Communication Aproach. The University of Arizona Press, 1990, 16.

3 BACHTIN, Michail Michaljovič: Forms of Time and of the Chronotope in the Novel: Notes toward a historical poetics. In: Richardson, B.: Narrative dynamics: essays on time, plot, closure, and frames. Ohio State University Press, Columbus, 2002, 15–16.

4 HERBERT, David T.: Crime and place: an introduction. In: Evans, David J., Herbert, David T. (eds.): *The Geography of Crime*. Routledge, London, New York 1989.

Behavior, emotions and meaning of the character of the place

The character of urbanism and architecture strongly influences the perception of a given space, including emotions. Many authors speak of the social and psychological characteristics associated with physical space that are in constant variability, such as in public spaces that change their social significance and social use over time.[5] Other authors point out the importance of the place and its attractiveness from the geographical (location in the territory), political (historical context), socio-cultural (influence of indigenous ethnoculture and indigenous ethnic groups).[6] The meaning of a place, its character or the reputation of a place influences the behavior of people in this space, which is influenced by emotions talks about localities that have the ability to create strong emotional responses in people for their specific characteristics or historical events, which also took place there indirectly to people who have never visited these places, through imaginary ideas that are formed by stories, drawings, photographs or information from the media.[7] Genius loci is thus a term used to denote the atmosphere, the meaning of a place, but other terms are also used, such as "the spirit of the place" or the charisma of the place, the image or reputation of the place. The genius loci has several evaluation dimensions, the genius loci with a positive component (sense of place) and the genius loci with a negative accent (desainst of place), according to the characteristics that influence the evaluation judgments. From the point of view of clarifying behavior in relation to the characteristics of the meaning of places and decision-making based on emotions, the theory of somatic markers plays an important role in this context. This theory simply states that thoughts and evaluations of a certain stimulus elicit a certain bodily response that sends signals to the somatosensory cortex, which causes automatic responses to a certain situation that is evoked by a stimulus.[8] These processes explain why some places evoke positive emotions and some negative emotions affecting experiences and behaviors.

Crime and characteristics of the inner space of the city

In the first half of the 20th century, the so-called Chicago School was one of the first to deal with the issues of the relationship between the century and the elements of its environment. She dealt with marginality, ethnic segregation, crime, juvenile delinquency, alcoholism, drug addiction, mental illness, etc. The high increase in crime and social pathology, in urban areas, were the cause of a number of theories explaining the processes

5 KOSKELA, Hille, PAIN, Rachel: Revisiting fear and place: women's fear of attack and the built environment. *Geoforum*, 31, 2000, 269–280.

6 FALŤAN, Ľubomír: Pozícia Bratislavy v regionálnom rozvoji Slovenska. In Aktuálne problémy regionálneho rozvoja. *Zborník z medzinárodnej konferencie. Banská Bystrica (UMB), 1997, 155–161.*

7 COSGROVE, Denis: Sence of place. In Johnston, Ron J., Gregory, Derek, Pratt, Gereldine, Watts J. Michael, Whatmore Sarah, eds. *The dictionary of human geography, 4th edition*. Oxford (Blackwell Publishing), 2000, 731–734.

8 DAMASIO, Antonio R.: A note on the neurobiology of emotions. In: Stephen G. Post, Lynn G. Underwood, Jeffrey P. Schloss, & William B. Hurlbut (Eds.), *Altruism & altruistic love: Science, philosophy, & religion in dialogue* (p. 264–271) 2002, Oxford University Press.

of organization and reorganization of the city as a key factor influencing social integrity and cohesion of the population. Many of these theories were based on the assumption of the internal layout of the city and the occurrence of a certain type and nature of crime. These theories are still being applied and re-used today, as the population expands into a number of cities and cities become the center of economic and social development and crime becomes part of them.

The Chicago School and its Influence on the development of urban sociology

Robert E. Park is considered one of the first founders of the so-called "Chicago School", with his publication "The City: Suggestions for the Invesigation of Human Behavior in the Urban Environment", which was published in the "American Journal of Sociology" in 1915. The Chicago School developed the sociology of the city, based primarily on the social morphology of urban settlements, examining the arrangement and spatial distribution of the city's social functions and associated facilities with an emphasis on security criteria. It is no coincidence that the first skyscrapers were built in Chicago at the end of the 19th century under the influence of architect William LeBaron Jenney, also called the father of American skyscrapers and the predecessor of the first Chicago architectural school. The first beginnings of the segregation of urban spaces can be included in this period for the emergence of the first so-called skeletal systems, which were initially used for the construction of tall buildings and infrastructure buildings and only later for residential blocks. In Europe, the skeletal system of building construction began to develop after the war in France under the influence of Le Corbusier. During this period, several mega residential blocks were built in France for several hundred inhabitants, satisfying all services, including housing. However, these projects proved to be high-risk in terms of the absence of social ties, high anonymity of the population and the absence of contacts with urban spaces and its elements creating belonging to places. This has led to an increase in a wide range of crime. The industrial expansion that took place in America, but also in Europe at the end of the 19th century, caused the concentration of the population in industrial centers and caused the need to develop urbanism. An example of this social transformation was Chicago, where there were dramatic changes in settlement by different ethnically diverse groups and immigrants, accompanied by an increased incidence of crime. For these reasons, it was necessary to build economically efficient urban infrastructure and hostels. At that time, the construction of skyscrapers and skeletal systems seemed to be effective. The Chicago school thus began to study city districts and the study of so-called high-risk neighborhoods. Thus, a number of theories have emerged in order to explain the causes of the dynamic growth of cities and the specific nature of the internal organization of the city in comparison with the behavior of living organisms, ie the city as a living organism. This theory of social ecology was one of the first, followed by the Theory of Concentric Zonal Structure of W. Burgess, understanding the development of the city according to concentric zones of human activities, where within groups of individual zones group different groups

of people with their own traditions, customs and history. which is reflected in the behavior. The theory of social disorganization (R. E. Park, E. W. Burgess, R. D. McKenzie, etc.) was also based on the study of city behavior. This theory saw the causes of crime in the destruction of social relations, which create a socially disorganized environment producing different definitions of morality. The theory was that the disintegration of the social order is a prerequisite for the emergence of deviations, which endanger immigrants and their children. The theory of social disorganization has experienced several renaissance over time, most recently in the 1990s. New self-report research has highlighted the importance of informal social control in influencing crime.[9] Other successors to the Chicago School began to focus on finding the causes of high crime in urban areas, and a number of theories emerged to monitor spatial crime. Sutherland's Theory of Differentiated Association was based on the assumption of the internal organization of the city and the observation of the occurrence of a certain type and nature of crime. This theory has found its innovative application and new use even today, as the expansion of the population to a number of cities continues, cities become the center of economic and social development and crime becomes part of them. Until recently, the vast majority of researchers addressed the issue of social disorganization in connection with the concept of the city and its individual parts or zones because crime was always much lower outside the city. However, recent statistics suggest that this trend is changing, as economic variables (income inequality, unemployment, poverty) change the population in a given community, as do social factors, which sometimes play a more important role in predicting crime in rural communities. We are talking about so-called rural crime.[10,11]

Spatial crime and perceptions of safety feelings

The theory of non-civilization and collective effectiveness is one of the theories focused on the relationship between the environment, fears of crime and the degree of victimization. It is based on the assumption that a neglected (uncivilized) environment is a cause for fear of crime, which is the result of a violation of social control in a particular locality, a violation of social norms and social values, and this environment is perceived as dangerous. The basic signs include dilapidated buildings, parked cars, garbage, etc.[12] Very close to this theory is the "Broken windows theory", which causes a domino effect. A broken window that remains broken is a signal of the absence of social control and the low quality of life of the community. It attracts attention and more broken windows are added

9 KUBRIN, Charis E., STUCKY, Thomas D., & KROHN, Marvin D.: *Researching Theories of Crime and Deviance*. New York, 2009, Oxford University Press.

10 BARNETT, Cynthia – MENCKEN, F. Carson: Social Disorganization Theory and the Contextual Nature of Crime in Nonmetropolitan Counties. *Rural Sociology*, 2002, 67, 3, 372–393.

11 BOUFFARD, Leana Allen – MUFTIĆ, R. Lisa, The "Rural Mystique": Social Disorganization and Violence beyond Urban Communities. *Western Criminology Review 7*, 2006, 3, 56–66.

12 SKOGAN, Wesley G.: Measuring what matters: crime, disorder, and fear, in: LANGWORTHY, Robeert H. (ed.), *Measuring What Matters: Proceedings From the Policing Research Institute Meetings*. (37–53). Washington 1999, National Institute of Justice.

because the community tolerates it, the so-called zero tolerance.[13] Another analogy is Eyes on the street theory, which emphasizes the importance of social interaction and cohesion, which can reduce fear and anxiety about crime by tracking the movement of dangerous people in space.[14]

The sharp increase in population and its concentration in large cities has resulted in a sharp increase in crime. This was the impulse for the implementation of further research focused on spatiotemporal characteristics, segregation of the population, personality characteristics of the offender, etc., and everything related to evoking feelings of fear and danger. Thus, concepts known as "defensible space" or "gated communities" have emerged, which enclose and fortify their spaces with physical and technical forms of security, and this space is perceived as safer[15] with less threat.

Criminological theories focused on the importance of elements of environmental design of the environment are among the most important. They are based on the assumption of the importance of certain environmental stimuli, which in some way activate the offender and the offender responds to them. Crime is more common in these places than elsewhere.[16,17] Researchers are based on the opinion that crime is not randomly distributed, but is influenced by the nature of the place.

Excluded localities as a source of crime

In connection with the search for the causes of the increase in crime, the concept of the so-called high-risk neighborhood emerged at the end of the 20th century. In the countries of Eastern Europe, which can also include the Czech Republic, the term high-risk neighborhoods are understood as so-called excluded localities (ghettos), which are stratified by property, sub-ethnicity, gender or caste, acquired status and length of stay in the city. Their inhabitants do not form typical communities in the true sense of the word. Even these urban spaces and their urban character are a source of crime and negatively affect the perception of feelings of safety. According to research conducted in selected areas, they are localities inhabited by a high number of people with higher status, racial diversity and the cheapest municipal dwellings.[18] In the conditions of the Czech Republic, high-risk neighborhoods are understood as so-called excluded localities with the absence of mutual ties between their inhabitants, with the absence of identification with the locality and with other inhabitants. Therefore, these localities cannot be approached as family

13 NEWBURN, Tim, JONES, Trevor: Symbolizing Crime Control: Reflections on Zero Tolerance, *Theoretical Criminology 11* (2), 2007 SAGE Journals.

14 WHITZMAN, Carolyn: Stuck at the front door: gender, fear of crime and the challenge of creating safer space. *Environment and Planning*.39, 2007, 2715–2732.

15 COZENS, Paul Michael, SAVILLE, Greg, HILLIER, David: Crime prevention through environmental design (CPTED): a review and modern bibliography. *Poverty management*. 23, 2005, 328–356.

16 NEWMAN, Oscar: *Defensible Space: Crime Prevention through Urban Design*. Macmillan, New York, 1972, 254.

17 HERBERT, David., HYDE, Stephen W. (1985) *Environmental criminology: testing some area hypotheses*. Transactions of the Institute of British Geographers, 10, 259–274.

18 SMITH, S. J.: *Crime, Space and Society*. Cambridge University Press, Cambridge, 1986, 228 p.

or neighborhood communities,[19] but it is a matter of social exclusion. "The problem of social exclusion is formed in the city environment, which is marked by a decline in population, average educational structure and aging of the local population."[20] Over the last few years, the number of excluded localities in the Czech Republic has been growing sharply in connection with unemployment and the decline in industrial production in localities that were previously considered important industrial centers. Examples are Ostrava, Kladno, Most, etc., where the metallurgical industry or coal mining is declining or stopped. Excluded sites and the solution to their problems is not just a social and legislative issue. Their increase and location in localities affects territorial development from the point of view of changes in spatial development planning and real estate prices, and also has an impact on intra-urban migration of inhabitants. Excluded localities inhabited by low-income groups are a source of crime. "The negative phenomenon accompanying life in social exclusion is the use of addictive substances and gambling, which can be perceived as a certain escape strategy from a hopeless situation, but also as a trigger for crime."[21] Among the most common offenses dealt with in excluded localities or their proximity are public order offenses (disturbance of night rest, civil cohabitation, pollution of public spaces, petty theft, trade in unstamped cigarettes or alcohol and verbal attacks). The occurrence of alcoholic and non-alcoholic drugs, truancy, petty crime, especially theft, is registered in children and adolescents. Young people growing up in hostels who did not know life in the ordinary neighborhood are perceived as a particularly risky group.[22] In the Czech Republic, the nature of social exclusion is changing, more and more localities are moving to areas of the periphery and inner peripheries.[23] Addressing the issue of social exclusion means not only addressing issues of material poverty, but also issues of education, increasing job opportunities, intensive implementation of community work and increasing the overall regional level and quality of life of the inhabitants of excluded localities.

Comparative study in the European context

With the development of industry and industrialization in the 18th and 19th centuries, a number of industrial centers with characteristic architecture were created, which were purposefully focused to fully suit the character of the industry under construction. Over time, together with declining production or depletion of resources, the decades-old architecture of these industrial centers ceases to serve its purpose and becomes problematic urban spaces with difficult usability, requiring high revitalization or renovation costs. In many cases, these are industrial centers of global importance that share this common issue. Therefore, comparative studies are being carried out looking for and exploring possible solutions. For this reason, a study was created that compares 2 industrial centers -Ostrava and Halle (Salle).

19 TOPINKA, Daniel, JANOUŠKOVÁ, Klára: *Výzkum rizikových faktorů souvisejících s existencí sociálně vyloučených romských lokalit ve městě Přerově*. SocioFactor, Ostrava, 2009.

20 TOPINKA, Daniel, JANOUŠKOVÁ, Klára: *Výzkum rizikových faktorů souvisejících s existencí sociálně vyloučených romských lokalit ve městě Přerově*. SocioFactor, Ostrava, 2009, 16.

21 ČADA, Karel a kol.: *Analýza sociálně vyloučených lokalit v ČR*. GAC,s.r.o.Praha 2015, p.85.

22 Ibidem.

23 ČADA, Karel a kol. 94.

The aim of the research was to compare the logic and dynamics of the process of social segregation of the population in residential areas of two selected European cities. In Ostrava and in Halle (Saale) it is possible to identify localities with socio-demographic differences, which in these cities lead to specific forms of socio-spatial segregation.[24]

The following were chosen as comparative indicators of socio-spatial segregation:

- Indicators of the physical and geographical structure of the city. The share of houses and buildings built in certain periods of the city's development was chosen as an indicator of the city's physical structure
- Functional indicators, ie the distribution of individual activities in the city and the resulting use of buildings, land and territory
- Social indicators, ie housing functions and characteristics of the permanent resident population.[25]

In Ostrava, processes of socio-spatial segregation took place throughout the period of socialism. Although socialist housing construction was the same as in Halle (Saale), ie the newly built prefabricated housing estates were attractive to all professions and educational categories of the population, socially needy residents were allocated flats in the original unrepaired housing stock near industrial plants and spatially disadvantaged localities. The process of socio-spatial segregation has been evident in this sense since the 1950s and deepened even more significantly during the period of transformation. In Ostrava, the perception of this issue is associated with a clearly negative concept and the idea of long-term excluded localities in which the Roma population predominates. Within Ostrava, panel housing estates cannot be perceived as a factor of socio-spatial segregation, as residents of various professional, educational and age groups still live here. A characteristic feature of socially segregated localities in Ostrava is the absence of basic infrastructure, especially school and medical facilities.[26]

The process of social segregation is not perceived by the Halle (Saale) city administration as a topical issue to be resolved. Socio-spatial segregation is not perceived as a state, but only as a natural process of urban development. A much more fundamental problem is the process of permanent depopulation of the city and the related increase in empty housing units, especially in high-rise prefabricated houses, which are the least attractive for residents.[27]

Despite the many similarities between the two industrial centers, the researchers came to fundamental differences, mainly in the different historical context of the development of both cities, in the different perception and location of socially segregated localities in both cities, including different policy approaches. This also differentiates approaches to solving this problem.

24 BAUM, Detlef, VONDROUŠOVÁ, Kamila, TICHÁ, Iva: *Charakteristika sociálně prostorové segregace ve srovnání dvou měst* (Halle - Ostrava). Ostrava, 2014, 8.

25 BAUM, Detlef, 11.

26 BAUM, Detlef, 56.

27 BAUM, Detlef, 65.

Conclusion

In relation to crime and security, public spaces are a much-discussed issue, because all spatial crime takes place here. The correct behavior of the inhabitants in the urban space should be influenced not only by individual moral norms and values, but also by elements of urban regulation, referred to as urban order. When these rules of conduct do not work in public, external mechanisms of social control come into play, such as camera systems, legislation in the form of municipal ordinances regulating the regime in public spaces in an effort to purify public space.[28] Public spaces in the Czech Republic are legislatively defined by Act No. 128/2000 Coll. on municipalities, § 34,[29] as all "squares, streets, markets, sidewalks, public greenery, parks and other spaces accessible to everyone without restriction, ie serving general use, regardless of ownership of this space." Public spaces are then further defined by Decree 501/2006 Coll.[30] on general land use requirements. The basic functions of public space include:
"Social", intended for real interaction of people and establishing mutual relations
"Residential", intended for relaxation, rest of the population
"collective" enabling people to meet in social and cultural events
"Service", designed for the transit of users and their access to the city's infrastructure.[31]
Other authors also mention functions that are symbolic as bearers of significance for a given community or an environmental function, intended for parks and forest parks that help maintain better air quality, preserve specific ecosystems and contribute to the revitalization of urban areas.[32]
Urban and architectural elements of the environment significantly influence the inner experience and behavior of man and are the bearer of cultural values. The public environment has a number of other aspects related to behavior, it has implications for the emergence of segregation, migration, fluctuation, etc. The public environment significantly affects feelings of security, which is important for maintaining the overall integrity of a person. Due to industrialization, the environment is being devastated, which is a challenge for finding opportunities for new urban solutions. In this regard, it brings new solutions for the F to the locality and is an important element in building social capital.

28 SENNETT, Richard: *The Uses of Disorder.* New Haven, London, 2008, Yale University Press.

29 Zákon č. 128/2000 Sb. o obcích, § 34.

30 Vyhláška 501/2006 Sb. o obecných požadavcích na využívání území.

31 KUČEROVÁ, Zdeňka: Veřejná prostranství. In: *Principy a pravidla územního plánování*. Brno 2019, Ústav územního rozvoje.

32 MARCUSE, Peter: Ohrožení veřejně využívaného prostoru v době stagnace měst. In: *Architektura a veřejný prostor: Texty o moderní a současné architektuře IV* (44–57). Praha 2012.

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REVIEWS

Veronika Kmetóny Gazdová – Ferdinand Korn:

Citizen and state between democracy and partocracy. Constitutional and political science penetration of the definitions of mutual correlation of the citizen as the originator of state power, the state and political parties.

Občan a štát medzi demokraciou a partokraciou. Ústavnoprávny a politologický prienik definícií vzájomnej korelácie občana ako pôvodcu štátnej moci, štátu a politických strán.

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ISBN 978-80-263-1650-3.

The monograph is the work of experienced authors – Veronika Kmetóny Gazdová and Ferdinand Korn, who, thanks to their profiling (political scientist and lawyer), had all the prerequisites to deal consistently with the topic of the monograph, from those aspects which seem the most relevant from the point of view of the contemporary social science. PhDr. Veronika Kmetóny Gazdová, PhD. is a graduate of the Faculty of Arts of the Prešov University in Prešov in the field Political Science, she defended her dissertation work at the Department of Political Science, Faculty of Arts at Pavol Jozef Šafárik University in Košice, in the field of "Theory of Politics". She devoted, among other areas, the phenomenon of partocracy, the field of social policy and the political science aspects of the social sphere in her scientific activities and research. JUDr. PhDr. ThDr. Ferdinand Korn, PhD. is a graduate of the Faculty of Law of the Pavol Jozef Šafárik University in Košice, in addition to a doctorate in Law, he also received a doctorate in Political Science and Theology and defended his dissertation work at the Gustav Radbuch Institute of Law, UPJŠ Faculty of Law in Košice.

Thanks to the relatively broad scientific focus of the authors, the publication can provide interdisciplinary view of the relationship between democracy and partocracy which is undoubtedly one of its benefits. It mainly combines the aspects of Political Science, State Law, Theoretical Law, Constitutional Law and Sociology. On the base of these starting points, it identifies and analyzes the problems of democracy development in the conditions of a flourishing partocracy. It pays attention to the essence and system of analyzed social phenomena and entities and the relationship between them as well as the dynamic process of their development and continuous change based on the action of various external and internal factors which cause them and affect their functioning.

Based on the above starting points, the authors have created a relatively wide space not only for a thorough description of the studied subject of the publication but also for finding unresolved problems and translating ideas for discussing the most appropriate modeling

of a well-organized and functioning democratic society. From the reader's point of view, the authors choose their own structure which reflects their way of thinking about the topic and is a suitable tool for arranging the content of the monograph into a coherent whole with continuously following parts. It is divided into ten chapters, supplemented by a preface, introduction and conclusion. In the introductory three chapters they characterize the basic institutes, provide their conceptual analysis, definition of their basic features and opinions of selected authorities in the field of political and legal science. The fourth part introduces the basic ideological starting points of political parties in the creation of their policy. A substantial part of the monograph is devoted to the problem of partocracy. In the fifth part, the authors describe its origin, essence and external manifestations, in the sixth chapter they pay attention to the issues of the rule of law and its principles and their threat by lush partocracies. The seventh part is devoted to the principle of sovereignty as a qualitative characteristic of state power. In the eighth chapter the issue of political parties (and partocracies) is examined from the aspect of the relationship between citizen – political party – state.

In the ninth part, the authors present proposals de *lege ferenda* and de *constitutione ferenda* which from their point of view can contribute to the elimination of the phenomenon of partocracy. In the reflection before the conclusion (Chapter 10), they deal with partocracies in the context of emergencies and crisis situations among other things. As well as the overview of the content of the work shows the monograph deals with the issues that are increasingly relevant in today's democracies. Although it is generally accepted that state governance systems would probably be difficult to function without political parties, their increasingly aggressive and large-scale infiltration of entities is proving to be a disease of democracy in the hands of the state. Issues how it is possible to consolidate democracy in this system have been the subject of professional public interest and the content of several professional works especially of a political focus for a very long time.

The subject of the monograph are complex social relations which presupposes an extensive approach to the issue and the process of processing the topic from general relations to individual problems as well as partial goals which are accepted in the assessed work. The authors apply a wide range of standard methods of scientific work especially conceptual, qualitative, relational and causal analysis, generalization, conclusion as well as comparison. The introductory parts provide a basic conceptual analysis, in the main parts of the work relational analysis dominates, the European context of the subject of the work is captured using a comparative method. At the end of the work the authors try to provide conclusive reflections and considerations *de lege ferenda* that are more in the nature of general ideas about ideal solutions (even radical) or states and have the potential to contribute to the professional discussion of the issues.

The work is written in a well-readable style, with the use of justified enthusiasm in the introduction, with appropriately chosen quotations at the beginning of the chapters and well-asked rhetorical questions to which the authors provide their arguments or leave them intentionally open, trying to engage the reader. In several aspects critical mirror is set up but the goal is not an end in itself but a constructive critique with the searching for alternatives.

It is also necessary to highlight a good philosophical background of the authors. Convincing iusnaturalist view (e.g. in a matters of the "classical" i-positivist principle of legal certainty) repeatedly leads to an emphasis on increased demands on the ethics of individuals' behavior and a change of the moral state of society including changes in political culture at the same time.
The monograph with its formal aspect, structure, used methodology, interdisciplinary character and content processing represents a full-fledged and beneficial work of this type of publication in the political science field as well as in the field of state science, theory of law and constitutional law. Supposed primary recipients of the work are scientific and pedagogical personnel at universities. However the monograph has the potential to attract the attention of the general professional public and also can be served as a useful study material for students.

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