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Articles

Sustainability Requires Balanced Economic and Social Development: The Example of the V4 Countries

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Abstract: It has been taken for granted for a long time that the main objective for economies has to be to maintain economic growth. Economic growth, however, especially when measured by gross domestic product (GDP) can be attractive while human and social conditions deteriorate. Globalisation has created global value chains, which are basically about locating activities into countries where they can be performed at the lowest costs. These processes can hold back economies from moving towards a higher level of development. The article examines the economic and social situation in the V4 countries in international context and on a long time horizon, by using the most important economic and social indicators. The main purpose of the analysis is to get an objective overview of the situation, and to suggest solutions to achieve a more harmonious economic and social development, which is the necessary precondition for avoiding middle income trap.

Keywords: social sustainability, GDP, middle income trap, innovation based development, global value chains, human capabilities

1. Introduction

Economic growth measured by GDP is an important indicator of any country's economic success. It has, however, many limitations, too. The most important one is that GDP is unable to measure those social and human development indicators, which cannot be measured in terms of money. Economies go through different stages of development. First they try to develop the economy by using their physical resources, like land, minerals, geological location and the physical and quantitative advantages of human capital. This development strategy can lead to the so-called middle income development stage. To progress further, however, economic strategies need to be changed. Measuring success by GDP-based growth does not help economies to step further. New thinking is necessary which considers human and social sustainability; a long-term thinking that places the qualities of human resources into the centre of economic policy making. Professional arguments warn that no country can be considered to be a developed one, which is not competing on

knowledge, creativity and innovation, but rather considers quantitative aspects to be more important than the qualitative ones. The new thinking therefore should start with reconsidering economic structures, roles of value chains, education and learning strategies and future orientation.

The V4 countries are in a very important stage of development. Based on all relevant research findings and rankings, Czechia and Slovakia are already in the group of developed countries, while Hungary and Poland are still emerging countries.

This classification is made, however, based on the per capita income level calculated from GDP. Therefore, because of the limitations of the GDP indicator, it cannot be accepted without some doubt that Czechia and Slovakia have already safely avoided the danger of getting stuck in the middle income trap and have reached the stage of being innovation- and knowledge-based economies. The data – as we will see later – only prove that for some indicators they perform better than Hungary and Poland, but for others they do not stand out. Therefore, compared to the really developed knowledge-based countries like Austria or Denmark, the V4 countries together still have a long way to go to achieve a similar developed status. For this purpose they have to change economic development policies and the focus of investment as well. They also have to apply a wider variety of indicators, beyond GDP to measure real progress.

2. Literature overview

This research paper aims at demonstrating the importance of system thinking when evaluating performance indicators of different economies. This means going beyond measuring economic success by the usual GDP indicator, and considering human and social indicators to better describe sustainability of present economic achievements. This is also the suggested solution for less developed economies which want to avoid to get stuck in the middle income trap. Professional literature sources underline these arguments. Pilling (2018) describes how GDP can be a misleading indicator by pointing out that GDP is a gross number, which is the total sum of everything produced over a given time period. This means that it only measures income, but does not measure real wealth. In this sum, however, all plastic waste, burglar alarms and petrol consumed while cars are stuck in traffic are calculated as economic benefits.

The other problem with GDP is that it does not say anything about distributions, as GDP is an aggregate indicator. Regional differences in performance can become the weakest element limiting the chance for sustainable development. It is also a serious weakness of GDP that striving for increasing its value may actually lead to crisis situations caused by overproduction, overinvestment and overconsumption, which, as experienced in the years 2006–2008, may lead to financial crisis. To demonstrate the fallacy of relying on the results of GDP measurements, Pilling offers the following example: "If the food or service improves in your local restaurant, GDP will not notice. Ditto, if an airline's safety record improves. In fact, GDP might prefer a plane crash – so that it can build a new plane." (Pilling, 2018, p. 4)

Kapoor and Debroy (2019) warn that focusing on GDP to measure development ignores all the negative externalities of economic growth, including climate change and income inequality. GDP does not measure the quality of life, satisfaction and happiness, which can be decreased by the growing inequality and the deterioration of the natural environment.

Stiglitz, Fitoussi and Durand (2019) argue for emphasising human and social well-being, as this is the way to achieve sustainable development. The authors also call attention to the fact that because of the many deficiencies of the GDP indicator it is very dangerous to connect economic policy programs entirely to the aim of increasing GDP. They suggest assessing nonmonetary costs and benefits of public programs and policies as well.

Basically all comments on the dangers of using GDP as the only and most appropriate measurement of economic success remind us of the fact that in the beginning this indicator was not developed to assess well-being, human development or sustainability. Originally Kuznets[1] is named as the inventor of GDP. Kuznets and his colleagues attempted to estimate the national income of the USA in 1932 to be able to measure the full extent of the Great Depression. The notion of GDP was further developed later, during the Second World War, by Keynes.[2] Both authors, however, warned against using it as a type of any welfare measurement.

One of the latest arguments on GDP being a flawed metric comes from Hoekstra[3] (2019) who states that GDP is fine if one wants to measure economic activity, but totally inadequate for measuring societal progress. He actually formed a "beyond – GDP" community, in order to suggest better indexes for measuring economic success from a development point of view.

There are also various suggestions about how to measure sustainability and social progress. A very general definition for social sustainability suggests that it is a process of creating sustainable and successful places that promote wellbeing. From a business perspective it is about understanding the impacts of corporations on people and society. (Adec Innovations, 2020)

Nair (2018) explains the origin of sustainability by saying that this idea grew out of the environmental movements in the 1960s and 1970s. But later the arguments have been extended to cover human and social sustainability issues as well.

Because of the complexity of sustainability – in the author's opinion – governments have to take active role in securing the conditions of sustainable development.

Harris et al. (2001) refer to sustainability as intergenerational equity, ensuring that future generations have an inheritance of natural, social, manufactured and human capital at least equal to that of the present generation. He also points out that from the point of view of neoclassical economic theory sustainability can be defined in terms of maximisation of human welfare over time.

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[1] Simon Kuznets (1901–1985), American economist and statistician. He prepared an assessment of the national income of the USA for the period 1929–1932.

[2] John Maynard Keynes (1883–1946) further developed the concept and methodology of calculating GDP in his book: Keynes (1936).

[3] Rotger Hoekstra is an environmental economist, expert in well-being and sustainability metrics and policies.

Alibasic (2018) points to the important relationship between sustainability and resilience, therefore he suggests an integrated approach to sustainability and resilience planning at national as well as local level.

According to Sen[4] (1999, 2000), social sustainability is one of the three pillars of sustainability, alongside economic and environmental. In his view social sustainability has six dimensions: diversity, equity, quality of life, maturity, democracy and governance, and social cohesion. He also argues for a shift in focus from incomes to outcomes, so from per capita income growth input to improved quality of life outcome.

Some authors are searching for a compromise between growth and sustainability.

Bascom (2016) stresses that sustainability and economic growth can be in harmony when growth is based on education, innovation, social cohesion, and does not harm human health and the environment.

Dile (2017) argues that sustainability and economic development should not be mutually exclusive. A cleverly planned business investment can achieve economic gains while supporting sustainability. He also stresses that sustainability does not relate only to the natural environment. It is also about quality of life, good quality jobs and geographically balanced development.

Mazzucato (2018) is more concrete: she relates growth to sustainability by pointing out that growth only supports sustainability if it is smart (based on investments into innovation), sustainable (i.e. greener), and more inclusive (so that it does not produce inequalities). Mazzucato already touches upon the importance of economic structure. This subject is more deeply analysed in the professional studies on middle income trap.

Kanchooschat (2015) defines middle income trap the following way: it is the situation in which a country fails to grow further into a high-income level despite attaining middle income status for a certain period of time. Among the reasons, he puts great emphasis on the failure of modernising the economic structure. Without creating an economic structure which is able to produce and export products and services with high proportion of local innovation and value creation, it is impossible to move to a high income status. In economic terms this means that if the competitive advantage of an economy is its cheap labour and subsidies offered to investors creating assembly type jobs, then this country will get stuck in a middle-income trap situation.

Other authors try to find more concrete reasons why countries get stuck in the middle income trap. For example, Mendez-Parra (2016) lists the following two typical reasons why some countries became stuck in middle income trap:

- Many countries successfully achieve middle income status by using subsidies based industrial policy to attract foreign investments, but then later strong industrial interest groups may attempt to block policy reforms to achieve transformation to innovation based economy, because they want to keep their subsidies and protection.

[4] Amartya Sen (1933–), Nobel Laureate in economic sciences, Indian economist and philosopher.

The transition process, as the author emphasises, requires considerable state investments into education and innovation. Especially the quality of science and mathematics education has to be improved. In order to avoid middle income trap, a technological development is also needed which helps to close the technology gap of an economy. According to Milberg and Houston (2005), technology gap is the difference between the technological level and innovativeness of a country, and that in a technologically leading country. The gap is reflected in R&D expenditures, the number of engineers and scientists employed, and consequently in the level of productivity.

High road development – as Huggins and Thomson (2017) stress – has to mean high wages, too. Aiginger and Böheim (2015) offer similar arguments. They also point to the fact that avoiding middle income trap needs abandoning price competitiveness and choosing a so-called high road strategy, based on research, skills, ecological ambitions, empowering employment policy and excellent institutions. High road policies therefore can support economic growth while also caring about human, social and environmental sustainability.

Summarising the conclusions which can be drawn from the literature, it is evident that sustainability is also related to the level of economic development a country can achieve. Innovation, knowledge and skills, as well as good quality jobs are important preconditions of sustainable development, which provide the necessary resources and capabilities to avoid a middle income trap situation, and to move towards a high income status.

3. The present research

This article intends to prove that economic growth, even if it is very attractive is not sufficient for sustainable development. Sustainable development has a long term view compared to the short term concept of measuring growth with GDP, an indicator that professionals demonstrated not to be a satisfactory one.

The article selected the V4 countries to demonstrate this supposition. A wide range of statistical data have been searched for this reason, and different statistical methods and illustrations have been used to prove the arguments about how economic growth could better serve human and social sustainability goals. The arguments are strengthened by analysing the V4 countries in an international context and making statistical comparisons between indicators of some better developed countries and those of the V4 countries.

In the conclusion, comparative tables support the suggestion related to how V4 countries should better harmonise economic growth and social development.

4. The economic growth achievements of the V4 countries

In recent years, the V4 countries have experienced an exceptional rate of economic growth. Table 1 indicates that the growth rate was the highest in the latest years in Poland and Hungary.

Table 1.
GDP growth in the V4 countries (2015–2019, %)

Country	2015	2016	2017	2018	20195
Czechia	5.3	2.5	4.4	2.8	2.5
Slovakia	4.8	2.1	3.0	4.0	2.3
Poland	3.8	3.1	4.9	5.1	4.0
Hungary	3.8	2.2	4.3	5.1	4.0
First position	Czechia	Poland	Poland	Poland Hungary	Poland Hungary
Last position	Poland Hungary	Slovakia	Slovakia	Czechia	Slovakia

Source: Eurostat

However, if we consider economic convergence measured by the GDP per capita (in PPS) as a percentage of the EU average, we learn that in the case of Hungary and Poland in 2018, 14 years after joining the EU the convergence indicator is only 71% (Figure 1). This number is 56% less than the Austrian value, and 53% less than the German one.

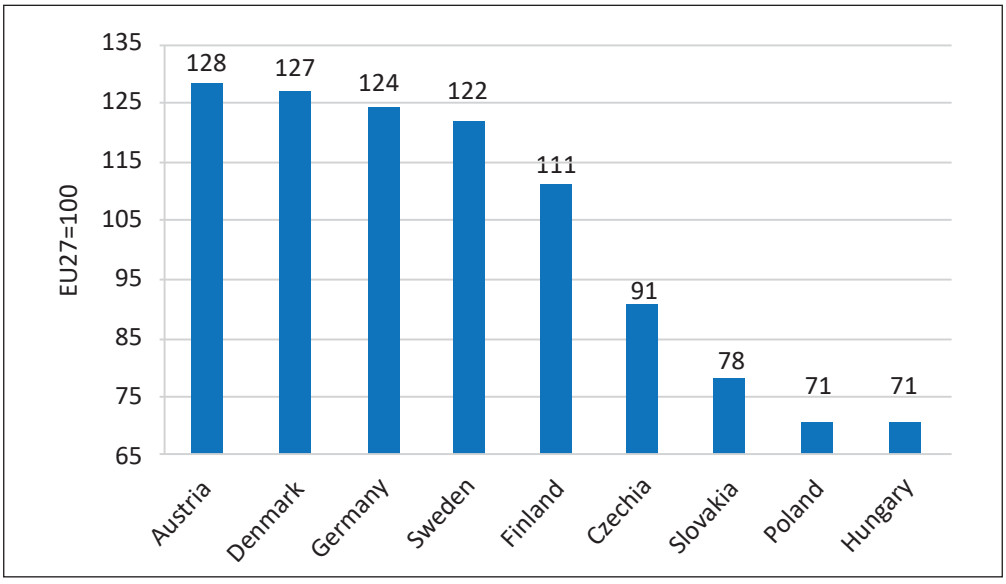

Figure 1.
GDP per capita in PPS (2018) (EU27 = 100)

Source: Eurostat

[5] The 2019 values are forecasts.

Within the V4 countries the Czech economic convergence is the strongest, although it is partially explained by the start from a higher value. This data indicate that convergence, in spite of the strong growth values, is not improving fast enough in the other countries.

From the point of view of the population, purchasing power adjusted GDP per capita indicator is especially important, because it measures material well-being. Figure 2 indicates how far the V4 countries are from the developed countries in the light of this indicator. We will explore reasons for these data later. We can, however, suppose an important reason right away: the lower wage levels.

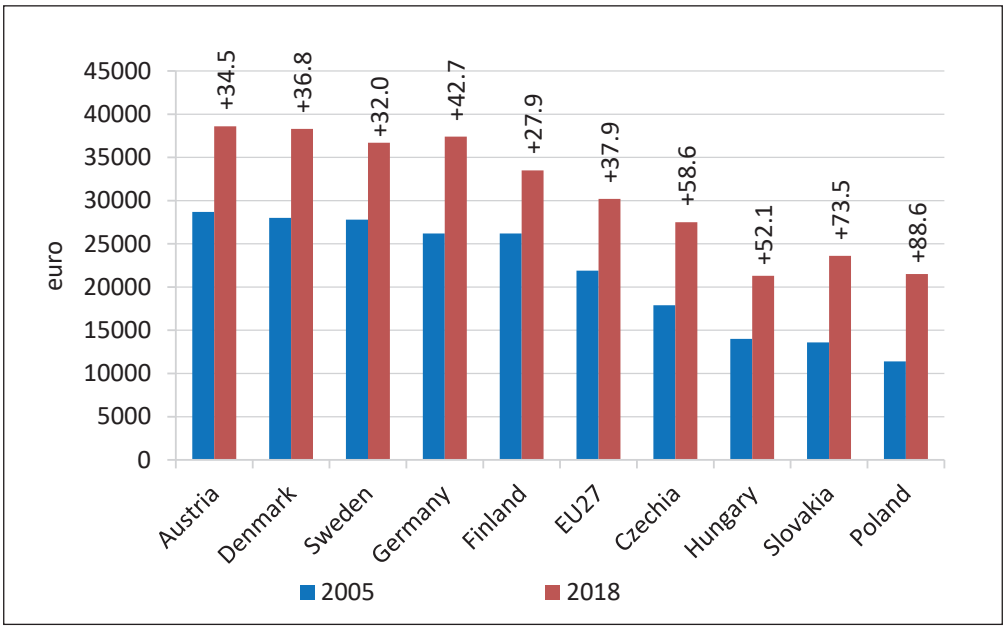

Figure 2.
Purchasing power adjusted GDP per capita, and its growth from 2005 to 2018

Source: Eurostat

The highest income growth has happened in Poland (88.6%) within the V4 countries, but it was only sufficient for a convergence of 71% in 2018. The GDP per capita value in the presented developed countries are much higher than in the V4 countries. The lowest level and growth rate is in Hungary.

These data show nationwide values; therefore, they may hide regional differences, which are important signs of regional development. A regionally balanced economy is more resilient, and better prepared for avoiding unexpected crisis situations. It can also better serve local human and social development objectives. The two typical indicators which measure regional disparities are the GDP per capita and the GDP per person employed. The latter one is also one of the productivity indicators. In accordance to the

latest, 5 March 2020 Eurostat news release, regional GDP per capita ranged from 30% to 263% of the EU average in the EU in 2018. There are considerable differences among the V4 countries, too.

Figure 3 demonstrates the largest and smallest value for the GDP per capita and the GDP per person employed indicators in the V4 countries and Austria. Austria is selected because of its strong economic ties with the V4 countries, and also because of its geographic proximity. The freshest data for EU27 are presented.

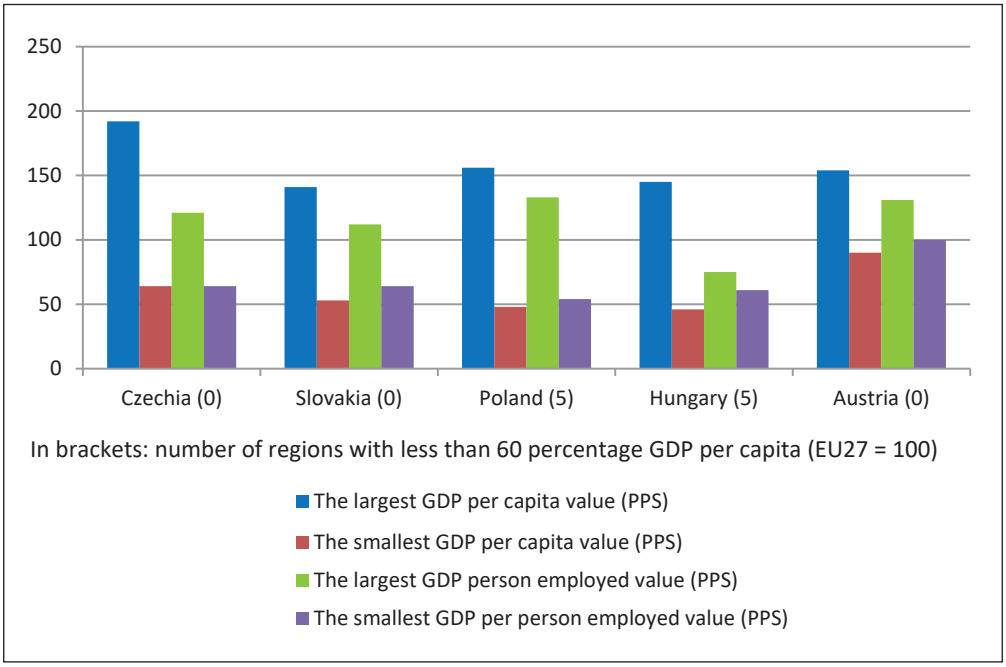

Figure 3.
Regional GDP indicators (EU27 = 100, 2018)

Source: Eurostat

What can we learn from the values? GDP per capita is a general indicator measuring new value added. GDP per person employed, on the other hand, illustrates the new value creation by the employees. However new value creation depends not only on the employees, but much more on the technological and managerial sophistication, as well as the knowledge intensity of businesses operating in an economy. The quality of jobs is also a determining factor of productivity. Large regional differences in the GDP per capita indicator demonstrate larger disparities in regional development levels. Lower productivity levels may be an indicator of lower innovativeness and knowledge creating capability of the entire economy. In Hungary, the regional differences are large, but productivity differences are minimal. This suggest a lagging productivity level in the entire economy. On the other hand, in Poland the regional GDP per capita indicator differs almost with the same ratio

than in Hungary (3.25, 3.15), but productivity disparities are large, suggesting an economic structure with higher and lower value added sectors in the different regions. Austria, on the other hand, demonstrates a well- balanced and harmonious economic structure from the perspective of GDP per capita, as well as GDP per person employed (ratios: 1.7, 1.3)

Finally, the number of regions with lower than 60% GDP per capita as percentage of EU average is another important warning sign of large regional disparities.

Table 2.
Number of NUTS 2 regions and regions with GDP per capita below 60% (EU27 = 100)

Country	The number of NUTS 2 regions	Regions with GDP per capita below 60% (EU = 100)
Czechia	8	0
Slovakia	4	0
Poland	17	5 (30%)
Hungary	8	5 (63%)
Austria	9	0

Source: Eurostat

It is especially worth mentioning that in Hungary, where the general GDP growth has been one of the highest in the recent years within the V4 countries, regional disparities are the largest, as 63% of all the NUTS 2 regions have only achieved a less than 60% convergence to the EU average.

Based on the numbers we can conclude that regional differences are generally higher in the V4 countries than in Austria. Within the V4 countries, the largest regional disparities occur in Hungary and Poland. One reason for Poland can obviously be the size of the country. In the case of Hungary another worrying sign is the generally very low GDP per person employed productivity indicator, which may point to the lower level of technological, innovative and managerial sophistication, and the large proportion of low quality, poorly paid jobs.

Concluding this economic introduction we face the question: why are the key macro data measuring economic achievements so contradictory in the V4 countries? What reasons may explain the slower than expected convergence, and the lower level living standard measured by the GDP per capita indicator? We try to answer these questions in the following sections. Obviously we have to start by analysing economic structures which may be responsible for some of the economic weaknesses of the V4 countries.

5. Economic structure and types of jobs in the V4 countries

Innovative enterprises are the sources of competitiveness of any economy. They create knowledge-based, high value-added and well paid jobs. It is therefore a very important indicator of what percentage of the enterprises are innovative in an economy. Innovativeness means several things for businesses. An innovative enterprise can continuously come up

with new product ideas, or develop new processes and search for new markets. Innovation is also more than product, process and market innovation. Enterprises have to learn continuously, renewing their organisational, management and marketing systems, which is also innovation.

Figure 4 illustrates the percentage of enterprises performing any type of innovation in the observed time period.

The numbers for three of the V4 countries are very low. This presumes at the same time a lower proportion of good quality and well paid jobs, less options for human development based on demanding and challenging jobs.

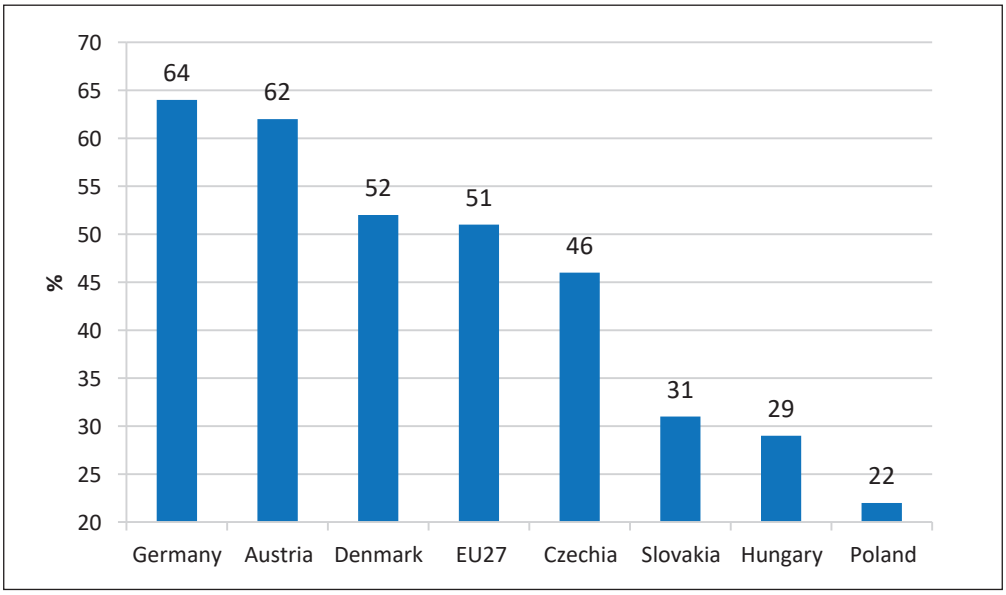

Figure 4.
The proportion of innovative enterprises (all enterprises = 100) (2016, %)

Source: Eurostat

As indicated on Figure 4, the proportion of innovative enterprises is much higher in the developed countries. Within the V4 countries the Czech value is the highest. As mentioned earlier, the V4 countries are homes of operations companies (mostly assembly-type ones) from developed EU countries. Their share of value added – as seen on Figure 5 – is especially high in Hungary and Slovakia, but they do not seem to contribute to increasing the proportion of innovative enterprises. This is demonstrated on Figure 6, which shows two extremely important innovativeness-related indicators.

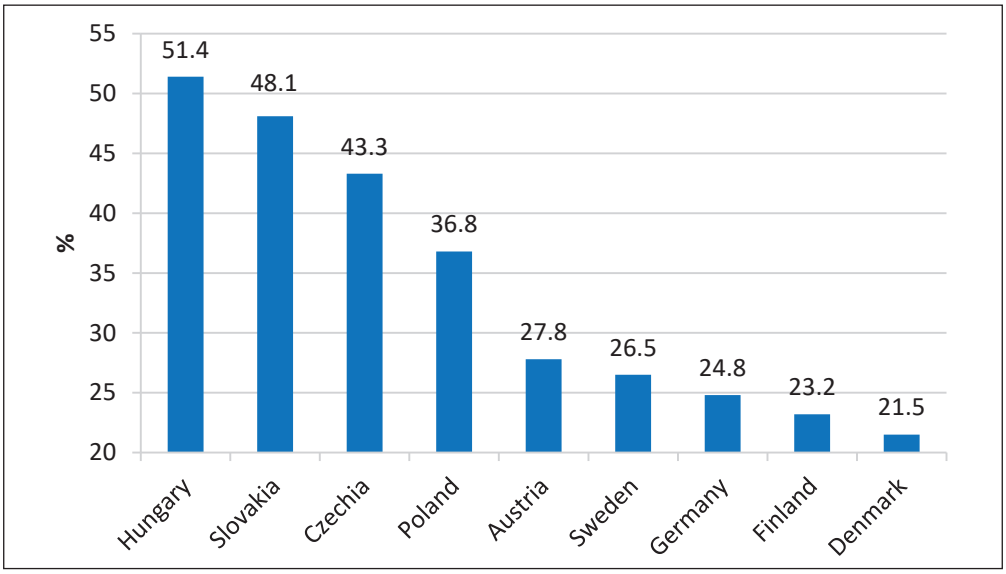

Figure 5.
Share of value added by foreign-controlled enterprises in the non-financial business economy (2016, %)
Source: Eurostat

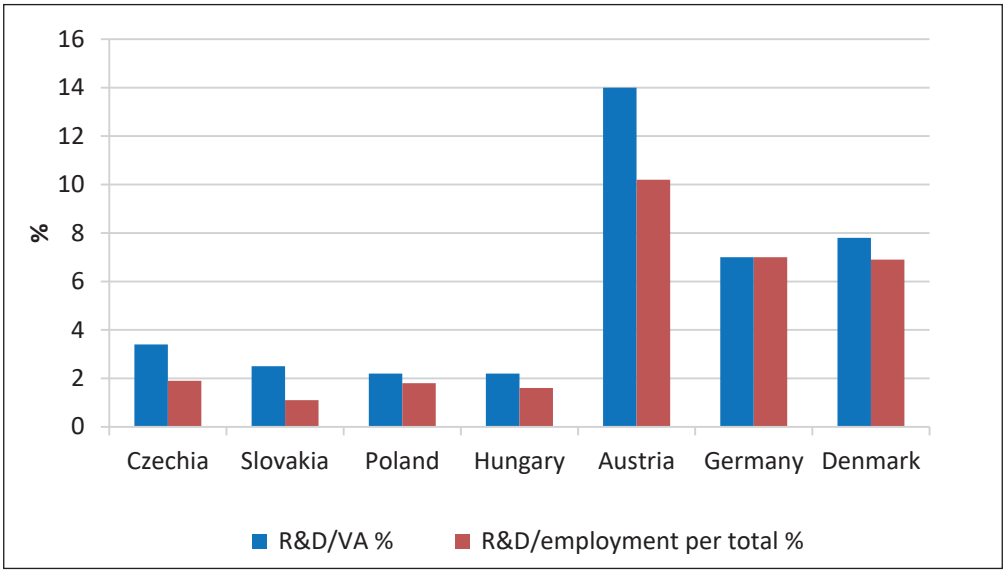

Figure 6.
R&D expenditure as percentage of value added, and R&D employment as percentage of the total persons employed in foreign controlled enterprises (2017, %)

Source: Eurostat

The data show that foreign-controlled businesses spend very small proportion of their local value added on R&D, and among all the persons they employ, R&D employment is minimal compared to – for example – the Danish, German or Austrian values.

This is an indication that these companies basically operate low-value added, assembly operations in these countries, while in the presented developed EU countries innovation related jobs are more typical. Because of their large share in the V4 countries' economy this situation can actually create difficulties for these countries if they want to move to a more knowledge-based economic structure. The types of jobs available in an economy are also signs of economic development.

The employment by professional status and occupation demonstrates the quality of available jobs, which also reflects wage levels. Obviously, managers and professionals have higher salaries than plant and machine operators and assemblers, or people working in so-called elementary occupations. On the other hand, types of occupations also describe the knowledge structure of an economy.

If the proportion of, for instance, plant and machine operators and assemblers is too high, that indicates a large proportion of assembly type jobs. It is also important to see the knowledge capability of the economy, which can be characterised by the proportion of professional jobs. A longer time horizon in turn demonstrates changes in the economic and knowledge structures. If an economy wants to avoid the so-called middle income trap, it has to decrease the proportion of assembly and elementary jobs, and increase the knowledge-based jobs.

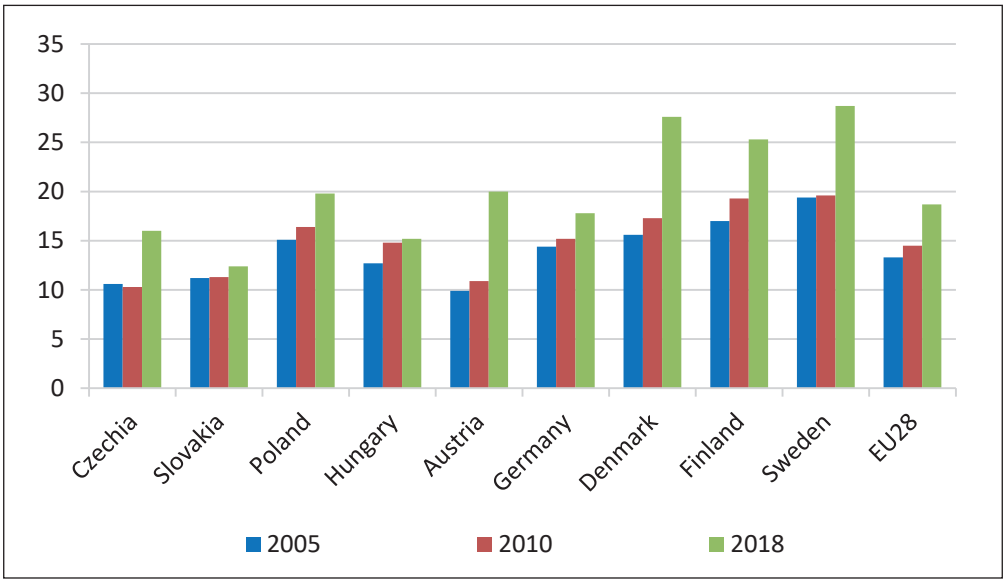

Figure 7.

Employment in professional occupation in 2005, 2010, 2018 in the 15–64 age range (%)

Source: Eurostat

This is especially important for the younger generation, as otherwise it tends to emigrate to countries where the higher quality jobs with the associated higher salaries are more easily available. On Figures 7, 8 and 9 we can observe[6] the proportion of professional, plant and machine operator and assembler, as well as the elementary type of jobs in the 15–64 years old age range, in three years, in the V4 countries and in 5 developed economies. Figure 10 shows the same proportions for all professional status for the 15–39 years old age range in 2018 in the same countries. Beyond the V4 countries five developed, competitive countries are selected for comparison.

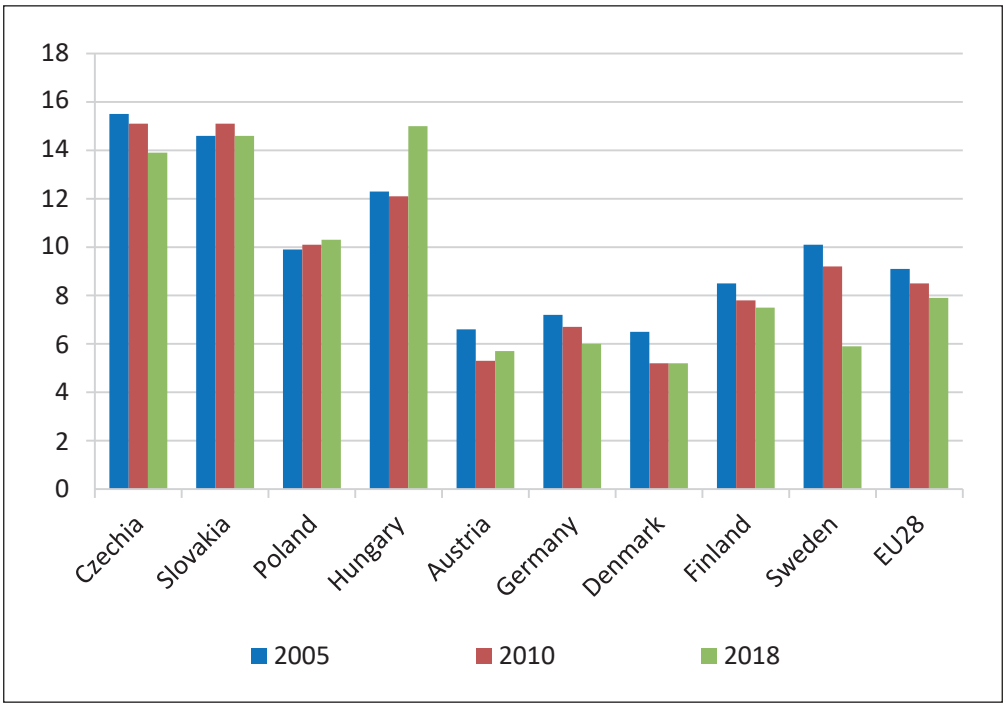

Figure 8.
Employment of plant and machine operators and assemblers in 2005, 2010, 2018 in the 15–64 age range (%)

Source: Eurostat

[6] The types of jobs are classified in accordance to ISCO 08. (International Standard Classification of Occupation 2008, ILO.)

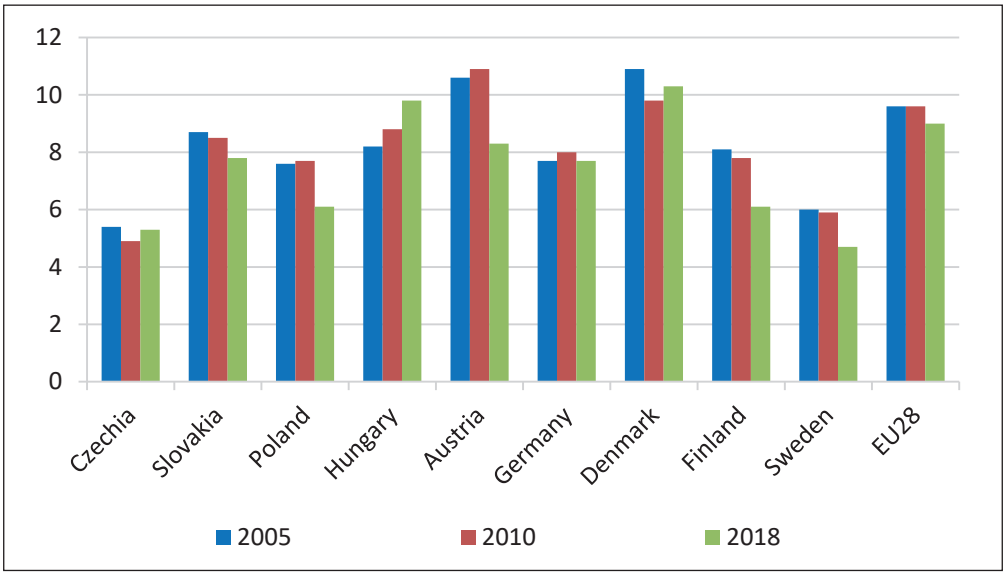

Figure 9.
Employment in elementary occupations in 2005, 2010, 2018 in the 15–64 age range (%)
Source: Eurostat

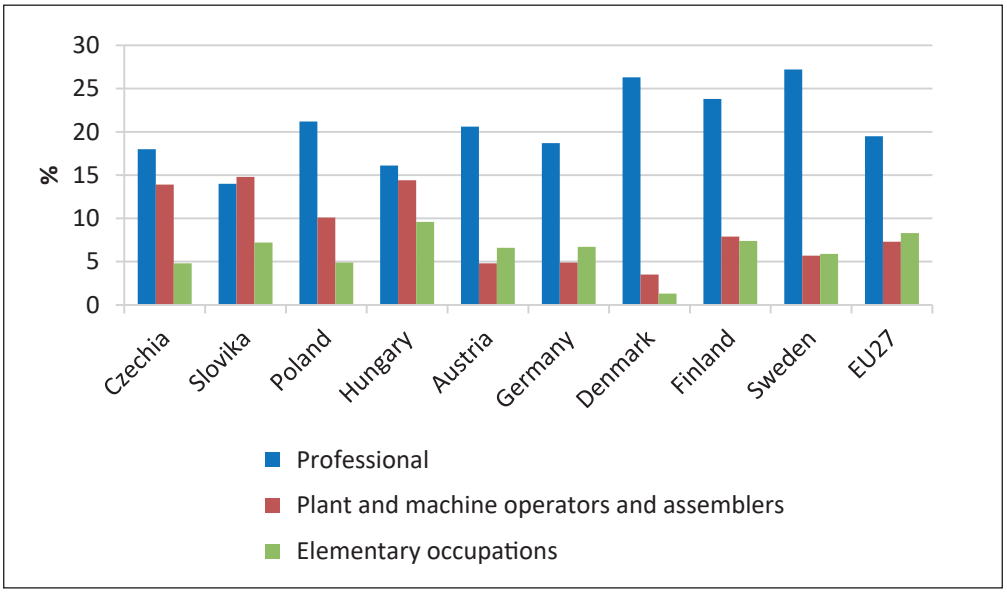

Figure 10.
Employment by different professional status and occupation in the 15–39 age range in 2018 (%)
Source: Eurostat

From Figure 7 we can conclude that in all years the proportion of professionals are much higher in the 15–64 age group in the more developed countries, with the exception of Poland (19.8%). In the case of Slovakia and Hungary, the proportion is much lower than the EU average. The three most competitive countries, Denmark, Finland and Sweden have the highest proportion of professionals in this age group. Germany is a surprising exception with its lower than EU average value. In the younger (15–39) age group – with the exception of Poland again – the V4 countries perform poorly in comparison with the three most competitive countries, and even compared to the EU average. The lowest proportion can be found again in Slovakia and Hungary. It is also worth checking the tendencies from 2005 to 2018. The largest increase in the proportion of professionals can be experienced in Austria, and the lowest in Slovakia. The second lowest increase has happened in Hungary.

As far as the proportion of plant and machine operators and assemblers is concerned, the differences between the V4 and the developed countries are striking in both age groups. The highest proportion in the 15–64 age group in 2018 can be found in Hungary (15%), the lowest in Austria (5.7%) and Denmark (5.2%). The Danish value is only 35% of the Hungarian one. In the case of the 15–39 age group Slovakia is leading with 14.8%. The lowest value is again in Denmark (3.5%). This value is only 24% of the Slovak one. Considering changes from 2005 to 2018 in the 15–64 age group in Poland and Hungary, the proportion of plant and machine operations and assemblers has increased, and in Czechia it has decreased. All the developed countries have significantly decreased employment in this category.

The proportion of those working in elementary occupations in the 15–64 age group has decreased in all countries, with the exception of Hungary. In Germany, the number is unchanged. Surprisingly, the differences among the countries are not so high for this occupation. However, within the V4 countries the Hungarian value is the highest (9.8%), and only the Hungarian value has increased since 2005. In the younger, 15–39 age group the Danish value is the smallest (1.3%) and the Hungarian one is the highest. Finally, let us have a look at a special form of employment, the precarious form. This is a form of employment in which employees have a short term work contract, most of the time about 3 months. This situation means uncertainty and insecurity for the employees with almost no chance of moving up to a quality job.

Figure 11 indicates that in both the total economy, and the industry and construction sectors in the V4 countries – with the exception of Czechia – these types of jobs are overrepresented.

In conclusion, we can make the following observations based the analysed data:

- in the V4 countries the so-called "blue collar", assembly and low skilled employment is proportionally large.
- Poland performs the best regarding professional employment. This may be one explanation for the highest GDP per person employed productivity for Poland in the percentage of the EU27 average (Figure 3). In spite of this, Poland is also the home of the region with the lowest level for this indicator, too (54%). The proportion of plant and machine operators and assemblers is also quite high in Poland (10.3%), although lower than in the other V4 countries.

– it is an especially worrying sign that even within the younger generation age group (15–39 years) the proportion of plant and machine operators' and assemblers' employment is very high, and the proportion of professional occupation is – with the exception of Poland – very low in the V4 countries.

These numbers mirror a less developed economic structure dominated by foreign assembly operations. This fact– especially in the case of Slovakia and Hungary – is a warning sign of the danger of getting stuck in a "low-road" cost-competitiveness strategy which inhibits them from moving to a "high-road" knowledge-based competitiveness position.

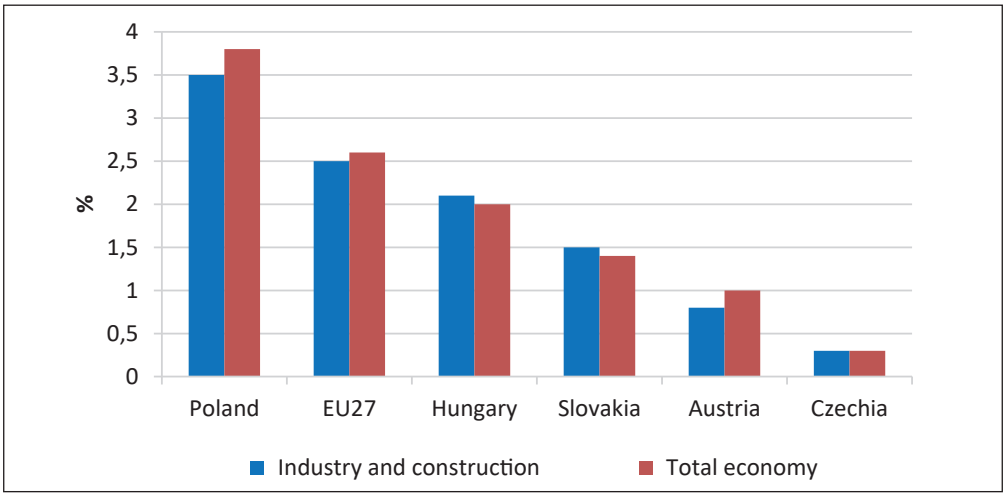

Figure 11.
Precarious employment for the 15–64 age group in the industry and construction sectors and in the total economy 2018 (%)

Source: Eurostat

6. The role of government expenditure structure in economic development

Governments can enhance economic competitiveness by strengthening the knowledge sector. The structure of government expenditure is a good indicator of priorities of government economic policies. The latest data on government expenditure by function were published by the Eurostat on February 21, 2020. The spending priorities of the V4 countries and three selected developed countries are compared in Table 3, 4, 5. Table 3 demonstrates government expenditures related to public debt transactions, economic affairs, and different areas of defence as percentage of the total public expenditure.

The V4 countries all spend much more than the three analysed developed countries and the EU27 average on "economic affairs", which is probably related to the stimulation of the economy in order to achieve higher growth.

Table 3.
Government expenditures on economic affairs and defence as percentage of total public expenditure (2018, %)

Country	Public debt transactions	Economic affairs	Police services	Prisons	In sum	Public expenditure as % of GDP
Czechia	2.0	14.8	2.4	0.5	19.7	40.7
Slovakia	3.5	13.2	2.5	0.5	19.7	41.8
Poland	3.6	12.1	2.6	0.6	18.9	41.6
Hungary	5.3	16.4	3.0	0.4	25.1	46.7
Austria	3.6	12.0	1.4	0.3	17.3	48.6
Denmark	2.2	6.5	1.1	0.3	10.1	50.9
Germany	2.3	7.6	1.7	0.2	11.8	44.6
EU27	4.0	9.4	1.9	0.3	15.6	46.7

Source: Eurostat

For Hungary it is a special weakness that because of the much higher debt (compared to the GDP level) than in the other V4 countries it has to spend much more on debt services. It is also surprising that the V4 countries spend more on police services and prisons than the other countries.

In Table 4, government expenditures differentiated by function are portrayed as percentage of GDP. Hungary and Czechia spend the least on social protection. In the case of Czechia, the reason may be – as will be shown by the different human development indicators – the more developed, balanced and inclusive society. For Hungary it is a government policy that everybody who is able to work has to work, if not elsewhere then at least in the public work scheme system. This is one explanation for the less resources spent on social protection.

Table 4.
Government expenditure by function (EU27, 2018, % of GDP)

Country	Social protection	Health	Education	Economic Affairs	Recreation, culture, religion
EU average	19.2	7.0	4.6	4.4	1.1
Czechia	12.0	7.6	4.6	6.0	1.5
Slovakia	14.3	7.3	4.0	5.5	1.1
Poland	16.2	4.8	5.0	5.0	1.3
Hungary	13.3	4.7	5.1	7.7	3.2
Austria	20.1	8.2	4.8	5.9	1.2
Denmark	21.9	8.3	6.4	3.3	1.6
Germany	19.4	7.2	4.2	3.4	1.1

Source: Eurostat

It is also surprising that Poland and Hungary spend the least on health, however, Hungary spends generously on recreation (sport), culture and religion.

Education is financed the most heavily in Denmark. In term of economic affairs – as observed earlier – the V4 countries (especially Hungary) are in the front.

Finally let us examine the human development related government expenditures in the percentage of total public expenditure. The values of these indicators are probably the most important if a country cares not only about the economic growth measured by GDP, but also about human development and social aspects in the society.

Table 5.
Government expenditure directly related to human development, as percentage of total public expenditure (2018, %)

Country	Health	Family and children	Old age	Pre-primary and primary education	Protection of biodiversity	In sum
Czechia	18.7	2.7	18.1	2.7	0.6	42.8
Slovakia	17.5	2.5	18.4	2.6	0.1	41.1
Poland	11.6	6.1	22.1	5.1	0.0	44.9
Hungary	10.1	3.6	14.3	2.7	0.1	30.8
Austria	16.8	4.3	25.5	3.0	0.0	49.6
Denmark	16.3	8.5	16.2	5.7	0.4	47.1
Germany	16.2	3.8	21.2	2.9	0.1	44.2
EU27	15.0	3.7	22.3	3.4	0.2	44.6

Source: Eurostat

In Table 5 we can observe that health related expenditures as percentage of total public expenditure are the lowest in Hungary and Poland. Denmark and Germany are the leaders. Poland and Denmark spend the most on family and children, and Slovakia the least. Old age population is supported the most in Austria, and the least in Hungary. Children are the future not only for the economy, but also for the society as a community. This is mostly emphasised in Denmark and Poland. Finally, biodiversity as an important feature of quality of life is the most emphasised factor in Czechia and Denmark.

Summing up the conclusions, the V4 countries spend the most on economic affairs in percentage of GDP and that of the total public expenditure. This may be a reason for the excellent GDP growth numbers. On the other hand, human and social type of public expenditures, although they are at different levels in different countries, are not as high as in the case of the presented developed countries. Economic growth is, of course, important, but cannot be more important than human and social development. First of all because human and economic development, on the longer run, are the preconditions of competitiveness. Secondly, economic growth is morally acceptable only if the results of it are mirrored in the entire society.

7. The way to competitiveness: investment in human capabilities

In the previous section we analysed public expenditure by function as percentage of GDP, and that of total public expenditure. We have concluded that the most emphasised field in the V4 countries is spending on economic affairs. Let us go into more detail now, and compare health and R&D expenditures of the V4 countries with those of three developed countries. These areas are very important for human and social sustainability, as well as economic competitiveness. We can also contrast human and knowledge investments with the strength of human capital as a partial indicator of human and knowledge investments.

In Figure 12, R&D expenditure can be seen in euro per capita and as percentage of GDP.

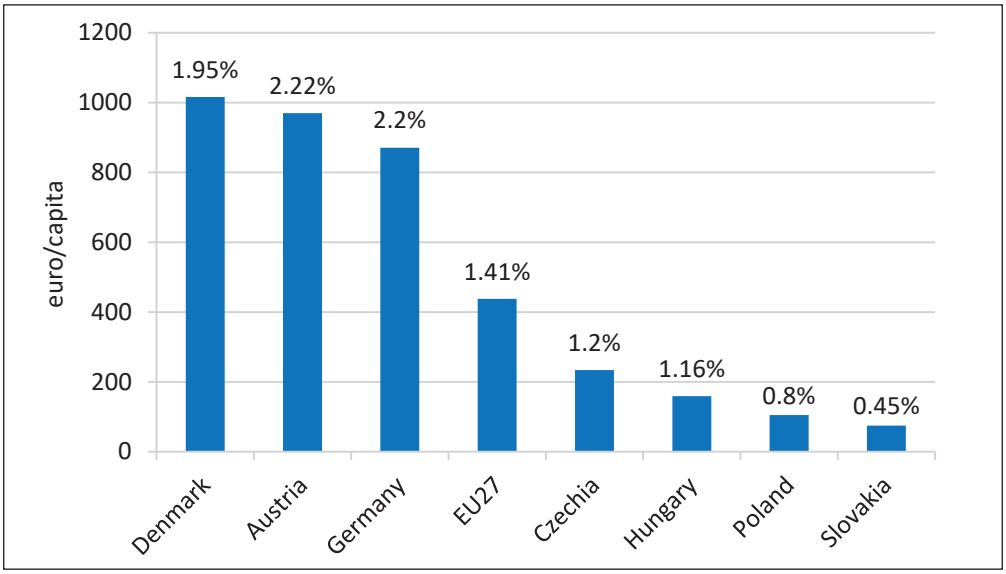

Figure 12.
R&D expenditure (euro per capita, percentage of GDP, 2018)

Source: Eurostat

As we can see, the GDP related numbers of the V4 countries are very much far away from those of the analysed developed countries. If we also check the absolute numbers, we experience even larger differences. Austria spends 13 times more euro on R&D for one inhabitant than Slovakia. Denmark spends close to 10 times more than Poland.

It is obvious that with such a low level of R&D investment, as knowledge investment, it is almost impossible for these countries to move to a knowledge-based economic structure and competitiveness.

As Table 6 shows, public expenditure on education on the other hand is similar within the V4 countries, but lower than in the selected developed countries. Especially the three Scandinavian countries invest a high proportion of GDP into education.

Table 6.
Government expenditure on education in different years (% of GDP)

Countries	2010	2015	2018
Czechia	5.1	4.9	4.6
Slovakia	4.5	4.2	4.0
Poland	5.5	5.3	5.0
Hungary	5.5	5.2	5.1
Austria	5.1	4.9	4.8
Denmark	7.1	7.0	6.4
Germany	4.4	4.2	4.2
Finland	6.5	6.2	5.5
Sweden	6.4	6.4	6.9

Source: Eurostat

It is alarming though that from 2010 to 2018 every country – with the exception of Sweden – has decreased public expenditure on education as percentage of GDP. Of course, in the case of countries with high level of GDP – like Austria, Denmark or Germany – this is not so tragic. But in the case of Hungary, for example, this may have detrimental effect on the future of the society, as well as on the future competitiveness of the economy.

Adult participation in learning is also crucial, especially in times of revolutionary technological changes, like in today's times. Figure 13 shows that this indicator is also very low in the V4 countries, compared to the four developed countries. The fifth, Germany, is a surprise with lower adult participation in learning than in Czechia.

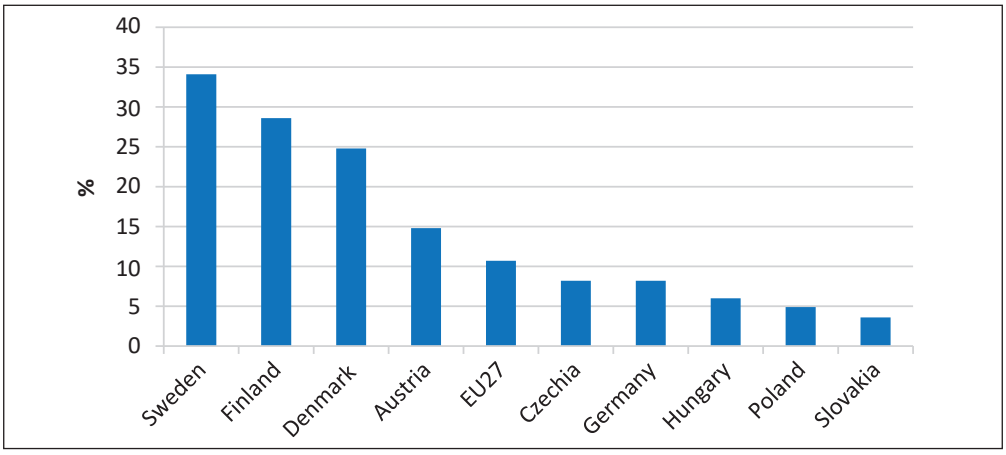

Figure 13.
Adult participation in learning[7] *(2019, %)*

Source: Eurostat

[7] Share of people aged 25 to 64 who stated that they received formal or non-formal education and training in the four weeks preceding the survey (Eurostat).

For the countries with low values for investment into human knowledge it should be an alarming fact that, taking into account the often emphasised argument that knowledge is the currency of the future, then they are not strengthening enough this currency.

8. The strength of human capital

The strength of human capital is a very important element of the knowledge position of a country. It can be measured from different perspectives. In this paper we measure strength first from the perspective of knowledge. Later we focus on some additional social characteristics.

One important indicator which characterises the strength of human capital is the proportion of people with tertiary education. Among them the proportion of the so-called STEM – Science, Technology, Engineering, Mathematics – graduates is outstandingly important.

Figure 14 presents the proportion of people with tertiary education in the best employable (25–34 years old) age group and in the active population (18–69 years old age group), for the V4 countries and three developed countries.

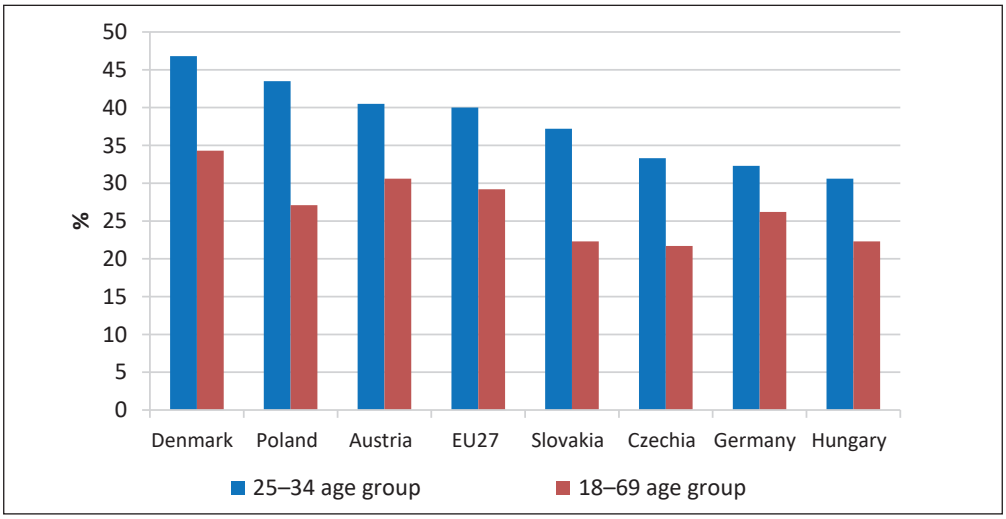

Figure 14.

Proportion of people with tertiary education in the 25–34 and 18–69 age range (2018, %)

Source: Eurostat

Among the V4 countries Poland leads according to both indicators. The best overall results can be observed in Austria and Denmark. The Hungarian value is weak according to both indicators. In the larger age range the Czech and Slovak values are also below the EU average. Surprisingly the German values are also low, they do not stand out at all from the values of the V4 countries.

The proportion of STEM graduates in the 20–29 years old age group per 1,000 inhabitants – as indicated in Figure 15 – is the lowest in Hungary and Slovakia.

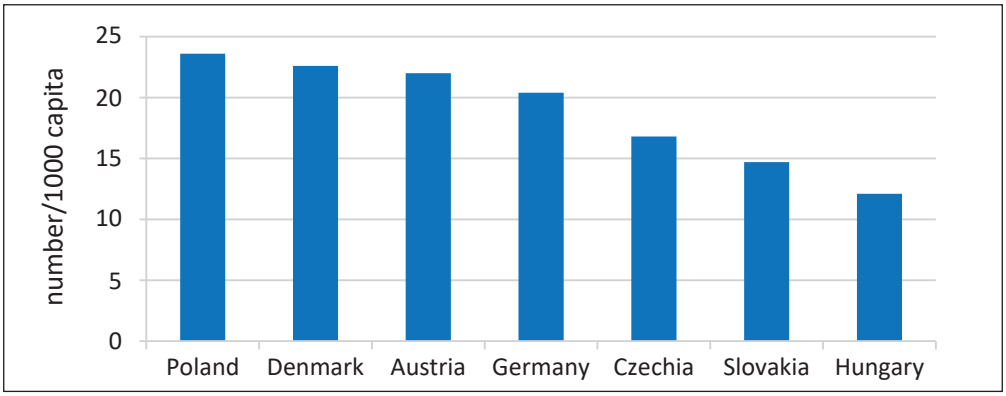

Figure 15.
Proportion of STEM graduates in the 20–29 years old age range per 1,000 inhabitants (2017, %)
Source: Eurostat

Finally let us consider another important human factor, the employment opportunities in high-tech knowledge jobs. It is not easy to judge the situation in this case: whether there are few high-tech jobs available, because the majority of the companies offer jobs mostly at the lowest value-added level of the value chain, or the properly trained people are not available in the necessary numbers, as Figure 14 and 15 may suggest. The most probable answer is that a combination of both options may be valid. Table 7 offers some explanation for the problem.

Table 7.
Scientists, engineers and high-tech employment

Country	Scientists and engineers (15–74 ages) as percentage of total population (2018, %)	Persons employed in science and technology (15–74 years) as percentage of total population, (2018 %)
EU27	4.4	21.1
Czechia	4.3	21.6
Slovakia	2.6	16.9
Poland	4.5	19.7
Hungary	3.6	18.0
Austria	6.1	24.2
Denmark	6.9	29.6
Germany	5.3	27.3
Finland	7.0	27.5
Sweden	8.2	32.3

Source: Eurostat

On Table 7 the first column shows the availability of scientists and engineers. The second one shows the proportion of persons employed in science and technology. Both indicators are measured as percentage of total population. The data are from the V4 countries and five developed countries. First of all it is obvious that the V4 countries do not perform too well according to these two indicators. The percentage of scientists and engineers is the highest in Sweden and Finland, the lowest in Slovakia and Hungary.

In terms of persons employed in science and technology as a percentage of total population, again, Finland and Sweden are the leaders, and the laggards are Slovakia and Hungary. The data underline the assumption that neither jobs nor people to fill them are available in sufficient proportion to support a knowledge-based competitiveness trajectory.

These statements are supported by the observations of the IMD.[8] The IMD Talent Ranking 2019 stresses the importance of human wealth for long term economic and social development. The index is developed based on the analysis of three areas:

- investment into knowledge and development of human resources;
- attractiveness of the country with regard to attracting and keeping high skilled, talented people ("appeal");
- readiness for the future (skills, science graduates, international experiences etc.).

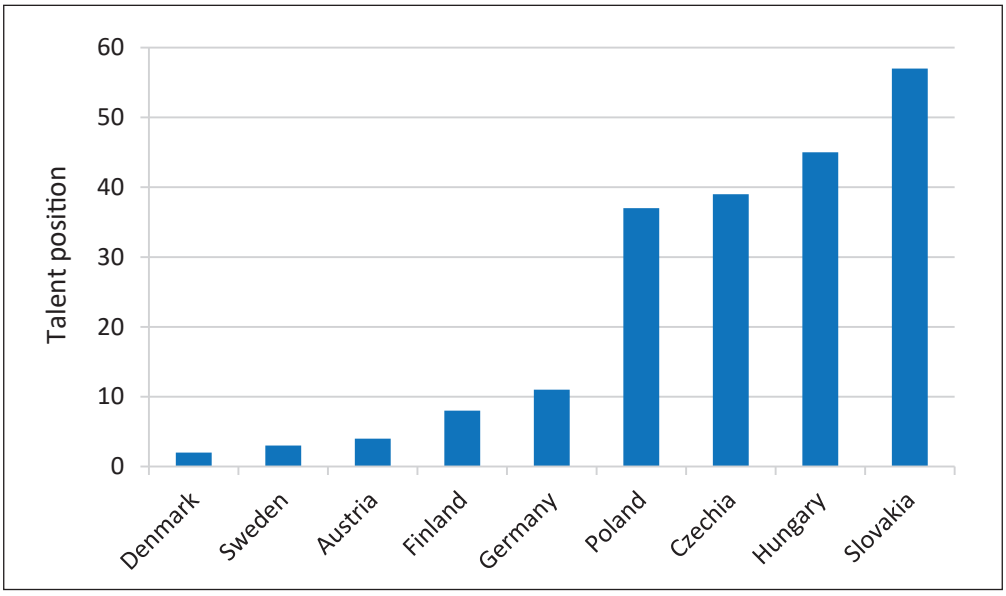

Figure 16.
IMD Talent Ranking 2019

Source: IMD, 2019

[8] Institute for Management Development, Lausanne, Switzerland.

Figure 16 pictures the rank of the V4 and 5 developed countries. The lower numbers indicate the better positions.

It is probably not surprising that the countries investing more into human capital are in much better position. Among the 63 countries examined by the IMD, Denmark is the second, and Sweden is the third. If we also analyse tendencies in the V4 countries, we can learn that, surprisingly, Czechia, Slovakia and Poland have slipped back. Hungary has improved its position (Table 8).

Table 8.
Talent ranking change in the V4 countries

Country	2015	2016	2017	2018	2019	Change of position
Czechia	33	33	38	37	39	–6
Slovakia	44	39	46	59	57	–13
Poland	29	29	34	38	37	–8
Hungary	49	51	54	49	45	+4

Source: IMD, 2019

Hungary's position is still poor after the improvement: 45th out of the 63 countries.

If we go into even more details we learn that Hungary's attractiveness for talented people (appeal) is weak (56th position). On the other hand, all V4 countries are poorly prepared for the future, i.e. they do not invest enough in skills development (readiness).

Table 9.
The positions of the V4 countries in the three areas surveyed by IMD (2019)

County	General position	Investment and development	Appeal	Readiness
Czechia	39	40	45	39
Slovakia	57	47	54	59
Poland	37	27	46	45
Hungary	45	33	56	57

Source: IMD, 2019

In conclusion we have to reinforce the fact that, although the V4 countries have achieved good economic performance in terms of GDP growth, this has not been achieved through investing enough into human skills. Rather, probably two special reasons have played a greater role: attracting foreign capital and stimulating the economy from EU funds and domestic sources in forms of public investments. As far as contribution of foreign companies to the GDP is concerned, we have to remind the reader that the repatriated profit is also included in the GDP. It is also known that especially when uncertainties are increasing, foreign companies send back home the earned profit in larger proportion. In order for the V4 countries to achieve sustainable development and not only economic growth, investment into people and knowledge should be the focus of national strategy. This would also help increase quality of life, and the level of human development. Let us

now turn to some social indicators of the V4 countries as compared to those of other, more developed countries.

9. International research findings on human development

Human Development Index

The best known human development index is the HDI[9] index. It is a composite index based on four indicators, which are life expectancy at birth (years), expected years of schooling (years), mean years of schooling (years) and GNI[10] per capita (PPP). HDI is measured on a scale of 0 to 1.0, with 1.0 being the highest possible value. The index was first launched in 1980. In the last report on HDI, 189 countries were analysed.

Figure 17 shows the rank of the V4 countries and Austria between 2003 and 2019, in five years.

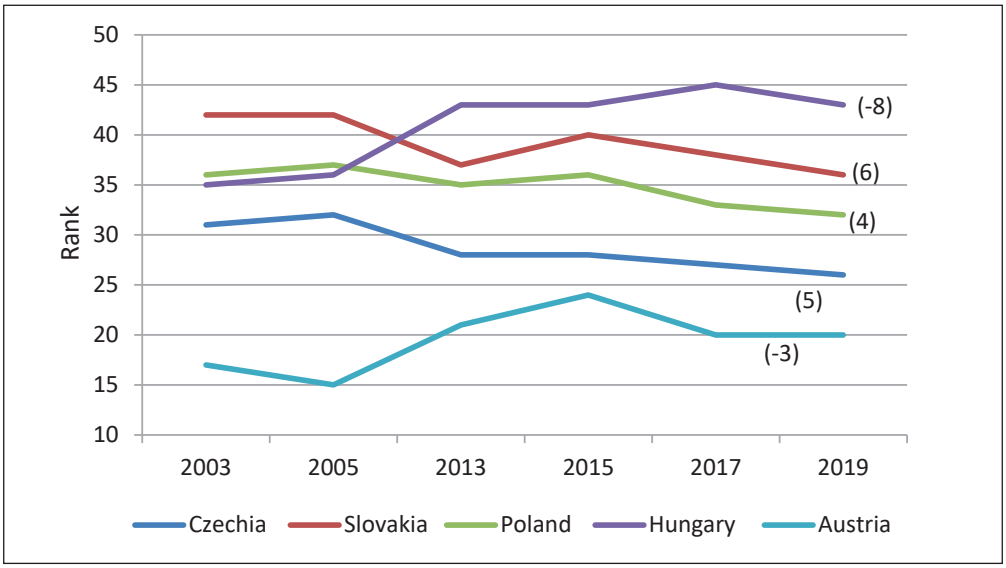

Figure 17.
HDI rank for the V4 countries and Austria in selected years

Source: UNDP, different years

Austria is chosen for comparison for its strong economic ties with the V4 countries and its geographic proximity. The Austrian position is the best in every year in spite of the fact that its position has worsened from the 17th to the 20th.

[9] Human Development Index, developed and reported by the UN Development Programme (UNDP).
[10] GNI: Gross National Income.

With the exception of Hungary, V4 countries have improved their position. While in 2003 Hungary was the second among the V4 countries, by 2019 it slipped back to the last position. This is not a surprise, as all human and knowledge investment indicators of Hungary are among the worst within the V4 countries.

One of the worst indicators of Hungary influencing HDI ranking is life expectancy at birth. Figure 18 proves that life expectancy at birth is the lowest in Hungary every year.

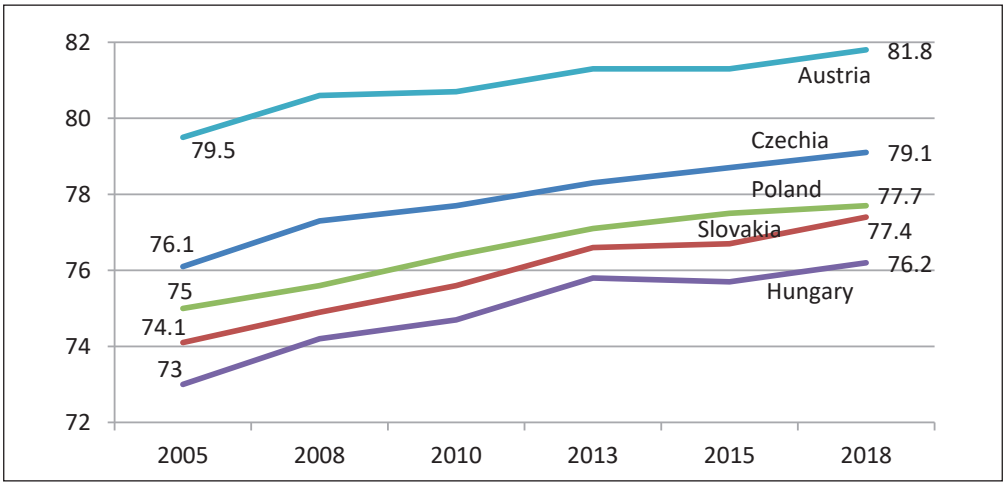

Figure 18.
Life expectancy at birth

Source: Eurostat

Although population change is not an element of the HDI index, it is still worth pointing out that population is an important economic resource of any country. Therefore, a strongly shrinking population is a sign of social, as well as economic problem. Table 10 exhibits the changes in the number of population in 5 consecutive years in the V4 countries and Austria.

Table 10.
Population change over the period of 2015–2019 (January 1) in the V4 countries and Austria

Country	2015	2016	2017	2018	2019	Change: 2019–2015
Czechia	10,538,275	10,553,843	10,578,820	10,610,055	10,649,800	+111,525
Slovakia	5,421,349	5,426,252	5,435,343	5,443,120	5,450,421	+29,072
Poland	38,005,614	37,967,209	37,972,964	37,976,687	37,972,812	–32,802
Hungary	9,855,571	9,830,485	9,797,561	9,778,371	9,772,756	–82,815
Austria	8,584,926	8,700,471	8,772,865	8,822,267	8,858,775	+273,849

Source: Eurostat

Out of the 5 countries analysed, population has increased in three. In Poland and Hungary population has declined. Measured against the population of the country, the decline over the time horizon from 2015 to 2019 in Hungary has been dramatic: 0.8%. In the case of Poland it is 0.08%. Decreasing population means decreasing labour force and knowledge basis. It is therefore a process that needs serious attention.

Social Progress Indicator

Another important index is the Social Progress Index, which is the research result of the Social Progress Imperative.[11] It has the following vision: "We dream of a world in which people come first. A world where families are safe, healthy and free. Economic development is important, but strong economies alone do not guarantee strong societies. If people lack the most basic human necessities, the building blocks to improve their quality of life, a healthy environment and the opportunity to reach their full potential, a society is failing regardless what the economic numbers indicate. The Social Progress Index is a new way to define the success of our societies. It is a comprehensive measure of real quality of life, independent of economic indicators. The Social Progress Index is designed to complement, rather than replace, economic measures such as GDP."

In accordance with this vision, Social Progress Index is calculated based on data collected from three main areas:

- Basic human needs;
- Foundations of wellbeing;
- Opportunities.

In each of the three main areas four indicators are measured:

Table 11.
Social Progress Index Indicators

Basic Human Needs	Foundation of wellbeing	opportunities
– Nutrition and basic medical care	– Access to basic knowledge	– Personal rights
– Water and sanitation	– Access to information and communications	– Personal freedom and choice
– Shelter	– Health and wellness	– Inclusiveness
– Personal safety	– Environmental quality	– Access to advanced education

Source: Social Progress Imperative, 2019

On Figure 19 we can observe a significant difference in social progress among the V4 countries and the analysed developed ones. The lowest values are the better ones!

[11] The CEO of the "Social Progress Imperative" is Michael Green.

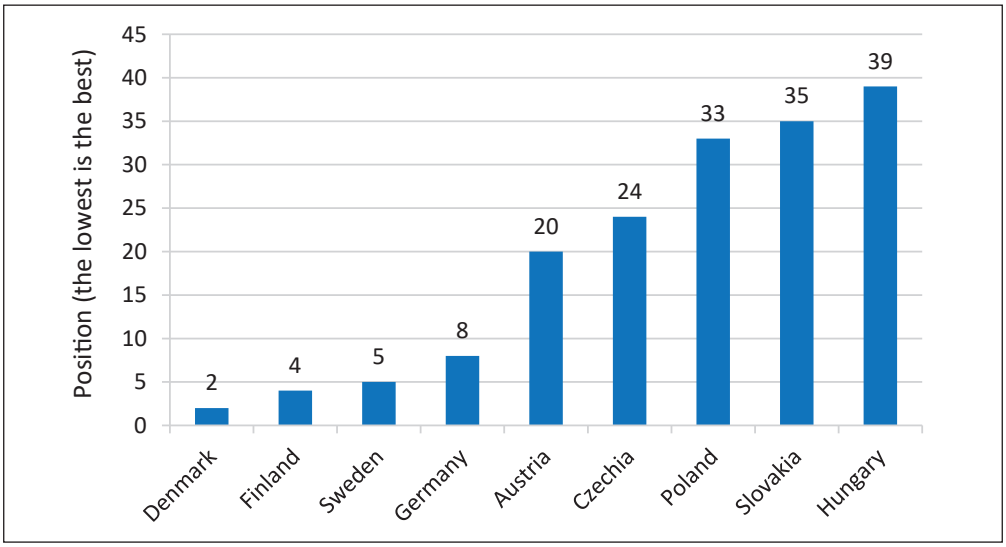

Figure 19.
Social Progress Index positions 2019 (Number of countries analysed: 149)
Source: Social Progress Imperative, 2019

Hungary is in the worst position and Czechia – close to Austria – in the best within the V4 countries. The leading countries are the three Scandinavian countries, which are among the most competitive ones, too. As far as the V4 countries are concerned, it is not the basic needs which hold them back, but rather the values for the other two indicator groups: foundation of well-being and opportunities. These indicator groups contain the indicators related to education, health and innovation, analysed earlier.

Life satisfaction

Life satisfaction is a soft indicator, based on survey, but still it may suggest how people feel about the different issues in their country.

The well-being of Europeans is regularly analysed by the Eurostat. The latest report was published on March 12, 2020. The overall index, for which the best value is 10, is calculated based on objective statistical data, as well as subjective measures of satisfaction. Quality of life is examined in the fields of housing, employment, education, health, safety, governance and the environment. People's use of time and social relations are also investigated.

The value of the overall satisfaction index is shown for the V4 countries and Austria on Figure 20.

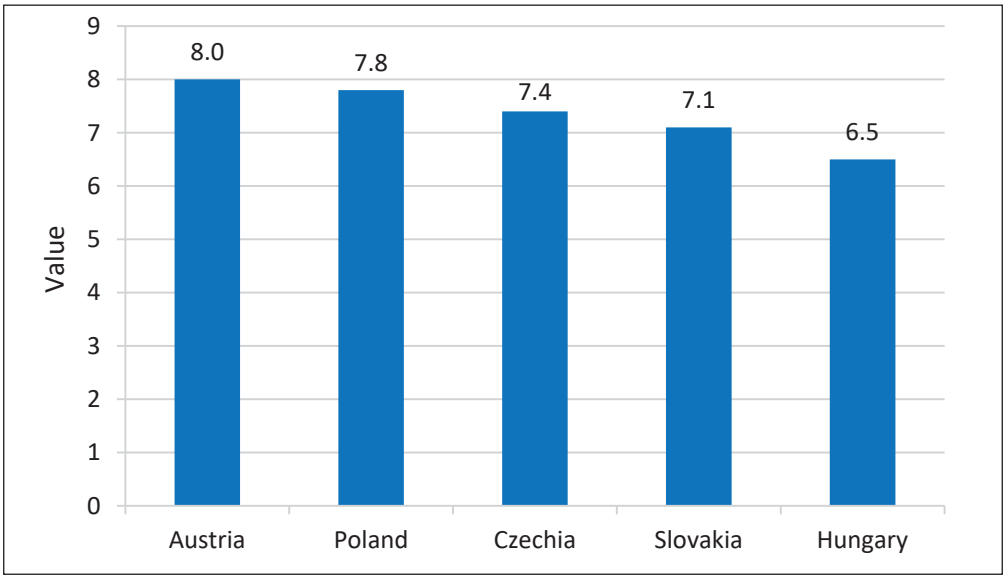

Figure 20.
Overall life satisfaction

Source: Eurostat

Within the V4 countries, people are the most satisfied in Poland, and the less satisfied in Hungary.

In conclusion we have to focus attention on the serious deficiencies for quite a number of human and social indicators within the V4 countries. Comparing them to those of the most developed countries, the salient differences can be found in the extent of investment into people, knowledge, and consequently, in the strength of human capital. Those countries are obviously the most developed and the most competitive which nurture and care about their human wealth and social conditions the most. Favourable economic growth indicators do not sufficiently monitor the real social achievements of the countries. They have to be supplemented with additional knowledge and social indicators in order to better understand future development trajectories. For the V4 countries it is obvious that if they want to step up to a higher level of development path, they have to invest more into their human resource.

10. Summary and conclusions

Let us summarise now the most important economic, knowledge and social positions of the V4 countries based on the selected indicators.

Table 12 shows that from the economic point of view the differences which characterise the V4 countries are not extremely large. Poland and Hungary performs well for GDP growth, Czechia, on the other hand, leads for two convergence indicators.

Table 12.
Positions of the V4 countries according to three economic indicators (based on the latest available data)

Indicators	Czechia	Slovakia	Poland	Hungary
GDP growth (2019) (%)	2.5	2.3	4.0	4.0
GDP per capita (in PPS) EU27=100 (2018)	91	78	71	71
GDP per capita (PPS) (2018) (euro)	27,500	23,600	21,500	21,300

Source: Eurostat

Table 13.
Positions of the V4 countries according to structural indicators in the latest available year

Indicators	Czechia	Slovakia	Poland	Hungary	Best position
Percentage of innovative enterprises (2016)	46	31	22	29	Czechia
Share of value added by foreign companies (2016) (%)	43.3	48.1	36.8	51.4	Poland
R&D expenditure in value added in foreign companies (2017) (%)	3.4	2.5	2.2	2.2	Czechia
R&D employment in total in foreign companies (2017) (%)	1.9	1.1	1.8	1.6	Czechia
Professional employment in 2018 (15–64 years) as % of total economy	16.0	12.4	19.8	15,2	Poland
Assembly operators in 2018 (15–64 years) as % of total economy	13.9	14.6	10.3	15.0	Poland
Elementary occupations in 2018 (15–64 years)	5.3	7.8	6.1	9.8	Czechia
Professional employment in 2018 (15–39 years) as % of total economy	18	14	21.2	16.1	Poland
Assembly operators in 2018 (15–39 years) as % of total economy	13.9	14.8	10.1	14.4	Poland
Elementary occupations in 2018 (15–39 years) as % of total economy	4.8	7.2	4.9	9.6	Czechia
Precarious employment in 2018 (15–64 years) as % of total economy	0.3	1.4	3.8	2.0	Czechia

Source: Eurostat

Table 13 verifies the fact that the Czech economic structure is probably the healthiest in terms of innovative and knowledge-based employment. Poland comes second, with a high proportion of professional employment and a low percentage of assembly operators. This

may be due to the lowest percentage of foreign controlled enterprises, which typically offer assembly jobs.

Table 14.
Public investment in people, knowledge and social issues

Indicators	Czechia	Slovakia	Poland	Hungary	Best position
Expenditure on health (as % of total, 2018)	18.7	17.5	11.6	10.1	Czechia
Expenditure on family and children (as % of total, 2018)	2.7	2.5	6.1	3.6	Poland
Expenditure on old age (as % of total, 2018)	18.1	18.4	22.1	14.3	Poland
Expenditure on pre-primary and primary education (as % of total, 2018)	2.7	2.6	5.1	2.7	Poland
R&D expenditure as % of total, 2018)	1.2	0.45	0.8	1.16	Czechia
Public expenditure on education as % of GDP (2018)	4.6	4.0	5.0	5.1	Hungary
Adult participation in learning (2019) (%, 25–64 years)	8.2	3.6	4.9	6.0	Czechia

Source: Eurostat

Based on Table 14 we can conclude that in terms of knowledge and social investment Czechia and Poland perform equally well.

Table 15.
The strength of human capital

Indicators	Czechia	Slovakia	Poland	Hungary	Best position
Proportion of people with tertiary education in 2018 (25–34 years)	33.3	37.2	43.5	30.6	Poland
Proportion of people with tertiary education in 2018 (18–69 years)	21.7	22.3	27.1	22.3	Poland
Proportion of STEM graduates, 2017 (20–29 years) per 1,000 inhabitants	16.8	14.7	23.6	12.1	Poland
Scientists and engineers as % total population	4.3	2.6	4.5	3.6	Poland
IMD Talent position (2019)	39	57	37	45	Poland

Source: Eurostat, IMD, 2019

In terms of the strength of human capital Poland leads for every measured indicator. Next is Czechia.

Finally let us compare a few human development indicators!

Table 16.
Human development indicators

Indicators	Czechia	Slovakia	Poland	Hungary	Best position
HDI index (2019)	26	36	32	43	Czechia
Life expectancy at birth (2018)	79.1	77.4	77.7	76.2	Czechia
Social Progress Index (2019)	24	35	33	39	Czechia
Life satisfaction (2018)	7.4	7.1	7.8	6.5	Poland

Source: Eurostat

For human development indicators, which are developed from a range of objective and subjective indicators, Czechia is ahead within the V4 countries.

Although many additional indicators could have been analysed and correlations could have also been searched for, we can conclude based on the values of the indicators shown that, first of all, the V4 countries are in similar according to some, and different according to other economic, knowledge and social indicators.

For many indicators Czechia performs the best, however, in terms of human capital strength, Poland is ahead of the other countries. Hungary and Slovakia are in general in the last two positions. From the points of view of sustainable economic and social development, only Czechia and Poland have a few indicator values close to those of the developed countries. This is a warning sign. It is not sufficient to put emphasis on the growth of economy if the results are not properly transmitted to society indicators. But it is not enough either to boost the economy by attracting foreign capital and help it capitalise on cheap labour force. V4 countries should move to knowledge-based competition to achieve strong human and social development stage, and that way to avoid middle income trap. This makes it absolutely necessary to invest more in knowledge, innovation and health, in sum, into their population. Otherwise there is no chance for speeding up convergence with the more developed countries in the EU.

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European Legal Regulation of Cryptocurrencies through the AML Scope

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Abstract: This article deals with cryptocurrencies and its impact nowadays on the AML field at a European Union level. The article will be divided into an introduction, four chapters and a conclusion; it will define elementary information and defitions, will identify ways of practical use of cryptocurrencies, will introduce risks connected with the use of cryptocurrencies and will introduce legal regulation of cryptocurrencies by the V. AML Direction. In the conclusion the quality of communitary regulation will be evaluated and a few *de lege ferenda* tips will be devised to improve regulation for the future.

Keywords: cryptocurrencies, Bitcoin, anti money laundering, European Union, regulation

1. Introduction

Cryptocurrency is a phenomenon of the last decade which attracts the attention of all legal and economic professionals and the non-professional public. Since 2009, when the mysterious creator Satoshi Nakamoto launched the system of Bitcoin, the amount of cryptocurrencies is steadily growing. There were around 3,200 (www.coinlore.com) known cryptocurrencies at the beginning of 2020 and there were an estimated 2.9–5.8 million of active cryptocurrency "wallets" at the end of 2017 (Hilleman & Rauchs, 2017). Although cryptocurrencies used by general public, which served as an inspiration for this article, form only a fraction of this amount. Bitcoin serves as a basis for this article, since it is the oldest and probably the most well-known cryptocurrency, and thanks to many years of tradition, it is possible to excellently demonstrate the evolution of its value and other contextual qualities.

In this article I will first define the term cryptocurrency and the term virtual currency – which is semantically superior to the term cryptocurrency – and then I will demonstrate several ways in which cryptocurrencies are most used nowadays. Subsequently, I will demonstrate the risks associated with the use of cryptocurrencies, based on my earlier publications (Datinský 2018a; Datinský 2018b), but in this article, unlike in the previous works, I will focus on the public risks that occur throughout the European Union. From the public law risks associated with the use of cryptocurrencies, I will focus more on the area of money laundering and the financing of illegal transactions, including specific cases of using cryptocurrencies for illegal transactions. In the final part of this work I will evaluate the current Community legislation of the field and its effectiveness in relation to combating money laundering and financing of illegal transactions.

2. Literature overview

Expert papers and opinions of expert institutions of the European Union were used to compose this paper in order to substitute missing legal or communitary definitions and to explain the functions of cryptocurrencies. Communitary and Czech regulations were used further in this paper to demonstrate the relevant regulation of the subject matter. Specialised websites are cited in order to demonstrate recent trends and technical options in the scope of cryptocurrencies, too. Finally, expert monographies about the subject matter of this paper were used and cited in this paper.

3. Research

An analysis of basic concepts and functions were performed in this paper. Comparative method was used for a comparison of two elementary kinds of currencies (crypto and fiat) and analytic method was used for the demonstration of elementary functions and consequences of these two kinds. The inductive method was used to introduce special risks related to the use of cryptocurrencies, and finally, simple steps were deduced, capable of eliminating the presented risks. The research methods used in this paper were analysis, comparison, induction and deduction.

3.1. What is cryptocurrency?

Before defining the very term cryptocurrency, it is appropriate to define the term superior to cryptocurrency, namely, virtual currency, of which the cryptocurrency is a subset. The specific legislative definition of virtual currency has been absent for quite a long time in European law, and this concept has been defined by European professional institutions, but in a rather negative way, i.e. by defining what these virtual currencies are not. The European Banking Authority defined the virtual currency as *"a digital representation of value that is neither issued by a central bank or public authority nor necessarily attached to a FC, but is used by natural or legal persons as a means of exchange and can be transferred, stored or traded electronically"* (EBA, 2014, 11). Financial Action Task Force defined the virtual currency in a very similar way as a *"digital representation of value that can be digitally traded and functions as (1) a medium of exchange; and/or (2) a unit of account; and/or (3) a store of value, but does not have legal tender status in any jurisdiction. It is not issued nor guaranteed by any jurisdiction, and fulfils the above functions only by agreement within the community of users of the virtual currency"* (FATF, 2014, 4). Some time later the European Central Bank has adopted a document in which it defined the virtual currency as *"a digital representation of value, not issued by a central bank, credit institution or e-money institution, which, in some circumstances, can be used as an alternative to money"* (ECB, 2015, 33).

With the increasing interest in the use of virtual currencies by the general public for a variety of purposes, which I will mention below, the need for national and Community legislators to regulate this phenomenon has increased in proportion. At national level,

some Member States have made at least partial regulatory efforts.[1] At Community level, however, a significant shift in the approach to and regulation of virtual currencies occurred only with the adoption of Directive 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of financial system for purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, or so-called "V. AML Directive" (hereinafter referred to as "The V. AML Directive").

This directive now contains a specific legislative definition of the term virtual currency, defining it this way: "a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically" (V. AML Directive, Article I, paragraph 2, letter d, no. 18).

It is therefore possible to deduce the basic conceptual characteristic of virtual currency from the above mentioned definitions, which is independence from the public authority of any state, whether related to the issuance of virtual currency or its circulation among users.

Virtual currencies can then be categorised according to whether they are issued by one or by a specific, narrower group of their users (centralised) or by an unspecified number, or more precisely by all its users (decentralised) and whether or not they are generally exchangeable among their users. Bitcoin, for example, which serves as a basis for this article, is a typical decentralised and exchangeable virtual currency. In the category of virtual currency centralised and unexchangeable, there can be a variety of values or currencies used in computer and mobile games, which players can buy or otherwise acquire in the game, and for which they can then buy various virtual items or services associated with the game itself.

This implies that typical cryptocurrencies are decentralised virtual currencies, as they are generally issued by all or an unspecified number of users (miners) without the interference of any authority. Since these virtual currencies are specifically encrypted by so-called cryptography to be readable and usable only by their users, the term cryptocurrency was derived from this method of encryption. The technical methods of origin and encryption, and technical aspects of cryptocurrency usage will not be dealt with in this work, as it would go far beyond its limited scope and other, technically more knowledgeable authors publish regularly on this matter (Lánský, 2018; Biryukov et al., 2014).

Through the optics of the legal order of the Czech Republic, the cryptocurrency unit can be described as a thing within the meaning of Act No. 89/2012 Coll., The Civil Code, as amended, namely a movable, intangible thing. A similar categorisation of the cryptocurrency unit can with high probability be performed under other European national legal systems. As with classic money, or more precisely banknotes, the subject of discussion might be whether or not is the cryptocurrency fungible. For payment system participants

[1] For example in the Czech Republic the national legislator specified by way of a general clause which subjects are liable to AML obligations and which subjects provide services connected to the virtual currencies; see Section 2, paragraph 1, letter l) of Act. No. 253/2008 Sb., on selected measures against legitimisation of proceeds of crime and financing of terrorism.

aiming at transferring the value of a unit from one entity to another, it will be considered fungible, but each cryptocurrency unit is represented by a specific program code that makes it unique, just as each banknote has its own unique serial number, different from all others, and therefore might be considered irreplaceable for a certain group of public.[2] Through the investor's optics a cryptocurrency unit may be viewed as a commodity and is also usually traded in the same way (Hampl, 2014).

3.2. Ways of using cryptocurrencies

Despite the fact that, according to the above mentioned definitions, cryptocurrencies are not legal tender, they are used very frequently for payment. The indisputable advantage of using cryptocurrency as a payment instrument is its minimal near-zero transaction costs and the considerable rate of transfer of its units among its users, not limited by geographical or political boundaries, which constitutes a significant advantage over foreign payments through standard payment service providers. To some extent, the anonymity of cryptocurrency users, who are almost entirely anonymous until the potential exchange of the cryptocurrency for a legal currency, may be considered an advantage, as they are only one member of a large, unspecified group of cryptocurrency users. The reverse side of the coin of these benefits is that cryptocurrencies are a very handy means of financing illegal transactions, terrorism, and can be used to legalise the proceeds of crime, as I will mention below.

As the demand for cryptocurrencies continues to grow and new types are constantly appearing, this high demand logically pushes up the price at which cryptocurrency units can be purchased. This has resulted in considerable interest in cryptocurrencies by speculators and investors who hope that the units they buy will grow in value over time, which often happens.[3] The first collective investment funds, focused on cryptocurrencies, start to operate nowadays. The first similar fund in Central Europe is a fund established by a Czech management company, called the Kryptofond (a typical name), and managed by CFG Funds s.r. o.[4] It was opened on January 31, 2018, but in the form of a private fund for qualified investors, managed by its management company pursuant to Section 15 of Act No. 240/2013 Coll., based on Article 3 of the European Parliament and Council Directive No. 2011/61/EU (AIFMD Directive), under a regime not subject to supervision by the national supervisory authority. In addition to the European cryptofund, there are a number of similar funds, the largest of which are based in the United States of America, and are managed by Grayscale Investments, LLC,[5] which focus more on individual cryptocurrencies and are not very diversified. However, these non-European funds are also special funds intended for qualified, private investors and are not publicly offered.

[2] I.e. collector's banknotes, or the very first Bitcoin code, the so-called Genesis block.
[3] See www.kurzy.cz
[4] See www.kryptofond.cz
[5] See www.grayscale.co

3.3. Risks associated with the use of cryptocurrencies

The aforementioned uses of cryptocurrencies as tools for paying or investing involve a number of risks that endanger not only the users themselves, but also the wider public. For the purposes of this work, these risks could be categorised into (i) private-law risks, i.e. those that endanger cryptocurrency users themselves, without overlapping into the general public, and (ii) public-law risks, that endanger society as a whole, nonetheless it is clear that private-law risks will extend to the public sector and, if they occur more frequently, endanger the wider public. Likewise, the manifestation of public-law risks will also have an impact on the users themselves.

I have dealt with the private-law risks in my earlier publications cited at the beginning of this article, so here I will focus on public-law risks with a transnational outlook; due to lack of geographical limitations of cryptocurrency use, these risks objectively threaten the whole, not only European, society.

Public-law risks usually fulfil the actus reus of some typical crimes against the currency and payment system of individual Member States, which, thanks to the single currency of the European Union, have a Community dimension. A typical case may be the occurrence of entrepreneurs offering their goods or services within the EU and requesting that their goods or services be paid exclusively by cryptocurrency, which may put the entire financial system at risk, although this is not yet the case on a larger scale.

With the growing volume of money exchanged for cryptocurrencies, the risks related to tax law also increase, as due to the anonymity of users, they do not have to voluntarily declare their profits on cryptocurrency investments, which in some cases can be quite substantial. The national tax authorities then do not have the possibility to check online wallets of cryptocurrency users in any way and are not able to find out by their control activity whether or not the given cryptocurrency user made an investment profit. However, the tax issue will not be discussed in this work.

A significantly more dangerous public-law risk is the relatively easy possibility of legalising the proceeds of crime, conducting illegal transactions and financing terrorism, which is very difficult to detect due to anonymity of cryptocurrency users and the above mentioned cryptocurrency decentralisation; the anonymity of the specific cryptocurrency issuer is also very difficult to regulate.

Socially the most widespread cryptocurrency, Bitcoin, allows all its users to transfer unlimited Bitcoin units, which in fact means making payments for any goods or service between those users. However, due to the above mentioned anonymity of their users, it is not traceable for what the payment was made or to whom it was addressed, as opposed to normal payments using the common currency, the so-called "fiat" currency, and related banking services. This risk has long been perceived both at the level of individual Member States (e.g. Methodological instruction No. 2 of the Financial Analytic Entity of the Ministry of Finance of the Czech Republic) and, over time, at EU (V. AML Directive preamble, Article 8,9) and international (IMF, 2016, p. 24) level.

A typical example of illegal cryptocurrency transactions is the purchase of illegal goods (drugs, weapons, etc.) in the so-called Dark Web Markets such as Silkroad, which actually operates as an e-shop, even with individual vendor ratings by the users of this

"e-shop" themselves, where the visitor chooses the appropriate goods, filters out the ideal supplier with the most favorable rating and price, and then pays for that order in cryptocurrency. Regardless of whether the outgoing payment goes to a risk country in terms of Article 9 of the V. AML Directive or whether its quantity exceeds the limits requiring client check or enhanced client check, the payment is made anonymously, immediately and the seller sends the order to the agreed address. This also benefits some terrorist groups, which finance their activities by these means and buy weapons for their attacks (Whyte, 2019, p. 10–11).

The above mentioned abuse of cryptocurrencies for illegal purposes is not easy to combat and regulate. As mentioned previously in this article, the absence of a specific issuer makes it impossible to supervise and in any way regulate the issue of cryptocurrency, or more precisely the actual creation of their units. In the absence of this subject, the question arises as to what other subjects in the cryptocurrency system are involved and whether these subjects can be effectively targeted with appropriate behavioral rules. These persons are then:

(i) cryptocurrency users themselves,
(ii) cryptocurrency miners, i.e. persons who actually create cryptocurrency units with their hardware, without having to buy them at the relevant cryptocurrency exchange offices,
(iii) so-called digital wallet providers that allow cryptocurrency units to be stored by individual users,
(iv) developers,
(v) persons who initiate first offer of the cryptocurrency, so-called Initial Coin Offering (ICO), which is equivalent to IPO (Initial Public Offering) in the case of an initial issue of securities on a stock exchange,
(vi) cryptocurrency exchange offices that allow the exchange of individual types of cryptocurrencies with one another, or the exchange of a fiat currency with a cryptocurrency,
(vii) cryptocurrency exchanges where individual cryptocurrencies are traded in the form of centralised and decentralised exchanges.

Cryptocurrency users are anonymous within the system, so it is difficult to control them technically. Miners are only a subset of cryptocurrency users, so even those are not easy to regulate. Developers are IT professionals who develop and program new cryptocurrency systems, therefore their regulation is not desirable, at least at a time when the use or creation of cryptocurrencies is generally not prohibited. ICO initiators, like developers, are not persons who would actively participate in the use of cryptocurrencies as users, but only those who receive funding for developing new or improving existing cryptocurrencies, thus regulating this activity would not again address the above outlined problems with the legalisation of proceeds or the execution of illegal transactions. On the other hand, these are entities who come into contact with future users who want to exchange their fiat currency for a new cryptocurrency, so they could be considered in an analogous way to those who provide currency exchange activities that I will mention below. It might seem logical to regulate cryptocurrency exchanges where cryptocurrencies and fiat currencies are

exchanged, but when they occur in decentralised form, it is only by way of a programmed software without a particular owner or operator, to whom specific obligations could be imposed. Regulation could therefore only affect centralised exchanges, subject to management and organisation by a specific person. It might seem logical to regulate the provider of virtual wallets, but as of 9 January 2020,[6] no identification data of its owner was needed for the creation and use of such a wallet, as is the case when opening a common bank account for fiat currency (Pytlík, 2019, p. 65–67).

From all of the above, it seems the easiest to regulate the cryptocurrency exchange offices, in which real fiat currencies are exchanged for digital currencies and vice versa, since these entities allow a person to enter the cryptocurrency system. When purchasing cryptocurrency units or exchanging them for a fiat currency, it is possible, and according to the author also desirable, to carry out an appropriate check of the client (the person performing the exchange) within the scope of AML. At the same time, an important fact is that the elementary objective of any person legitimising the proceeds of crime is to obtain some real return in the form of fiat currency, property or other benefits at the end of the legalisation process, whereas according to the author cryptocurrencies do not constitute a real return yet, therefore, one must use a virtual exchange office to achieve this.

On the other hand, even the regulation of currency exchange offices and client checks when entering or exiting the system may not solve the problems outlined above and eliminate the risks of illegal use of cryptocurrencies, as the originally exchanged fiat currency may come from purely legal sources and cryptocurrencies purchased for it may then serve for financing illegal transactions. Conversely, the true origin of the cryptocurrency, which is exchanged for fiat currency, may be debugged by the user and the exchange office does not have the means to verify such information in any way. In conclusion of this part of this article, it is worth mentioning that the anonymity of cryptocurrency users in the execution of transactions is not in all cases boundless. The European Union finances and operates the so-called Titanium Project,[7] which is exploring new ways and tools that can be used to deanonymise cryptocurrency transactions for the purpose of investigating crimes, and this project has seen partial success with, for example, the Bitcoin cryptocurrency. However, the whole process is very complex and costly, and is not yet used on a larger scale.

3.4. Cryptocurrency regulation within the scope of the V. AML Directive

The author's above mentioned opinion on the necessity of regulation of exchange offices providers corresponds with the current Community legal regulation of AML, implemented by the V. AML Directive, Article 8, where the need to include persons carrying out currency exchange activities and persons providing virtual wallet services among the liable entities within the meaning the AML is explcitely stated. In Article 9, the Directive then identifies

[6] A New AML Directive enters into force on 10 October 2020 and includes these providers as entities liable to AML obligations, as specified below.

[7] See www.titanium-project.eu

the anonymity of cryptocurrency users as a reason for its potential misuse for the purpose of crime, which also corresponds to the above mentioned opinion of the author.

The V. AML Directive is to be seen as the first significant and highly anticipated step by the EU legislator towards effective regulation of cryptocurrency transactions and prevention of their use for illegal transactions, although it is rather a small step towards comprehensive regulation of this area. Below are listed some of the major innovations that the V. AML Directive has brought.

The basic benefit is the embodiment of legal definition of virtual currency in Article 3 of the V. AML Directive, which has so far been defined only by individual professional institutions; furthermore, the definition of a virtual wallet provider, which is newly considered a liable entity under the AML Directive, and finally the classification of a currency exchange provider between virtual currencies and fiat currencies as liable entity. The above is also related to the extended method of performing the in-depth check of the client according to Article 13, which also allows the inspection to be carried out in accordance with *"electronic identification means, relevant trust services as set out in Regulation (EU) No 910/2014 of the European Parliament and of the Council or any other secure, remote or electronic identification process regulated, recognised, approved or accepted by the relevant national authorities"*, which can greatly speed up the client's in-depth check, for example by using client data from his/her personal bank, whose card, for example, carries out transactions and purchases cryptocurrency units.

According to Article I (29) of the V. AML Directive, the above mentioned new liable entities are then subject to registration with the competent AML authorities, furthermore, exchange offices will even be subject to authorisation procedures, which should ensure faster and more transparent control of transactions provided by these entities, and should also ensure obligatory qualification of persons providing such services.

The resulting effect is that if a person exchanges a fiat currency for a cryptocurrency within the EU, the V. AML Directive requires that the exchange service provider, listed with the supervising AML authority, is obliged to check and identify the client. Since very often a virtual wallet service is offered along with an exchange for cryptocurrency to a customer, especially for new cryptocurrency users who are not yet using such wallet, the wallet and its public key are then identifiable and associated with the particular cryptocurrency user identified during the exchange upon receipt/assignment of the virtual wallet by the liable person (exchange office).

The resulting situation after the adoption of the V. AML Directive thus by far does not comprehensively address the question of the misuse of cryptocurrencies for illegal transactions from the perspective of AML, as the transparency of cryptocurrency transactions and the identification of persons carrying out transactions is still not ensured, although this is not due to lack of effort of Community legislators, but mainly to nowadays' technical possibilities. It is a question of the future whether technologies for deanonymising cryptocurrency transactions, decentralised cryptocurrency exchanges, and similar means that serve cryptocurrency users and facilitate their illegal transactions, will be developed more effectively and faster. According to the author, the current EU regulation, with regard to the current technical possibilities, is appropriate and can be described

as rather good. The author considers the exclusion of persons operating centralised electronic cryptocurrency exchanges as liable entities as a minor deficiency of the new regulation.

4. Conclusion

In the presented work, the basic notions of the examined material were defined, namely the the terms virtual currency, cryptocurrency and the most common uses of cryptocurrencies. The risks associated with the use of cryptocurrency as a means of payment were also identified and the possibility of misuse of cryptocurrencies to legalise the proceeds of crime and finance illegal transactions was identified as a major risk. The existence of this risk is mainly due to the anonymity of cryptocurrency users and individual transactions, as well as the absence of an entity that could be subject to effective regulation, that is a regulation that would prevent specific ways of misusing cryptocurrency payments. Currently, the only entities that can be effectively regulated are virtual exchange service providers, where cryptocurrency is exchanged for fiat currency, and virtual wallet providers, that allow users to securely make payments with their cryptocurrency.

These entities are therefore targeted by the current European AML legislation, embodied in the V. AML Directive, which included these entities as liable entities within the meaning of the AML, therefore if, after the Directive enters into force in the EU, a person will exchange fiat currency for cryptocurrency and will be assigned a virtual wallet, providers of such services will be obliged to check the client and identify him/her. With this adjustment, virtual wallet owners who participate in selected virtual payments will be identified and will lose their anonymity. Likewise, when someone exchanges a fiat currency for a virtual currency, he will be subject to obligatory identification or check under the AML rules.

These benefits of the V. AML Directive do not, of course, fully address the issue, but with regard to the current technical possibilities, more precisely the impossibility of disclosing the anonymity of cryptocurrency users, the current legal regulation may be considered appropriate. A minor drawback may be the exclusion of centralised virtual exchanges operators among liable entities.

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The Influence of EU Law on Public Administration in New Member States

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Abstract: The membership of Central and Eastern European countries in the European Union has influenced the development of almost all branches of law, including administrative law. The paper analyses the influence of European Union law on the fundamental object of interest of administrative law within new member states – on public administration and its laws. In this context, the influence on laws governing the organisation of public administration, laws governing the activities and tasks of public administration as well as laws governing processes in public administration will be assessed.

Keywords: European Union, public administration, processes in public administration, extra-territoriality, transterritoriality

1. Introduction

Following the Luxembourg Summit of December 1997, the European Union was involved in a process of preparing the most ambitious enlargement ever: thirteen countries, with economic structures, histories and cultures different from those of the other 15 EU states, had applied for membership. These were: Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey. These states had been applicant counties for quite some time, but the enlargement process was lengthy and cumbersome (Zervoyianni et al., 2006, pp. 34–35).

The Slovak Republic, the Czech Republic, the Republic of Poland and Hungary (hereinafter referred to as the "V4 countries"), as well as Malta, Cyprus, Slovenia, Estonia, Latvia and Lithuania have been Member States of the European Union since 1 May 2004. Bulgaria and Romania have become Member States of the European Union since 1 January 2007, and Croatia since 1 July 2013.

The membership in this transnational organisation entails the need for adapting national law to the requirements of this organisation in various areas (Schweiger & Visvizi, 2018, p. 120). However, this process of adapting national law had begun before these countries became members of the European Union, in the context of meeting the pre-accession criteria, the so-called Copenhagen criteria (see Brusis, 2002, p. 49). The political and institutional criteria were: i) protection of human rights and respect for minorities, ii) fight against organised crime, drugs and illegal migration, iii) protection of the environment, iv) adoption of the aims of the EU and ability to enforce the EU legislation, and v) ability to pay the contributions to the EU budget on a regular basis. The economic criteria

were: i) creation of the well-functioning market economy, and ii) ability to cope with the competitive pressures within the EU (see also Füle, 2013, pp. 9–12).

Adapting national law to the requirements of the European Union covers almost all branches of law, including administrative law. Indeed, it can be stated that this branch of law must reflect "European trends" to the greatest extent. The influence of European Union law can be seen in relation to laws governing the organisation of public administration, laws governing processes in public administration, and, to the greatest extent, laws governing the tasks and activities of public administration (see e.g. Hofmann et al., 2011, p. 259).

The aim of this paper is to analyse how and to what extent European Union law has influenced the above mentioned branches, i.e. laws governing the organisation of public administration in the new Member States, laws governing the activities of public administration in these countries, as well as laws governing processes in public administration of the new Member states. Given the broad focus of this paper, its aim is not to provide a detailed and exhaustive enumeration of these influences, but above all to point out, the most fundamental of them in the author's view. Its purpose is to open a discussion on the issue as part of efforts to develop educational and scientific cooperation between academics from new Member states.

Taking into consideration the aim of this paper, it was necessary to apply mainly standard methods of research. First of all, it was necessary to analyse the current state of regulation in defined areas of public administration and to identify areas affected by European Union law. These areas had to be compared to the regulation in the new Member States. Based on this analysis and comparison, it was necessary to aggregate conclusions on the manner and extent of the impact of European Union law on the given areas of public administration.

2. The influence of European Union law on laws governing the organisation of public administration

The organisation of public administration is a complex, internally structured system consisting of various interconnected subsystems. Based on the organisational understanding of public administration, we can characterise public administration as a formal institution or set of institutions. Each formal institution is characterised, in particular, by its organisational structure, procedural rules and mutual communication system. Their purpose is to ensure the implementation of stipulated objectives based on the principle of maximum efficiency of its work. In individual countries, the organisation of public administration is implemented in various forms. It is mainly influenced by historical traditions, the size of the territory of the country, a period of time usually associated with the reform of public administration, in a certain developmental stage of the country, and so on (Sobihard, 2007, p. 81).

In addition to the factors mentioned above, the organisation of public administration in a given country may be influenced by membership in transnational and international

organisations. Within the European area, the Council of Europe and the European Union are of particular relevance in this regard.

The Council of Europe, through its acts, either international treaties concluded under its auspices[1] or resolutions and recommendations of the Committee of Ministers[2], lays down, as a rule, the qualitative requirements for public administration activities, and defines the basic rules and principles in public administration activities and procedures (see Košičiarová, 2012). However, it does not directly lay down requirements for the organisation of public administration, the institutional framework of public administration authorities in a member state of the Council of Europe. This influence is only indirect, and concerns the establishment of the organisational basis of public administration in order to optimise the implementation of the above mentioned quality rules and principles related to the activities of public administration (see Addink, 2005, pp. 21–43).

The situation is similar in relation to the influence of the European Union and its law on the organisation of public administration. Thus, this transnational organisation also lays down certain rules and principles to be applied in the activities of the Member States; it is reflected in the organisation of public administration only indirectly.

One such principle is the principle of sincere cooperation, arising from Article 4(3) of the Treaty on European Union. *"Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in mutual respect, assist each other in carrying out tasks which flow from the Treaties."*[3] The principle of sincere cooperation also involves a requirement applicable to the Member States to provide a sufficient institutional framework for carrying out tasks arising from the primary and/or secondary acts of European Union law.

A similar conclusion can also be drawn from Article 197 of the Treaty on the Functioning of the European Union (Pekár, 2012, p. 86). According to this Article, *"Effective implementation of Union law by the Member States, which is essential for the proper functioning of the Union, shall be regarded as a matter of common interest. The Union may support the efforts of Member States to improve their administrative capacity to implement Union law. Such action may include facilitating the exchange of information and of civil*

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[1] For example, the European Charter of Local Self-Government.

[2] For example, Resolution No (77) 31 of the Committee of Ministers of the Council of Europe on the protection of the individual in relation to the acts of administrative authorities, Recommendation No (80) 2 of the Committee of Ministers of the Council of Europe concerning the exercise of discretionary powers by administrative authorities, Recommendation No (87) 16 of the Committee of Ministers of the Council of Europe on administrative procedures affecting a large number of persons, Recommendation No (81) 19 of the Committee of Ministers of the Council of Europe on the access to information held by public authorities, Recommendation No (91) 10 of the Committee of Ministers of the Council of Europe on the communication to third parties of personal data held by public bodies, Recommendation No (2002) 2 of the Committee of Ministers of the Council of Europe on access to official documents, Recommendation No (84) 15 of the Committee of Ministers of the Council of Europe relating to public liability, Recommendation No (91) 1 of the Committee of Ministers of the Council of Europe on administrative sanctions, Recommendation No (2000) 10 of the Committee of Ministers of the Council of Europe on codes of conduct for public officials, Recommendation No (89) 8 of the Committee of Ministers of the Council of Europe on provisional court protection in administrative matters, Recommendation No (2003) 16 of the Committee of Ministers of the Council of Europe on the execution of administrative and judicial decisions in the field of administrative law, Recommendation No (2004) 20 of the Committee of Ministers of the Council of Europe on judicial review of administrative acts, Recommendation No (2007) 7 of the Committee of Ministers of the Council of Europe on good administration.

[3] Article 4(3) of the Treaty on European Union.

servants as well as supporting training schemes. No Member State shall be obliged to avail itself of such support. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish the necessary measures to this end, excluding any harmonisation of the laws and regulations of the Member States. This Article shall be without prejudice to the obligations of the Member States to implement Union law or to the prerogatives and duties of the Commission. It shall also be without prejudice to other provisions of the Treaties providing for administrative cooperation among the Member States and between them and the Union."[4]

These general requirements for ensuring a sufficient administrative framework implementing European Union law in the territory of a Member State are subsequently specified in the acts of the secondary law of the European Union. Subsequently, these acts require the existence of authorities having a power to check compliance with specific obligations arising from acts of the European Union, as well as deciding in case of their breach.

For example, Article 5 of Directive No 2006/114/ES the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising requires Member States to confer upon courts or administrative authorities powers enabling them, in cases where they deem such measures to be necessary taking into account all the interests involved and in particular the public interest, to take measures for the cessation of, or to order the prohibition of publication of, misleading advertising or unlawful comparative advertising (see also Jakab, 2016, p. 20).

Generally speaking, it can be stated that European Union law lays down a requirement for Member States to ensure a sufficient framework of public administration authorities that will enforce compliance with the obligations arising (directly or indirectly) from acts of the European Union and ensure liability if they are breached. However, the European Union does not specify any requirements for the category, the position of such an authority in the system of organisation of public administration of a Member State, or for the organisation of public administration as such.

However, there are some exceptions to the statement in the previous paragraph. Specifically, European Union law implies the requirement for the creation of so-called national regulatory authorities exercising their competence, in particular, in relation to markets where competition is not sufficiently developed (in particular, network industries), or regulating Europe-wide issues (e.g. personal data protection, broadcasting and retransmission). In addition to the requirement for the existence of such authorities, European Union law also implies other requirements for their independence, their competence or procedural rules.

In the new Member States, this was reflected in the extension of the category of state administration authorities with nationwide competence independent of other public administration authorities, including central state administration authorities. Under the influence of European Union law, either after the accession of the new Member States to the European Union or in the process of approximation of law in the pre-accession period, several authorities of this category were created. Some examples, not exhaustive, of this category are provided below.

[4] Article 197 of the Treaty on the Functioning of the European Union.

The legal status of such authorities is influenced by Article 3 of Directive No 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive). Under that Article, Member States shall *"ensure that each of the tasks assigned to national regulatory authorities in this Directive and the Specific Directives is undertaken by a competent body. Member States shall guarantee the independence of national regulatory authorities by ensuring that they are legally distinct from and functionally independent of all organisations providing electronic communications networks, equipment or services. Member States that retain ownership or control of undertakings providing electronic communications networks and/or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control."* Based on these requirements, such authorities as, for example, the Telecommunications Office of the Slovak Republic (*Telekomunikačný úrad Slovenskej republiky*) was established in the Slovak Republic; nowadays it is the Regulatory Office for Electronic Communications and Postal Services (*Úrad pre reguláciu elektronických komunikácií a poštových služieb*). In the Czech Republic, these requirements are fulfilled by the Czech Telecommunication Office (*Český telekomunikační úřad*), in the Republic of Poland by the Office of Electronic Communications (*Urzad Komunikacji Elektronicznej*), or in Hungary by the National Media and Infocommunication Authority (*Nemzeti Média- és Hírközlési Hatóság*).

The creation of a national regulatory authority in the new Member States in the field of regulation of the market of electricity and gas, as well as in other network industries, also resulted from the requirements of European Union law. At present, the requirements for the position, powers and quality of this national regulatory authority are specified in Article 35 *et seq*. of Directive No 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC. The requirements of the Directive in relation to such an authority include: the requirement for the creation of one national regulatory authority, the requirement for the independence of such an authority that exercises its powers impartially and transparently (is legally distinct and functionally independent of any other entity, acts independently of any market interests, does not seek or take instructions from other authorities), the requirement for an independent budget, the requirement for the term of office of the chairman (5–7 years), or the exact specification of the objectives, duties and powers of such an authority (Articles 36, 37). In order to meet the requirements of European Union law, an independent Public Utilities Commision (*Sabiedrisko pakalpojumu regulēšanas komisija*) was established in Latvia, the Energy Regulatory Authority (*Nationalacde Reglementari in domeniul Energiei*) in Romania, the Energy Agency (*Agencija za energijo*) in Slovenia, or the Estonian Competition Authority (*Konkurentsiamet*) in Estonia.

A national regulatory authority for personal data protection also belongs to the category of state administration authorities with nation-wide competence whose creation is influenced by European Union law. The requirement for the existence of such an authority stems from Article 51 *et seq*. of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing

Directive 95/46/EC (General Data Protection Regulation). Under Article 51 of that Regulation, *"Each Member State shall provide for one or more independent public authorities to be responsible for monitoring the application of this Regulation, in order to protect the fundamental rights and freedoms of natural persons in relation to processing and to facilitate the free flow of personal data within the Union."* In addition to the requirement for the existence of such a regulatory authority, the Regulation also lays down the requirement for independence (Article 52), the requirements for members (Article 53), the rules on establishment (Article 54), and the competence, tasks and powers of the national regulatory authority (Articles 55–58). Thus, European Union law regulates very intensively the nature and activities of such an authority. New Member States already created such national regulatory authorities under the influence of the previous legislation of the European Union, while in their current form they reflect the requirements of the above mentioned Regulation. The Office for Personal Data Protection of the Slovak Republic (*Úrad na ochranu osobných údajov Slovenskej republiky*) has been established in the Slovak Republic, the Croatian Personal Data Protection Agency (*Agencija za zaštitu osobnih podataka*) in Croatia, the State Data Protection Inspectorate (*Valstybiné duomenų Apsaugos Inspekcija*) in Lithuania, or the Office of the Information and Data Protection Commissioner in Malta.

3. Influence of European Union law on the activities of public administration

The membership of new Member States in the European Union also influenced the type, scope, quantity and quality of tasks carried out by national public administration in these Member States. In addition to standard tasks carried out by public administration, the implementation of European Union law has also fallen to the scope of their tasks (see also Heidbreder & Brandsma, 2017, p. 805–821).

In identifying tasks through which national public administration implements European Union law, it is first necessary to define the interface between tasks carried out directly by the bodies, institutions and agencies of the European Union and those carried out by national public administration, either alone or in cooperation with the bodies, institutions and agencies of the European Union. In this context, a reference should be made to the division of competences of the European Union. The Lisbon Treaty introduced four basic categories of competences of the European Union: exclusive competences, shared competences, supporting competences and special competences. European Union law does not enumerate particular competences of the Union, but only the areas of individual competences. In addition to explicit competences, i.e. competences expressly provided for in the founding Treaties, there are also implicit competences of the Union which may result from the provisions of the founding Treaties, as well as from acts adopted by the institutions of the Union (Jánošíková, 2013, p. 27).

In specifying the tasks of national public administration in the implementation of European Union law, it is necessary to specify which tasks are carried out exclusively by the European Union bodies, institutions and agencies, i.e. which tasks do not belong to the

scope of activity of national public administration. It is the category of the so-called exclusive competence. Under Article 3(3) of the Treaty on the Functioning of the European Union, *"the Union shall have exclusive competence in the following areas: (a) customs union; (b) establishing the competition rules necessary for the functioning of the internal market; (c) monetary policy for the Member States whose currency is the euro; (d) the conservation of marine biological resources under the common fisheries policy; (e) common commercial policy. The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope"* (see also Konstadinides, 2009, pp.151–152).

On the other hand, there is a category of the so-called shared competence, i.e. competence exercised by both the Union and the Member States, while the Member States exercise it only to the extent to which it is not exercised by the Union.[5] Under Article 4(2) of the Treaty on the Functioning of the European Union, *"shared competence between the Union and the Member States applies in the following principal areas: (a) internal market; (b) social policy, for the aspects defined in this Treaty; (c) economic, social and territorial cohesion; (d) agriculture and fisheries, excluding the conservation of marine biological resources; (e) environment; (f) consumer protection; (g) transport; (h) trans-European networks; (i) energy; (j) area of freedom, security and justice; (k) common safety concerns in public health matters, for the aspects defined in this Treaty."*

The room for implementing European Union law through national public administration can be seen, in particular, in the category of shared competence. First of all, the European Union regulates this competence, as a rule, in the form of directives. Therefore, Member States must implement these directives in national legislation. Subsequently, Member States, through their authorities, in particular, public authorities, implement this law and ensure that it complies.

Given a large set of tasks of national public administration in the implementation of European law, it is impossible to give their exhaustive list. With some degree of generalisation, it is possible to point out the most important ones, in which the influence of the European Union is noticeable. Taking into account the European Union's initial idea – the common internal market and the related free movement of persons, free movement of goods and free movement of capital –, the most notable tasks of national public administration influenced by European Union law are the following.

In the context of strengthening the free movement of persons, the tasks of national public administration have been influenced in particular in connection with foreigners' residence, employment services, conditions relating to the pursue of business activity (in particular, small business activity), other regulated activities, as well as services in the internal market. As regards the free movement of goods, the tasks of national public administration were most influenced. This was manifested mainly in connection with the liberalisation and deregulation of certain types of markets (energy, heating, postal services, water management, transport, etc.), consumer protection, food security, or with laying down the technical requirements for products, etc. Last but not least, the free movement

[5] Article 2(2) of the Treaty on the Functioning of the European Union.

of capital has necessitated interference in the activities and tasks of public administration of Member States, in particular as regards the harmonisation of laws governing banking, insurance and capital market.

The tasks of public administration of Member States are not only specified in the acts of general application of European law (or in national legislation implementing the above mentioned acts of the European Union), but can also be laid down in individual acts – decisions of the bodies, institutions or agencies of the European Union. These acts may also impose a duty on national administration to act in a certain way. For example, Article 108(2) of the Treaty on the Functioning of the European Union states: *"If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the internal market having regard to Article 107, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission."* This means that the Commission shall decide that the competent authority of a Member State shall act in a certain way.

A similar duty of a Member State to act is also defined in Article 299 of the Treaty on the Functioning of the European Union, i.e. the duty of a Member State to ensure the enforcement of a decision of the European Union body imposing a pecuniary obligation. Under that provision, "*Acts of the Council, the Commission or the European Central Bank which impose a pecuniary obligation on persons other than States, shall be enforceable. Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Commission and to the Court of Justice of the European Union."*

One of the specificities in carrying out the tasks of public administration of a Member State arising from European Union law is that the acts of application of law resulting from this activity may also have transnational effects, i.e. effects not only in the territory of the Member State that issued the act of application of law, but also in the territory of another (other) Member State(s), without that act having to be recognised in the territory of the Member State concerned, i.e. it has an automatic effect (Jakab, 2018, pp. 7–18). For example, if one Member State decides to issue a Schengen visa to a third-country national, the effects of such a decision will be applied in the territory of all Member States within the Schengen area. Similarly, a decision to grant a residence permission in the territory of one Member State, the granting of citizenship of one Member State (automatically resulting in the citizenship of the European Union), a decision to admit certain goods will have similar effects (see e.g. De Lucia, 2012, pp. 17–45; Seman, 2018, pp. 33–48; Ruffert, 2001, pp. 453–470; Handrlica, 2017a, pp. 82–113; Handrlica, 2017b, pp. 49–59; Handrlica, 2017c, pp. 63).

According to doctrine, transnational administrative acts can have different forms. The first form is the administrative act which produces "effect-related transnationality"; in this case an "administrative act is enacted in a state with regard to the addressee resident there, and which develops a legal effect beyond the borders of this state" (Ruffert, 2011, p. 281). In the second form the transnational character results from the fact that the issuing

authority and the addressee of the administrative act are located in different states, i.e. this is "addressee-related transnationality" (Ruffert, 2011, p. 287). In the third form a foreign authority itself crosses the state border in order to issue an administrative act abroad, i.e. this is "authority-related transnationality (Ruffert, 2011, p. 290).

It can therefore be stated that the European Union had, and still has, a significant influence on the activities of public administration in the new Member States (but not only there) and on the tasks which they carry out.

4. Influence of European Union law on processes in public administration

Processes in public administration of its Member States are another area influenced by the European Union and its law. This influence is manifested from two perspectives. First of all, in the form of general principles and provisions relating to all processes in public administration.[6] In addition, it is also manifested in the form of specific provisions regulating specific procedures or specific areas.

In connection with the general principles and provisions, the influence of the European Union is evident both from the texts of law and from the results of the decision-making activities of the Court of Justice of the European Union. One of the most relevant documents in this respect is the Charter of Fundamental Rights of the European Union, which became binding in 2009 when the Treaty of Lisbon entered into force. Article 41 of the Charter proclaims the right to good administration. According to that Article, *"Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union"*. This right includes the right of every person to be heard, to have access to his or her file, the right to be given reasons for decisions of the administration, the right to have the administration to make good any damage, and the right to use a chosen language of the Union. This right to good administration can also be exercised in relation to the authorities of a Member State if they apply European Union law (see Nehl, 2009, p. 322; Benko, 2013, pp. 1651–1667).

Before this right was expressed in the Charter, these principles had been recognised by both European and national courts, pointing out the common constitutional heritage of all Member States. Some of these principles were also declared by the European Court of Human Rights, referring to Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, i.e. to the provision governing the right to a fair trial,[7] or also to other provisions of that Convention (Mattarella, 2011, p. 65).

These general principles are not only provided for in the national legislation of individual Member States governing general administrative processes, but also in international treaties or internal regulations of several international or global organisations. They

[6] See also OECD, 1999.

[7] For example, Taskin and others v. Turkey, No. 46117/99.

commit themselves to respect these principles, but also require their members to respect them in administrative processes.[8]

It should be pointed out that these general principles are applicable in both regulatory and application processes. Certainly, the rules relating to a fair trial have a wider impact in the regulatory processes. On the other hand, the right to have access to the file or the right to be given reasons for decisions are more significant in the application processes. In any case, all these general principles are to be established in the administration of each Member State, also in order to create a single administrative area.

In addition to the general principles and provisions, the European Union influences the processes of national public administration by establishing specific procedural rules for their action. The most notable processes influenced by the European Union are processes relating to the protection of the environment – environmental impact assessment or integrated permitting of activities polluting the environment. In addition, public procurement processes as well as financial control processes are also significantly influenced by European Union law. It is not the purpose of this paper to analyse these procedures in more detail; rather, its purpose is to point out the most important processes influenced by European Union law.

The basic acts of the European Union regulating the environmental impact assessment process are Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment and Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment. The intention pursued by these directives has been implemented in the laws of all new Member States in the form of national legislation.[9] The environmental impact assessment procedure is a procedure of expert and public assessment of the envisaged environmental impacts of strategic documents during their development and prior to their authorisation, as well as the proposed activities before deciding on their location or prior to their authorisation under specific regulations (see Sčensná & Vernarský, 2016, p. 74).

The public procurement process of both contracting authorities and sectoral contracting entities has also been significantly influenced by Europeanisation. European legislation in this area has been subject to a number of changes. This issue is currently regulated in Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and Directive 2014/25/EU of the European

[8] The most common example in this respect is the Aarhus Convention of 1998.

[9] For example, in the Slovak Republic through Act No. 24/2006 on environmental impact assessment, amending certain acts, as amended; in the Czech Republic through Act No. 100/2001 on environmental impact assessment, amending certain related acts (Environmental Impact Assessment Act); in the Republic of Poland through the Act on providing information on the environment and environmental protection, public participation in environmental protection and on environmental impact assessment; and in Hungary through Governmental Decree No. 151/2009 (VII. 23.) regarding the procedures of environmental impact assessment and the single procedure of authorisation of utilisation of the environment. (XII. 25).

Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water sector, energy, transport and postal services sectors.[10]

Last but not least, European Union law significantly influences the financial control and audit process. This is connected with to the need for the European Union to ensure that financial discipline is respected, in particular as regards the use of EU funds. The basic rules for financial control within the European Union are laid down in legal acts governing the Union's budgetary rules as well as that governing the individual funds from which finances are provided. Such basic acts include Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014 and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012; and Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006.

Taking into account the form of this legislation – i.e, regulation –, the effects of these legal acts on the public administration control and audit processes of the new Member States were direct and immediate (Tekeli, 2016, p. 85).

5. Conclusion

The membership of new Member States in the European Union, as well as the efforts for such membership, have also influenced the formation of the organisation of public administration, its activities as well as the processes taking place in the public administration of these countries. The intensity of this influence was different but still relevant in relation to these areas.

As regards the organisation of public administration in the new Member States, it should be noted that European Union law lays down the requirements for the creation of a sufficient framework of public administrative authorities to enable the effective implementation of European Union law. The individual secondary acts of Union law further specify this requirement in relation to a specific area regulated by a respective act. However, European Union law does not lay down any specific requirements for the organisation of public administration; it leaves them up to Member States. An exception to this statement

[10] The adoption of these Directives was also reflected in Slovak legislation through Act No. 343/2015 on public procurement, amending certain acts, as amended; in Czech legislation through Act No. 134/2016 on public procurement; in Polish legislation through Act of 11 September 2011 (Public Procurement Act); and in Hungarian legislation through Act 2015 CXLIII on public procurement.

is the Union's requirement for Member States to develop the so-called national regulatory authorities, which are to be independent of other authorities, and which have an independent budget and specific powers. This requirement is reflected in the organisation of public administration of new Member States in the extension of the category of state administration authorities with nationwide competence independent of central state administration authorities.

The European Union has also influence on the activities of public administration in the new Member States, i.e. on tasks which it carries out. The implementation of European Union law has also been added to the scope of national public administration tasks, particularly in the area of shared competence between the European Union and the Member States. The scope of these tasks is quite wide, and the purpose of this paper is not to provide its exhaustive enumeration. In addition to tasks of national public administration arising from the Union's acts of general application, tasks may also result from the individual acts of Union bodies, institutions or agencies. A specific feature of the implementation of European Union law is that a decision taken by a public administration of one Member State has an effect also in the territory of another Member State, several or all Member States.

Last but not least, the European Union has also had an influence on processes taking place in the public administration of Member States. This influence has been in two forms: in the form of the implementation of general procedural principles or provisions, and in the form of the need for adapting certain specific procedures. The latter category mainly concerns environmental protection processes – environmental impact assessment processes or integrated permitting of activities polluting the environment. This also applies to public procurement procedures for both contracting authorities and sectoral contracting entities. An example of this influence is the financial control and audit process, which is also influenced by the requirements of the European Union.

It can therefore be stated that the public administration in the new Member States has been strongly influenced by European Union law; to the greatest extent in connection with activities in the implementation of European Union law, and to a less, but relevant extent, in connection with public administration procedures as well as with the organisation of public administration.

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Protection of a Weaker Party in Public Interest – Material Scope of the Directive on Unfair Trading Practices in Business-to-Business Relationships in the Agricultural and Food Supply Chain

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Abstract: The article focuses on the scope of the Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain. It discusses recent developments in regulatory approach to unfair trading practices. It analyses steps taken towards uniformity in this area of law within the EU and contemplates whether there is a need for further harmonisation. The article attempts to evaluate the scope of the UTP Directive, focusing mainly on a material scope inherently linked to the notion of "agricultural and food products" and characteristics of unfair trading practices. It also discusses whether Member States should consider widening the national regulations beyond food supply chain so that their scope would cover vertical relationships in every sector of the economy.

Keywords: unfair trading practices, B2B, buyer power, bargaining power, agricultural producer, agri-food sector, buyer, supplier

1. Introduction

The Directive on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, which entered into force in May 2019 (hereinafter: the UTP Directive) is the final solution to the problem of unfairness and inequality of bargaining power in business-to-business relationships (hereinafter: B2B) reached by EU authorities supported by Member States and other stakeholders. It sums up more than ten years of discussion that began first with actions taken by the European Commission aimed at overcoming challenges faced by the European food supply chain (among them: Wijnands et al., 2019; COM/2008/0321 final, 2008; COM/2009/0591 final, 2009). Throughout the years the issue of unfair trading practices was not limited to the agri-food sector, it was also reviewed in a wider context of the whole supply chain. Having said that, it is noteworthy to consider whether the scope of the regulation should be broadened beyond food supply chain. This issue will be given further consideration in the following sections of the paper.

The paper gives an assessment of the scope of the UTP Directive with the main focus on material scope inherently linked to the notion of "agricultural and food products."

Although the UTP Directive has many points in common with competition law, they generally do not overlap (on the subject of similarities and divergence between the two regulations see Daskalova, 2019). There are many convergences between both regulations, but their prevailing aim is different. Due to the nature of such practices, competition law is not the best suited tool to eliminate them. In short, the aim and capabilities of competition law prevent it from being an effective tool of counteracting UTP. The comparison of both regulations is particularly compelling given that in most Member States the prohibition of UTP is enforced by NCAs. Nevertheless, these issues go beyond the aim of this paper and its short form.

The remainder of the paper is organised as follows. The next section presents a brief background information on the key factors behind introducing prohibition of UTP and refers to a current state of play in Member States. Section *Nature of the prohibited practices* analyses the characteristics of UTPs in more detail, and section *A glance at the scope of the UTP Directive* discusses mainly the material scope of the regulation and the personal scope closely related to it. It also discusses whether Member States should consider widening the national regulations to the whole supply chain. Finally, section *Conclusion* presents the conclusion and suggests some tips for future research on unfair business-to-business practices in the EU.

2. Overview (regulatory background)

At the outset it is important to highlight the marked trend towards providing greater legal protection to weaker party, e.g. to the employee or the consumer. Within the EU legal framework, particular attention is paid to consumer protection. However, there is also an increasing number of instruments aimed at protection of the weaker party in B2B relations. One of such instruments is the UTP Directive focusing on protecting a supplier in relation with a larger buyer in the food supply chain.

Until recently, the issue was given little consideration. The concern about significant differences in bargaining power expanded gradually in both economics and law. The main focus of the legislators was on total welfare – and in particular consumer welfare. They have been slow to react to problems that UTPs can present. To some extent UTPs can result in positive effects to consumers, such as reducing the cost of final products (Clarke et al., 2002, p. 187); this makes the harm caused to weaker parties in B2B relations less visible and causes legislators to ignore or overlook the problem.

Therefore the question is: what are the reasons for change in the approach and shift to public enforcement? Most of the UTPs can be successfully tackled by measures of private law. The essence of private law, that is, granting initiative to the party to make use of its rights, turns out to be its weakness in relationships characterised by asymmetric bargaining

power. Private enforcement was deemed insufficient due to the "fear factor",[1] hence the need for a state intervention. In this regard, the UTP Directive imposes an obligation on Member States to provide or strengthen a mechanism of public enforcement[2] which was a novel solution in some countries.

Better bargaining position, even if achieved in accordance with the law and market rules, does not justify imposing unfair conditions on a weaker party in a transaction – unfair in the sense that a weaker party would not have accepted them if there was no stark imbalance in the contractual position of the parties.

In free market economies, trade relies mostly on economic principles and legal equality. Ideally, market equilibrium is achieved automatically with no need of state intervention, though this approach implies no economic differences between market participants. However, with existing inequalities, it only deepens the advantage of the stronger party over the weaker. Consequently, in extreme cases, there is a need to apply non-economic measures, in this case legal measures, in the public interest.

The European Economic and Social Committee also shed some light on the importance of balance between the parties that enables mutual relations based on fairness. The Committee stressed that the protection of a weaker party cannot be a sole rationale for state actions aimed at restoring the disturbed balance. In this regard, the primary objective of regulations on unfair trading practices should be the protection of the economic interest of Member States (COM/2013/37 final, 2013).

However, most of the Member States decided to introduce detailed regulations preventing the abuse of the bargaining position by a stronger party, before any regulatory actions at the EU level. In practice, this led to substantial differences in national legislation. Some countries blacklisted specific trade practices, while others relied on general clauses referring to fairness, good commercial conduct and other principles fundamental to trade system. Depending on the approach adopted by a particular Member State, provisions concerning UTPs are part of competition law (extending its scope beyond EU competition rules) or can be found in different branches of law – including, among others, civil, commercial (laws of general nature) or sector-specific laws (Renda et al., 2014, p. 35–43). This in turn translates into how abusive behavior is defined, what measures are implemented to combat this behavior and what the potential sanctions for non-compliance are. It will also, to some extent, determine the object of protection and the model of enforcement (public, private or the combination of both).

Since it was the Member States that introduced the relevant laws on a national level first, in a way it was a bottom-up harmonisation in this area. As can be expected, this course of action has achieved little in terms of uniformity. The Laws of some Member States were designed to meet particular needs of domestic markets of those countries. This is best illustrated by a simple example of the Member State with one of the highest concentration

[1] The "fear factor" is further explained in: Green Paper on unfair trading practices in the business-to-business food and non-food supply chain, COM (2013) 37 final, p. 7–8; Report from the Commission to the European Parliament and the Council on unfair business-to-business trading practices in the food supply chain, COM(2016) 32 final, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016DC0032&from=PL.

[2] Recital 28 of the UTP Directive.

ratio in food retailing.[3] Lithuania introduced specific legislation on UTP in 2009 – the Law on the Prohibition of Unfair Practices of Retailers.[4] The Law focuses on protecting suppliers against abusive practices of buyers, which are large retail chains. At the time of its adoption, it applied only to the four largest retail chains: Maxima, Rimi, Iki and Norfa. A characteristic feature of the Lithuanian market was the lack of large international retail chains. The situation changed after 2016, when the German retailer Lidl began to gain an increasing market share, mainly at the expense of Maxima, which is still the largest network with approximately 40% of the market.[5] Another significant factor contributing to divergence among the national legislation is the influence of national interest groups and political pressure within Member States.

3. Nature of the prohibited practices

Unfair trading practices that are a result of imbalance of bargaining power in vertical B2B relations resemble those covered by consumer law. However, the scope of protection of B2B power imbalances is nowhere near to the standard set by consumer law.

Even if the weaker party is not an SME supplier or buyer, it may be facing similar problems of limited freedom of choice, negotiations impediments and dependency in relationship with its stronger counterparty. Superior bargaining power is a relative concept and depends on the circumstances of the particular relationship between parties. The point of reference is bargaining position of the other party, not the reference to the relevant market. The advantage of a stronger party is of economic nature. Economic analyses suggest that the assessment of bargaining power between suppliers and buyers should be made on a case-by-case basis, as it depends greatly on the trade relationship. Even the subject of the transaction can affect distribution of bargaining power between the supplier and the buyer. This means that a similar transaction on another product market can completely alter the balance of bargaining power (Haucap et al., 2013, p. 15–16). The size of an undertaking does not play a key role in the assessment of bargaining power (Heimeshoff & Klein, 2013, p. 14). It is more important to analyse to what extent a stronger party can limit the freedom of a weaker party (the degree of dependence of the weaker party) or expand its capabilities (Carstensen, 2017, p. 76).

Generally, abuse of a bargaining position consists in imposing contractual conditions on one party (B2B relations) resulting from a stronger position of the other party in a given trade relationship. Abuses will occur in situations where one of the parties uses its bargaining position to achieve economic benefits at the expense of the weaker party. In some cases, a weaker party will accept adverse conditions in order to avoid serious financial losses. Unfair practices may indirectly lead to a foreclosure of competitors from relevant markets. The assessment of the unfairness of behavior is generally determined by its purpose

[3] It may also apply to Sweden and Finland, bearing in mind that regulations of both countries have limited scope and are based on consumer protection legislation. See SWD/2018/092 final – 2018/082, 2018.

[4] *Lietuvos Respublikos mažmeninės prekybos įmonių nesąžiningų veiksmų draudimo įstatymas*, Valstybės žinios Nr. XI-626, 22.12.2009.

[5] Vizbarienė, 2018.

and reference to commonly accepted practices in a specific market. Usually, there is no obligation to prove the suffered damage or impact of the infringement on the market, because the main focus is on the fairness, not the implications of the practice.

A catalogue of unfair practices is open as there is no uniform legal definition of UTP. The following list is based on provisions of national laws, international reports and other "soft law" documents which provide an overview of examples of UTPs,[6] such as:

- unjustified extension of payment deadlines, exclusion of contractual penalties in the event of late payment;
- introducing unclear or imprecise contractual conditions;
- claims for additional benefits that have no relation to the subject of the contract;
- introducing additional marketing fees, e.g. slotting fees, loyalty fees, charging fees for fictitious services, fixed fees for remaining on the list of suppliers ("pay-to-stay"), participation in the costs of promotion and marketing;
- using excessively detailed product specifications to refuse delivery or reduce the price of goods ordered;
- providing products of lower quality or different parameters than agreed;
- cancelling orders and lowering forecasted last-minute orders (especially in relation to perishable agricultural and food products), setting excessively high minimum order thresholds;
- reducing or delaying deliveries in comparison to previous arrangements;
- unjustified return of unused or unsold products, threatening to withdraw products from the offer;
- claims for payment for the deterioration or loss of agricultural and food products that occurred after the transfer of ownership to the buyer;
- unjustified lowering of prices, unfair price fixing, e.g. encouraging the sale of goods below production costs;
- inadequately high contractual penalties;
- unfair transfer of commercial risk to the other party;
- unilateral changes to the provisions of the contract, including retroactive change of the general terms of delivery and prices;
- unilateral contract termination and exclusivity clauses, e.g. an obligation to make purchases from a selected buyer/supplier;
- territorial limitation of supply.

As it is apparent from the above list, the UTPs can take any form: they are not limited to the provision of the agreement stating the obligations and rights of the parties. UTPs may occur at any stage of the product selling (which is confirmed in Recital 15 of the UTP Directive).

The UTP Directive specifically lists the unfair practices in Article 3(1)–(2). The first list contains practices that are regarded unfair regardless of the circumstances. The second list consists of practices that are deemed fair as long as they are subject of contractual

[6] ICN, 2008, p. 7–9, 20–21, 27–28; COM(2013) 37 final, p. 5–6; Renda et al., 2014, p. 99–100; Article 3 of the UTP Directive; SWD/2018/092 final – 2018/082, 2018, p. 206–225.

agreement. While it is understandable that certain practices can be justified and bring benefits to the parties, it cannot be ruled out that those practices could also be agreed involuntarily. In result, it gives room for potential abuse by the party exercising significant bargaining power which contrasts quite sharply with the idea behind the UTP Directive.

A short list of prohibited practices obviously has its merits and limitations. On the one hand, an exhaustive list is always flawed in so far as it fails to capture every possible UTP and allows an opportunity to circumvent it. On the other, it provides minimal standard and certainty for economic operators as to what to expect, the biggest advantage possibly being lifting the administrative burden from enforcement authorities, leading to shorter and simplified investigation.

The decision-making practice of the Member States is not extensive, despite the fact that some of the regulations were introduced more than ten years ago. For example, since the relevant law was enacted, only a dozen or so decisions were issued in the Czech Republic (Bejček et al., 2019, p. 17; Úřad pro ochranu hospodářské soutěže, 2018, pp. 32–33; Úřad pro ochranu hospodářské soutěže, 2019, p. 17). The situation is similar in Lithuania (Moisejevas et al., 2019, pp. 191–193; Lietuvos Respublikos Konkurencijos Taryba, 2019, pp. 29–31) and Bulgaria (Dinev, 2019, pp. 51–54). In Slovakia (Blažo et al., 2019, pp. 267) and Hungary (Papp, 2019, pp. 154–156) enforcement authorities are more active, they issued several dozen decisions.[7] Still, the enforcement authorities were expected to be more active in this field.

In many Member States legislation prohibiting UTP refers to general clauses supplemented by examples of prohibited practices rather than specific lists (SWD/2018/092 final – 2018/082, 2018, pp. 227–236). Member States rely on more or less stringent tests to capture as many prohibited practices as possible, which may imply that it is inefficient to rely solely on an exhaustive list of practices. Moreover, some Member States moved from detailed lists of UTPs to more general categories, e.g. in France[8] and the Czech Republic (Frischmann & Šmejkal, 2016, p. 231, 239–240), because the former model was deemed unsuccessful. In order to fulfil requirements of the UTP Directive, those countries are obliged to reestablish the previous model of detailed catalogue of prohibited practices.

4. A glance at the scope of the UTP Directive

The personal scope of the UTP Directive indicates that it is focused primarily on the problem of buyer power,[9] giving very limited attention to seller power. The provisions of the UTP Directive apply in situations of imbalance of bargaining power depending on thresholds set in Article 1(2). The introduced categories do not reflect the structure of national agri-food markets, therefore they provide more of a guidance than a ready-made solution. The personal scope of the UTP Directive is improved, though, compared to Proposal for

[7] By comparison, in Poland the enforcement authority issued six decisions since 2017, when the rules on UTP were introduced.

[8] As a result of the amendment, in 2019 a list of 13 prohibited practices included in Article L.442-6 of the French *Code de commerce* was removed and generally formulated categories of prohibited practices were introduced.

[9] More on the buyer power with regard to UTP see Gjendemsjø & Anchustegui, 2019; Carstensen, 2017, p. 38–78.

a Directive[10] containing a vague definition referring to the SME category (for a critical analysis of the issue see Piszcz, 2018, pp. 153–154). However, it still has its flaws, such as the lack of "two-sided" protection (Piszcz, 2020, pp. 114–117).

The material scope of the Directive is limited by definition to "agricultural and food products", which covers products listed in Annex I to the TFEU as well as products not listed in that Annex, but processed for use as food using products listed in that Annex [Article 2(1) of the UTP Directive]. Hence, the Directive applies not only to the entire agri-food sector; it goes beyond that. The definition includes mostly food products, but also raw agricultural products, semi-products, food supplements, food for special medical purposes, total diet replacement for weight control, fortified food, novel food, products not intended for human consumption etc. Many of the above mentioned products can be bought in pharmacies and from medical wholesalers. Thus, the Directive applies (to a limited extent) to the entities from the pharmaceutical and the biotech sector (manufacturers, wholesalers, pharmacies). If we also consider residues and waste from the food industries (listed in Annex I) and their intended end-use, say, biofuel industry, then the scope is further extended beyond the narrow and typical understanding of agri-food sector.

A broad definition of agricultural and food product relates to supply chains other than food supply chain. It is somewhat inconsistent with the emphasised need to protect the agri-food sector, and above all, the need to protect agricultural producers (Recital 7 and 10 of the UTP Directive). In the light of above, commentators point even to the questionable legal basis for the Directive (Schebesta et al., 2018).

Another issue is the introduction of a more precise definition of "perishable product" than in the Proposal for a Directive, which should be viewed as an improvement. Currently, perishable agricultural and food products are agricultural and food products that by their nature or at their stage of processing are liable to become unfit for sale within 30 days after harvest, production or processing. It is further clarified that perishable products are products that are normally used or sold quickly (Recital 17 of the UTP Directive); e.g. fruit and vegetable crops are perceived as highly perishable. Perishable products also stand out from other products for their features such as limited shelf time, changes in demand and approach to safety issues of these products. Prohibiting some practices referring to perishable products can prevent or minimalise the risk of food loss and food waste, which is a serious and pervasive problem. It is also economically viable and may enhance the performance of the food chain.

With the above comments in mind, I turn the attention to the issue of the limited scope of the UTP Directive and whether it is sufficiently justified. In the beginning, the discussion on UTP referred to the whole supply chain.[11] Further along the road it was

[10] Proposal for a Directive of the European Parliament and of the Council on unfair trading practices in business-to-business relationships in the food supply chain [2018] COM/2018/0173 final (hereinafter, Proposal for a Directive)

[11] COM/2013/036 final, 2013, p. 6–7; COM/2013/37 final. The Resolution of 12.06.2013 of the European Parliament stated that similar regulations could be introduced in other sectors of the economy, to the benefit of consumers; www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0268+0+DOC+XML+V0//EN&language=EN. In another resolution of 11.12.2013, the European Parliament clearly stressed that unfair trading practices occur throughout the entire supply chain; www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0580+0+DOC+XML+V0//EN&language=EN.

slowly constrained to food supply chain. There is no doubt that the agri-food sector has peculiar characteristics. It is also stressed in the UTP Directive (Recital 6). The sector is subjected to many state interventions. States often grant subsidies for specific crops, land subsidies, thus significantly influencing the market dynamics. Such actions affect the structure of the market, the level of concentration and other factors crucial to the functioning of the market. Sometimes this may lead to creation of artificial supply and demand in a given market. Agricultural producers depend on various circumstances, such as: unpredictable weather conditions, geographical conditions, compliance with provisions regarding crop and animal welfare, order-based production which is not uncommon and somewhat reduces the possibility of changing or finding a new buyer.

The food supply chain combines three key sectors for the food industry: agricultural, processing, wholesale and retail distribution. The activities of the agricultural sector include, inter alia, crop production and livestock farming, providing both products for direct consumption as well as raw materials for the processing industry and alternative markets, such as biofuels. The processing industry is at the bottom of the chain. It is diversified because it consists of the production of agricultural goods and animal products as well as basic processing, e.g. refining sugar. The final link in the chain supplying final products to consumers are retailers, such as large retail chains, small local stores, HoReCa etc. (High-Level Group on the Competitiveness of the Agro-Food Industry, 2009). Other features of the food supply chain that lead to its complexity in comparison to other supply chains are the products' perishable feature, price, and demand variation, increasing consumer awareness of food security.

However, despite the distinctive attributes of the food supply chain, UTPs are present in the whole supply chain, and they are detrimental, regardless of the sector in which they occur. It is worth considering to broaden the scope of regulation so that it would capture other sectors, taking into consideration that certain events indicate the need for such actions in some Member States. Recent proceedings initiated by the Polish competition authority can serve as an example. The authority is investigating unfair conduct of wholesalers supplying personal protective equipment to hospitals (UOKIK, 2020). The conduct of wholesalers could include UTP, but due to the limited scope of the Polish Act Counteracting the Unfair Use of Contractual Advantage in the Trade in Agricultural and Food Products,[12] there is no basis for that. Hence, the authority attempts to tackle it as a competition law infringement. It demonstrates that this issue requires greater public awareness and more attention from policy makers than it has received so far.

As to the Member States, national laws can go beyond definition of food and agricultural product. Therefore, the Member States are not obliged to limit the scope of their existing provisions as long as they are proportionate and compatible with EU law (Recital

[12] Act of 15 December 2016 on Counteracting the Unfair Use of Contractual Advantage in the Trade in Agricultural and Food Products [Ustawa o przeciwdziałaniu nieuczciwemu wykorzystywaniu przewagi kontraktowej w obrocie produktami rolnymi i spożywczymi] (consolidated text in Journal of Laws of the Republic of Poland 2019, item 517).

39 of the UTP Directive). Some Member States complement laws on UTP by sector specific regulations imposing additional obligations on trade of food and agricultural products.[13]

5. Conclusion

The UTP Directive in its form allows for a less uniform regulatory approach to the issue of unfair trading practices. The way some of the provisions were drafted suggests the option to adjust them to specific needs of the country rather than to implement them word by word. On the other hand, the broad discretion given to Member States may pose a potential risk for "gold-plating". Careful scrutiny of national legislation will be required in order to comply with the EU framework.

The standard of minimum harmonisation is laid down in Article 1 of the UTP Directive, allowing for regulatory pluralism. The Member States that had already had national laws in place usually adopted more developed rules on UTP. Hence, the UTP Directive will not bring landmark change for those countries.

Member States should consider broadening the scope of UTP laws beyond the food supply chain as there are no legal obstacles or arguments against extending the regulation to all sectors of the economy. It must be noted that when the European Commission started the consultation process years ago, the debate focused on the occurrence of unfair trading practices in the whole supply chain. Even now, the definition of "agricultural and food product" allows for a broader application of the UTP Directive. Furthermore, the Member States should think of framing useful rules of general application in addition to practices listed in the UTP Directive.

Currently, the map of UTP legislation resembles more a mosaic of various national laws. Regulations of the Member States often contain divergent rules in this respect. It opens up the possibility for opportunistic behavior of international retail chains to apply different practices depending on the country and its regulations. For now, the introduction of the UTP Directive will not significantly change this situation because of its minimum requirements. It is an area of law where EU harmonisation will possibly increase proportionally.

Further action is required to truly approximate the UTP legislation across the EU. A good step towards that goal will be closer cooperation between enforcement authorities and maybe the establishment of a new EU network for UTPs. As in most Member States the designated enforcement authority is NCA, they already have experience in cooperation within the European Competition Network, and now, in the light of the ECN+ Directive,[14] their cooperation will be strengthened.

[13] See examples of Central and Eastern European countries in Piszcz & Jasser (Eds.), 2019.

[14] Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, OJ L 11, 14.1.2019, p. 3–33.

Since the Member States are still facing the challenge of transposing the provision of the UTP Directive into national laws, there is a dearth of comprehensive evaluation. It remains to be seen whether adopted measures (particularly a list of practices prohibited *per se*, which is absent in most Member States legislation) are proportionate and appropriate to achieve policy objectives.

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Disinformation as a Tool Aimed at Weakening Consolidated Democracies

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Abstract: This scholarly article indicates threats to the stability of political systems of consolidated democracies resulting from disinformation. The article presents threats resulting from the effects of disinformation in four areas: state, society, politics and law. The authors demonstrate the exposure of society to manipulative effects of fake news, which affects human emotions, reasoning and behaviour due to the use of created images of reality. It has been pointed out that fake news as a targeted manipulation tool, while aiming to achieve its goals, exploits the imperfections of the human mind. For this reason, the individual and thus the society need support to protect themselves from the manipulative threat coming from this phenomenon. Protection from fake news must be provided with the respect of freedom of expression, the values of society, the individuals' liberties as well as legal rights. Disinformation is not a new phenomenon in itself, but the development of the Internet and social media allows for an unprecedented scale of social manipulation. The article also indicates that disinformation is often directed at civil liberties and destabilises the principles of social life and citizens' trust in public institutions, authorities or the media, regardless of whether its source is third countries or it is "produced" internally. In a democratic state a citizen should be able to make informed decisions and independently assess whether the information encountered in the social media is true or false.

Keywords: destabilisation, fake news, consolidated democracy, information, disinformation

1. Access to information as a determinant of modern democracies

While defining the concept of information, it should be noted at the outset that the concept is only seemingly simple, in fact it is complex. There is a multitude of different approaches to information in the literature, representing various fields and disciplines of science. In addition to scientific theories, the term is also commonly used (Ziółkowski, 2007, p. 51), which has considerable significance in political sciences. It can be assumed that the particular concept of information refers to several intuitive understandings. Firstly, each piece of information is a message about something, and secondly, information is acquired by the individual through observation or other mental activities (Greniewski, 1967, p. 51). In scientific terms, information is generally defined either in an objective context or is closer to a subjective context when it is defined in social sciences. It should be noted that information, depending on the content or the adopted reference system, can

also be interpreted in a broader or narrower sense. Broadly speaking, information is understood as a content taken from the outside world in the process of our adaptation to it and the adaptation of our senses (Fischer & Świerczyńska-Głownia, 2006, p. 9). In a narrow sense, information refers to the message obtained by humans through observation or mental action, subject to transmission in the sender (human) – recipient (human) system (Groniewska, 1990, p. 45). Babik (2008), in turn, emphasises the importance of the concept of qualitative and quantitative recognition of the characterised concept. In the first of these ranges, the author points to the existence of qualitative definitions focused not so much on measuring but on describing information. He refers to several most important concepts: according to Gregory Bateson from the PaloAlto, information conveyed to students during their education at school is one of the factors that shape people's perception of the surrounding reality. By contrast, Carla F. von Weizsäcker perceives information as the signal content that makes sense to the recipient.

The quality of information is therefore understood by reference to its content in certain conceptual categories such as: truth, timelines, relevance or usability. Qualitative concepts, by emphasising the semantic-pragmatic tendency, are widely used in social sciences with a particular emphasis on communication science. The precursors of mathematical information theory also fall within this trend. They are Norbert Wiener, Claude Shannon and Warren, to name but a few. Thanks to Wiener's work on cybernetic theories and the complementary theories of C. Shannon who cooperated with Weaver in 1949, a mathematical model of signal transmission was created (Garcia de Torres, 2001, p. 103) – to date being the core concept of the science of communication.

Russian philosopher Arkadij D. Ursul (1971) defines information as a reflection (mapping) of the diversity that characterises the surrounding reality (object, event, process, phenomenon). Such a variety in biology can be a set of signals reaching a living organism, whereas in psychology, stimuli received from the external human environment. Other specialists express similar opinions: R. Hartley – a mathematician, a slightly older colleague of another well-known mathematician C. Shannon, stated that information is a very capacious term and proposed to treat information "physically" and not through psychological interpretation. According to R. Ashby (1957), an expert in cybernetics, the concept of information is associated with the diversity of the surrounding world. N. Wiener (1954), an American mathematician and pioneer of cybernetics, treats information as an appellation deriving from a content taken from the outside world in the process of the adaptation of our senses to a piece of information.

A closer analysis of the quoted statements does not give any grounds either for rejecting any of them or for accepting any other concepts as the only correct ones. It can be admitted, however, that these are complementary opinions describing information from different points of view and in different contexts. Therefore, none of them can be treated as a comprehensive interpretation of this concept. It can be compared to a road seen by drivers in the fog: everyone sees only a small part of it. It is also worth mentioning L. Ciborowski's monograph *The Information Fight*, where he states that "the stimuli affecting the human reception system invoke a mental object in his or her imagination, reflecting the image of a material or abstract entity (subject, process, phenomenon, concept, etc.), which in his or her opinion (consciousness) is, to a certain extent, associated with these stimuli.

This means that information is only those experiences that inspire the human mind to a certain imagination. Its existence is relatively related to the existence of man and his mind" (Ciborowski, 1999, p. 185).

It is to be admitted that the explanation of the holistic approach to the essential features of the subject of the study, referred to by the term information, is rather difficult. Neither Claude Shannon, the creator of the quantitative information theory, nor Stafford Beer, the author of one of the first scholarly articles on the use of cybernetics and the general theory of control in management in economic systems, had never defined the term, although they often used it in their arguments. Currently many authors are trying to fill this semantic gap, but there is no agreement about this as yet in the formulated views. This can be perceived in the functioning lexical norms as well as in the literature on the subject.

In the context of the subject discussed, it is a fundamental statement that information is a knowledge generating tool but – and this should be emphasised – not knowledge *per se*. Information is time related, it may be up-to-date or not. So it has product features and can be sold and bought. Knowledge, however, belongs only to a particular person. In the knowledge society, everyone should be able to navigate freely through waves of information and make its own interpretations. Freedom of movement is connected to freedom of expression and is about developing critical thinking skills to distinguish between useful and worthless information.

We humans are social beings voluntarily seeking contacts with other people and forced by reality to interact with other people. In these contacts it is information which becomes an indispensable binder of individual entities with their surroundings. This is expressed in the integrative function of information. Family relationships are an eloquent example of this role of information: conversations (and thus information exchange) is an indispensable factor integrating family members.

It is to be recognised that information should also be sought in the areas where it is used. Emphasis can be placed on the role of information in decision-making processes, as it is the case in business operations. However, a human being is a personality that needs to be considered in various dimensions – professional, social, psychological, cultural or historical. In each dimension, one always needs information to play a variety of roles.

Information, as a kind of "soft power", is a tool for shaping human personality. The reception of information forces each of us to analyse it and stimulates an appropriate response: it forces us to choose the purpose of the action and how to achieve it, especially when it is presented in an attractive and suggestive form. Each of us applies various criteria for such assessment: the criterion of usefulness, utility, profitability, moral criteria and others can be applied. Then follows an act of evaluating information. A frequent repetition of this sort of act creates the habit of taking action in accordance to specific evaluation criteria. Our consciousness formulated appropriately to specific principles and norms of behaviour that shape our personality comes into fray. This is especially relevant with regard to young people. Respectively, it is information itself which becomes an instrument of human education despite the fact that there could be diverse categories of recipients of information. As stated by Targowski, the governing power is not the one who rules but the one who has the right bits of information in the right memory available at the right time (Stefanowicz, 2009, p. 279).

Individuals' rights to exercise freedom of choice is one of the main principles of liberal democracies. These rights are truly valuable when they are excercised by individuals through rational means. In turn, they can be amplified by the rights to reliable information and freedom of expression. This is why information *per se* should be considered a determinant shaping modern democracies.

Information shaping the social context plays an important role in shaping society. Information is not just a force affecting the external environment but also a subject of influence. The definitions belonging to this trend refer to a very wide range of phenomena and also to processes whose essence is relying on information that is important in creating social reality (Braman, 1989, p. 233). The condition for the development of the democratic community is free access to reliable information enabling the citizen to control the course of events and express his/her opinions (provide information). It is taken for granted that every citizen's opinion counts (at least theoretically) in the countries of liberal democracy. It is society that decides who will belong to the political elite. All citizens, through participation in elections, influence the shaping of forces in the Parliament. So as to implement these assumptions, genuine information, not fake information, is necessary to help citizens to make conscious election decisions. It is believed the reliable information gives people a chance to express their real opinion on a given political issue.

2. The influence of information on shaping social attitudes

The development of computer technology has caused an insatiable need for information, whose resource in cyberspace seems infinite. At the same time this situation causes an abstract temptation to control information, a temptation which, in fact, cannot be satisfied (Bauman, 2018, p. 55). Information as a force shaping society plays an important role in creating a social context. Information is not only a force affecting the external environment but also a subject of influence. The definitions pertaining to this trend refer to a wide range of phenomena and processes, including those which predominantly depend on conveying information, an important tool for creating social reality..

In the course of the discussion presented in the article, various dimensions of information were revealed. Firstly, the communication dimension – information can be transferred (communication is probably the most common activity performed with information). Secondly, the cognitive dimension – information can enrich one's knowledge (although it is not the only purpose). Third, the physical dimension – every piece of information is conveyed through some physical medium. The structural dimension is yet another one – each piece of information has a unique structure; perhaps every structure is information.

The role of information as a "spotlight" illuminating a particular situation is expressed in the theorem emphasised by specialists. It is claimed that each of our actions is preceded by making a specific decision. This applies to human participation in public and economic activities as well as in private life. The essence of decision making is or rather should actually be based on informed choices. It is a process that resembles moving in an unknown terrain. To reach the goal (to solve the problem), one must examine the paths that lead to

it. Without knowing appropriate paths, moving forward will generally be at risk of failure. To avoid it, one must "see" the problem space, which requires an analysis and decision making – you need to have the right information to "illuminate" your surroundings. The more accurately this information describes reality, the more it will reduce the uncertainty concerning the effects of actions taken, and will protect a person against possible errors.

The decision function means that information is an indispensable element of the decision-making process (both in terms of the decision problem and the procedures used). Therefore, some people argue that the decision itself is one form of information, because it often affects its content.

The opinion forming function appears when information helps people in shaping an individuals' worldview as well as the views of other people who follow the advice of their peers or associates. Thereby, they build and hierarchise their own personal system of values (Stefanowicz, 2009).

The controlling function is related to the fact that the sender of information, as a result of its transmission, wants to get a specific response from the recipient and influence his or her behaviour, opinions or position. This function is also associated with the decision-making process, because an entity acquiring information from the external environment faces a decision dilemma at a later stage prior to undertaking specific actions. The motivational function, which is performed in connection with providing feedback to a person about the direction of its action, can additionally serve as an incentive to intensify efforts.

The human being constantly feels the need to receive new messages. The opinion-forming function of information is clearly revealed when a person readily uses information made available by easily available sources: the Internet, social media, press, radio and television. This means that the recipient naturally limits his or her knowledge of the world to information published by these sources. In this way one is involuntarily submitting oneself to information manipulation: one pays attention to facts that can be learned from a given source and often remains unaware of the facts that this particular source omits. The mere fact that certain facts are selectively disclosed to the general public as "key information" (an expression heard often on television and radio) draws the recipient's attention to specific aspects of public life and diverts his or her attention from other manifestations, no less and perhaps more important, but intentionally silenced.

Properly profiled information affects the attitude of a person, the actions and decisions taken. It is owing to information captured in the form of a word, image or film (or any other form) that one can penetrate and influence another person's mind. As a consequence, the image of the recipient's world is shaped to a certain degree and his views are suggested. No surgery can penetrate the mind of another person to such an extent as information can. Such surgical treatments can only change the structure of the brain, which is not equal to changing the thought processes of the individual, his or her criteria for the assessments of reality and preferred values or attitudes. Information as a "soft power" is used to control the environment – to guide other people in the direction desired by a decision-maker. This is the foundation strategy for educating or rather shaping the minds of the young generation. Commercials which are based on the "soft power" of information provide a good instance of this strategy. Its purpose is not to provide pure

information about specific products or objects, but it is aimed at convincing potential customers to buy them. This is sometimes done without any hesitation to use social engineering tricks, dishonest though they may be. The effects of such actions are both positive and negative. An example of the latter is the advertisement of tobacco products or alcoholic beverages often perversely presented as a desire to inform potential customers about specific articles available on the market. They also constitute information carrying a negative (aggressive, chauvinistic, homophobic, vulgar) content.

The impact of information as a "soft power" is conspicuous in shaping the information society and so are tasks which arise from the development of information technologies and constitute a challenge for information services in new conditions. But it is not the development of new technologies themselves that has such a revolutionary impact on society. The effect achieved is the effect of the synergy of two interconnected components: information and modern technologies to collect, process and spread it.

3. The fake news phenomenon

The so called post-truth era in the world of social media domination seems to have difficulties in verifying information. Even though it cannot always be verified, it does not mean it is away from the truth as such. It seems to be more difficult to reach it than it used to be but it is not impossible. Actually, it is the truth *in spe* in which the quality criterion of the received content is beginning to be appreciated. This is why it is important to understand the post-truth phenomenon – its basic tool, its specificity, the most important features and the way it can be influenced. This tool is *fake news*. The term has its place in the discussion of both phenomena of post-truth and the value of information or the condition of modern media at all. In the new media era we got used to being surrounded by the flow of information. Thousands of pieces of information that reach us through various channels of everyday life are nothing extraordinary. The appropriate classification of information becomes the real challenge, and widespread ignorance of how to separate false information from true information further aggravates this phenomenon. The classification and attitude towards information is governed by mathematical algorithms which, instead of us, have begun to select the messages we receive. At the same time a large proportion of society is unaware of this fact. The flow of information also includes those pieces of information that we call fake news. It is intentionally created for disinformation, entertainment or any other purpose. Its frequently shocking content reaches thousands of recipients on a daily basis. The increase in the popularity of news (including fake news) in the social media dimension is a phenomenon of the last few years. The dissemination of sensational fake news content is still a considerable problem in the mass media and internet users are outdoing each other in creating more and more absurd information.

Fake news is neither the truth nor a lie, because, although it is based on misinformation, it often contains partly true information. Fake news is created and used in situations where the purpose of a medial publication is not its correspondence with the facts but getting as much interest in the topic as possible (Gillin, 2017). Fake news is sometimes constructed to deliberately mislead the recipient so as to achieve, for instance, financial,

political or even propaganda benefits. The creation of fake news is indeed intentional. Intentionality is the key to creating fake news, because the distribution of false contents is deliberately carried out for a specific purpose defined by the sender using channels that spread and speed up this distribution and expand the number of recipients of the specific contents. The reason why the Internet is such a readily used medium for spreading fake news is that it is often impossible to reach the real source of primary information (Gans, 2004 p. 39).

Analysing the phenomenon of fake news, which is a tool of the post-truth era, seems important primarily due to the fact that its presence in the media and public discourse has significantly increased. In 2017, the word went to the Merriam-Webster dictionary published since 1828 (Lekach, 2017, p. 41), and in 2018, the phenomenon of fake news aroused extremely high interest among internet users. It is apparent that fake news is overwhelming in the mass media and on the Internet (Ziółkowska, 2020).

Donald A. Barclay defines fake news as a propaganda tool, while Brian McNair goes much farther and notices the reason for the emergence of contemporary social and political trends in this phenomenon. Moreover, Monther Aldwairi and Ali Alwahedi claim that fake news was created as part of the psychological war (McNair, 2018). Several classifications of fake news can be identified, among which the most popular but also the most extensive one is based on the content criterion as presented in Claire Wardle's classification. He has enumerated the characteristics of seven types of false information: satire or parody, false connection, misleading content, false context, imposter content, manipulated content and fabricated content.

Some scholars argue that fake news is a response to the needs of recipients. We have to admit that due to the dynamic of fake news' spread we can clearly distinguish its presence in the media ecosystem. In accordance to the post-truth definition, fake news rely on objective facts which exert less influence on shaping the public, at the same time appealing strongly to human emotions and personal beliefs. So there will be messages that use the emotion or anecdotal arguments as the main persuasive device, and these messages will certainly be perceived as true ones. This information will effectively influence the public opinion by spreading doubts, mockery, hatred, or by the attempted creation of certain needs. The objective facts, the knowledge of reality and its description play a secondary role in the interpretation of fake news, which do not need to have much to do with the truth itself (Kucharski, 2018, p. 47). Considering Harold Laswell's model of communication, it is conspicuous that the post-truth, which applies in particular to the content that the recipient receives, goes together with a complete marginalisation of his or her own person and his or her ability to critically analyse the information received. The expected effect of fake news can be compared to the effects of the persuasion act. The ability to receive specific information, in turn, affects the scale of information-related impact on the recipient of the content (Palczewski, 2020, p. 154). At the same time, referring to objective facts does not necessarily change the mode of thinking about the world. Other people's arguments or opinions will always lose with a well-grounded belief arising from the core system of values and the accepted perception of the surrounding reality.

The fake news phenomenon is the result of many factors, e.g.: civilizational, cultural, economic and social. Sometimes the fake news phenomenon is identified with the crisis of

journalism and the relativisation of the concept of truth. Tabloidisation or so called softening of news of the mass media comes to the fore when discussing the reasons for the creation and development of the phenomenon of fake news. False information is intentionally created to be attractive, sensational, appealing to recipients, satisfying their curiosity and at the same time diverting their attention from understanding the falsehood of the content they decode. Economic reasons are also of great importance. Fake news are produced by cheaper and faster means than news based on reliable sources of information. It also brings more profit to the people or media that create or distribute it (Palczewski, 2018, p. 157). For those who are aiming at destabilisation of a particular country, the use of fake news as a weapon is far more cheaper than any military action. (Chlebowski, 2019, p. 169) regrets that it is now possible to publish unconfirmed information as well as forward unofficial contents (without informing the recipient) or just duplicate messages from social platforms. Taking into account the disappearance of critical thinking and considering the fact that there is no one, objective truth, it should not surprise us that fake messages are gaining in status and popularity.

The technological factor has made fake news even more widespread while creating new areas that have enabled faster distribution of fake information. For some people this situation provides new opportunities to become a "media personality", which has urged them to take immediate steps at the medial level (Palczewski, 2018, p. 159). Fake news should be perceived as misinformation which is neither the truth nor a lie but manipulation. When explaining fake news, it is worth noting the statement of the EU Commissioner for Security Sir Julian King who stated that "false information and misinformation have become a weapon, which is a serious threat to countries' stability and security. The use of trusted channels to disseminate harmful and divisive content requires a clear response which should be based on greater transparency, traceability and responsibility" (EC, 2018a).

It is worth emphasising the Eurobarometer survey, according to which 83% of the respondents said that false information is a threat to democracy. They express concern that misinformation aims at influencing elections and immigration policy. The study also highlights the importance of high-quality media. Respondents perceive traditional media as the most reliable source of information (radio 70%, television 66%, printed press 63%). Internet information sources and online video services were found to be the least reliable with a trust level of 26% and 27% respectively (EC, 2018b).

In addition, the European Commission's Joint Research Centre has published a study (EC, 2018c) on false information and misinformation in which it is pointed out that two-thirds of online news readers prefer to access them via algorithm-based platforms such as search engines, news applications, and social networking sites. It has been found that market power and income sources had shifted from news publishers to platform operators, who have an immeasurable amount of data from which they have to appropriately match readers with the articles and advertisements addressed to them. So, as it has already been mentioned, the more dangerous this phenomenon is, the more vulnerable the recipient is to the influence of fake news. To sum up, fake news is the main tool of the post-truth era and is defined as misinformation deliberately misleading the recipient to achieve the goals set by the sender. Intentionality is the key to describing this phenomenon.

4. The influence of misinformation on consolidated democracies

Until now the phenomenon of post-truth has been referred to politics. It is gradually covering other domains of social life. We have witnessed the rise of the circumstances in which real facts are not the most important value in shaping public opinion. It affects feelings or influences beliefs, thus plays a key role in moulding public opinion. Truthfulness has ceased to be crucial. Words and discourse in the public space live more and more their own lives and the sense of the phenomena they describe is distorted or the context of their origin disappears.

The system of consolidated democracies is liberal democracy with its democratic rule of law (Kozłowski, 2019/2020). Depending on the degree of freedom and the level of its restrictions, the different political systems can be divided into the following categories: consolidated democracy, semi-consolidated democracy, hybrid regime, semi-consolidated authoritarian regime, and, in the most extreme cases, consolidated authoritarian regime.[1] According to the authors, formulating an assumption about the impact of fake news as tools of misinformation on consolidated democracies requires describing the impact of information on shaping society. It should be recognised that information with its impact through the content of human sensory and mental experiences represents an enormous strength and value in shaping the functioning of democracy.

The human inclination to cheat other people has now been strengthened with new opportunities of expression ensuing from civilisational and technological advancement, with general tolerance for such a behaviour being increased. Even though ethics and morality are still dominant in public discourse, at least on the level of declarations, they do not always realise in practice. Allowing half-truths or manipulations to increase the importance of feelings in perceiving the world contributes to far-reaching changes in social structures. People-to-people contacts, attitudes towards authorities and trust in the media are being re-evaluated in a way leading towards an alternative reality in which there are no clear laws systematising the perception of reality.

The authors of the article indicate that it is extremely important to create a secure public space in the sense of freedom from harmful manipulations to ensure the development of democracy. The basic condition for a rational action in all spheres of human existence is always the need to make accurate decisions, which is inextricably linked to the need for relevant, objective and truthful information. This condition indicates that each piece of

[1] This article adopts a typology of political systems based on their attitude to the concepts of democracy and authoritarianism, as proposed by Andrzej Antoszewski and Ryszard Herbut, who in turn draw on the conceptions put forward by scholars such as Larry Diamond, Joseph Schumpeter and Robert Dahl. Antoszewski and Herbut emphasise the need to distinguish two sub-categories of democratic systems: consolidated (stable–full) and semi-consolidated (unstable–flawed/limited). Consolidated democracies are those that respect the separation of powers, sustain competitive party systems and adequately competitive elections, do not include decision-making centres uncontrolled by voters, impose limits on executive authority, and guarantee civil rights, as reflected in the unfettered development of civil society. Semi-consolidated democracies are often "new", or, as Dahl calls them, "newer" or "immature"; Diamond describes them as "electoral democracies". Although they meet the basic criteria characteristic of consolidated democracies, there are nevertheless flaws in their practical application. Consequently, such democracies must be considered incomplete (Antoszewski & Herbut, 2001, pp. 18–49).

information has its price proportional to the value of decisions manifested efficiently through the prism of the accuracy of the cost selection.

To act efficiently and effectively in all spheres of human existence, one must first get to know the areas and materials of the operational fields. This entails obtaining information about what, where, and when should be done to achieve the desired states and effects. Reliable and comprehensive information about this is a prerequisite for the selection of appropriate instruments, operators and variants of action (Ciborowski, 2010), which represents an enormous strength and value in shaping both positive and negative consequences in all spheres of human existence.

Living and acting in the modern world means the appropriate use of information. This statement consolidates the sense of social, economic, political and educational transformations. A person involved in various social processes and playing specific social roles from the earliest moments of his or her life is subject to a stream of diverse information (Goban-Klas & Sienkiewicz, 1999, p. 179).

In human society, everyone should be able to move freely through waves of information. Freedom of movement is about developing critical thinking skills to distinguish between useful and worthless information. We receive more and more information and experience it more and more intensively; we, as citizens, are increasingly becoming the object of manipulation understood as actions aimed at convincing us to adopt a specific behaviour.

The fundamental factors constituting the current reality are the flow of information, the intensified pace of life and the growing number of changes (Ball, 2000). However, the excess of information forces the recipient to intensify the effort put into the reception and selection of information. Therefore, the information management skills have become crucial. The increasing amount of information should serve the development of the economy, contribute to strengthening democracy or improving the quality of social life. However, the currently observed excess of information can overwhelm the recipient and cause problems with filtering the information. This is, in turn, conducive to the formation of information noise, which is becoming increasingly widespread nowadays. Separating facts from opinions and truth from falsehood becomes a challenge that the contemporary consumer of media contents faces on a daily basis. In such an environment it is extremely easy for fake news to function. The aforementioned phenomena do not contribute to the general development. Nevertheless, one can venture a claim that reliable and comprehensive information, which are a prerequisite for choosing the right instruments as well as options, should be available to the citizen.

5. Conclusions

Contemporary societies cannot be diagnosed as having a passive attitude to the changing social reality. The authors believe that ongoing discussions around the post-truth issues and the problems of the increasing amount of fake news force actions that aim at limiting their pervasiveness. Such activities are undertaken by several institutions like the European Union, the media or NGOs. Admittedly, online platforms play an important role in

combating the misuse of their infrastructure by hostile entities and strive to ensure the safety of their users and the public. Appropriate control and preventive activities are undertaken by Buzzfeed websites dealing with the investigation and verification of false news from a journalistic perspective or an initiative of the International Federation of Library Associations and Institutions (IFLA), which has prepared and published a short guide on how to verify information to guard against fake news. There is a special Polish portal, the Konkret24408, whose editors deal with analysing information and detecting fake messages. In thematically segregated sections one can find popular news about politics, health or science which has been verified and properly marked as true or false. Another similar portal, acting under the name of Antyfake, is a non-governmental organisation that carries out its mission on the Facebook platform.

Preventive actions in this area will bring greater social benefits than just post factum initiatives. Such actions are also concerned with decreasing the amount of fake news the general public is fed with. Preventing here cannot mean political censorship, but is related rather to checking and verifying information and educational practice. The call for rational thinking comes to the fore and precludes the non-reflective reception of media content. The increasing awareness in this area may result in the general public (the recipients of media content) being more reflective and analytical as regards the nature of the information received. Such awareness, in the context of publishing activities explaining this phenomenon, may influence the citizens' ability to think critically and the will to check the sources or authors of various publications and programmes. In addition, reading the texts and viewing the entire content, instead of a brief glance at the headline, will allow news recipients to familiarise themselves with the topics properly. Beyond doubt, this ability cannot be acquired when one ignores the complexity of society. In reality, it requires support of social education and an active warning about the harm brought about by fake news. This must be conducted at a similar level as we fight addiction to nicotine, alcohol, drugs or road rage. Activities that increase awareness of fake news can effectively prevent the spread of misinformation. If the recipient, who, as an active participant in the information society, also becomes a sender, will think twice before sharing fake news with others, there is a chance that false information will not become popular and will not gain followers and resenders. That is why it is so important to educate the general public about the destructive impact of fake news. This should not be just a small CSR project. This should be a highly supported and promoted action financed by supranational organisations free of governments and political control to protect them from intentional and possibly destructive political influence.

The recipient of media contents should know that his actions each day affect larger social groups. By clicking on the sensational publication, one satisfies his or her curiosity, but also brings profits to media owners and their associates and employees. The actions of these media owners are often far from ethical activities and are focused on bringing political or financial benefits to certain political and medial circles or are intended to cause disorder by impairing social integration. The one who passes a particular harmful or dishonest publication on without further checking it will only strengthen the impact of its derogative, offensive or manipulative content. It is as simple as that. Thus, education and public discussion are a basis for effective prevention of disinformation in this context. Such

a conscious and active approach of the recipient may result not only in raising the level of the published content but also in increasing the citizens' knowledge of information in the future.

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From Fragments to Drafts Hungarian Jurisprudence on Administrative Procedural Law until 1945

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Abstract: The paper aims to give a historical overview of the pre-codification of Hungarian administrative procedural rules. Therefore, the main stages and the main actors of an era that started with rules of fragmentary style and law books with ambiguous or a simple descriptive character regarding Hungarian administrative procedures are presented in the paper. The first part is devoted to a detailed examination of the origins of administrative law and administrative science until the end of the nineteenth century in Hungary. The second part of the paper provides an analysis of the Simplification Act, and the period of the first schemes for classification of administrative procedures (1901–1957) in Hungary. From this period, we should underline the appearance of the scientific school led by Zoltán Magyary and the preparations of the Administrative Procedural Code by József Valló.

Keywords: Hungary, administrative procedural law, historical background

1. Introduction

The comprehensive body of different level legal rules labelled as administrative procedural law (or simply: administrative law) plays an important role in safeguarding and guaranteeing our rights towards an administrative agency or public body. All European countries and the European Union itself do have a sophisticated branch of legal rules providing for the manners of administrative action, legal remedies, forms and substance of a public action and so on. For more than sixty years the Hungarian legal system also contains a Code, an Act of Parliament for general rules of administrative procedure, while many special Acts and Government decrees provide for further details of central, territorial or local administrative actions. It is more than self-evident that such norms should exist in a modern constitutional state and their content tends to become alike in most of the EU member states. It is (or should be) also self-evident that the enactment of such norms was anticipated with a long period of proposals, drafts and procedural regulations of embryonic nature. As administration changed, administrative systems of countries developed, the law had to follow the changes and the ways where Administration moved. In this article I try to present the main stages and the main actors of an era that started with rules of fragmentary style and law books with ambiguous or a simple descriptive character, but by the end it

could face the first draft of general codes of administrative procedure as one of the main results of Professor Magyary's Hungarian Institute of Administration.

2. The origins of Administrative Law and Administrative Science until the end of the nineteenth century

Thinking on public law in Hungary, it was strongly determined by the emphasis placed on independence (Beöthy, 1900; Beöthy, 1905; Beöthy, 1906; Andrássy, 1901; Andrássy, 1905; Andrássy, 1911) of the Hungarian state (to varying degrees throughout history), even at the expense of revolutions and wars of independence. These include the Dózsa Rebellion (a peasant revolt, 1514),[1] which had begun as a crusade against the Ottomans; the uprising of Stephen Bocskai against the Habsburgs (1604–06) (Benda, 1993), during which he was elected Prince of Transylvania and Hungary; the similarly-oriented Rákóczi's War of Independence (1703–11) (R. Várkonyi, 1979) led by Francis II Rákóczi, another Prince of Transylvania; and the Hungarian Revolution of 1848, also known as the Hungarian War of Independence (1848–49) (Spira & Arató, 1955), which is primarily associated with Governor-President Lajos Kossuth, and which was also directed against the Habsburgs.

From the 10th century until 1949, Hungary had a historical constitution, similar to that of England. The main characteristic of a historical constitution is that it is an unwritten (uncodified) legal document. This means that the constitution is not contained in a single fundamental statute, but is composed of several important 'basic laws' and other significant legal documents. The parts of the Hungarian historical constitution consisted of numerous important basic laws, the Admonitions of Saint Stephen, the customary law detailed in the Tripartitum of István Werbőczy, and the Inaugural Diploma (Zétényi, 2010, p. 1407; Fogarasi, 1861; Horváth, 2011). The Doctrine of the Holy Crown – concerning the Holy Crown of Hungary and connected with the person of Saint Stephen (968–1038), the first Hungarian king (as Stephen I) from the Árpád dynasty, and traditionally known as the founder of the Christian state of Hungary – should also be emphasised. The doctrine specifically connected the state's legal personality to this crown. The Holy Crown of Hungary is the emblem of the Hungarian state and the Hungarian people (Timon, 1903; Eckhart, 1941). The most important developer of the notion of the Holy Crown was the Hungarian nobleman István Werbőczy (1458–1541), an ideologue and compiler of noble law (customs, Latin: *consuetudo, ius consuetudinarium*).[2] The 1848–49 revolution was followed by the Austrian–Hungarian Compromise of 1867 (German: *Ausgleich*) which, in the decision to use the name "Austro–Hungarian Monarchy" with its hereditary territory and other states under Habsburg rule, was intended to reflect the key status of Hungarians

[1] György Dózsa was a Székely Hungarian member of the lower nobility, the leader of the army of crusaders. The peasant-based army under his direction attacked the troops of Hungarian noblemen. Later the fear of armed peasants appeared as one third of the country came under Ottoman (Turkish) rule. Surprisingly, the turn of events played an important role in social criticism, which was fostered by the sermons of members of the Franciscan Observant Order.

[2] István Werbőczy was the collector of the customary law of the nobility, such as his contemporaries, the Polish Jan Łaski (1456–1531), or the Czech Kornel Viktorín Vsehrd (1460–1520).

in public law. However, the Hungarian role in actual (political) decision-making was considerably less than would be evident from this political structure (Szabad, 1977, p. 184).

We should underline that no two public administrations are identical. Both practical and theoretical issues can present themselves in different ways to different types of states. The recognition and conception of problems can differ by state. This does not mean that states do not seek similar or even common models (Tamás, 2010, pp. 76–77). Administrative procedures and related laws are, in part, a function of codes of administrative procedure (or the lack thereof) and administrative court procedures (both contentious and non-contentious). Hungarian legal literature was already dealing with the issue of procedural law prior to 1945 (Kmety, 1907, pp. 179–217). (Not long ago, in 2017, many of these volumes were reprinted: Boér, 2017; Tomcsányi, 2017; Egyed, 2017; Szontagh, 2017). At the same time, Hungarian administrative procedural law exists in an international environment and, despite the country's linguistic isolation, it was published as part of international handbooks both before 1945 (Ferdinandy, 1909; Márkus, 1912) and during the socialist period (1945–89) (Szamel & Ivancsics, 1990), and is still being published today (Lőrincz, 1998; Boros, 2014; Jakab, 2011). However, the fact remains that codified financial administrative jurisdiction (1883) is the foremost among Hungarian administrative procedures, and that certain administrative procedures existed prior to administrative jurisdiction. This is true even if administrative procedures were studied only from the Compromise of 1867 onwards (Paulovics, 2012); indeed, during the socialist period it was heavily stressed, erroneously, that Hungarian administration was not a subject prior to 1867, as Hungary was not independent (Szamel, 1977; Csizmadia, 1976). Nevertheless, today's Hungarian administrative theory has transcended these opinions, and Hungarian administrative science has been studied since the Polizeiwissenschaft of the 18th century (Koi, 2013; Koi, 2014).

The development of Hungarian administrative procedural law took place later than that of criminal procedural law and civil procedural law, and its aims and tendencies were also different (Boros, 2019; Stipta, 1999). The *preparatory steps* preceding measures for substantive administrative decisions, and the decision itself (the administration of the case), constituted a key subject during the feudal age, i.e. much earlier than the Compromise. During the Habsburg period, several resolutions (royal announcements) issued at a very high level attempted to simplify those activities of court and national offices which related to preparing decisions and administration, and at the same time tried to make them quicker and more effective. In 1724, an *"administrative directive"* appeared, which dealt fundamentally with issues that today are regarded as of a procedural or case-management nature, and yet are relevant from the point of view of handling cases: registration, issuing of documents, preparation of the minutes of deliberations, presenter reports, inter-office communications and the precise recording thereof, and the introduction of forms. Several announcements followed the first during the eighteenth century (1754, 1769, and 1784). Finally, in 1792, court decrees laying down detailed rules for administration completed the royal announcements. Subordinate national offices and other, centrally administered public offices had to act according to regulations issued for

central (court) bodies. In the Hungarian administrative science, the next era after the Polizeiwissenschaft (1769–1840) was the period of the administrative legal model. The first Hungarian scholar of this science was Ignác Zsoldos (1803–1885), a country judge (Hungarian: *szolgabíró*, Latin: *iudex nobilium,* German: *Stuhlrichter,* Slovak: *Slúžni*) and legal writer (publicist), who was one of the first jurists (legal scholars) member of the Hungarian Academy of Sciences. Individual procedures related to administration in the activities of country judges and their offices (corresponding to today's district offices) appeared in his two-volume major work of 1842. The role of country judges and their offices was strengthened by the fact that the distant central administration managed from Vienna was only imperfectly built up. Such procedures included the election of municipal judges and clerks (Section 1 of Act IX of 1836) and the endorsement (Latin: *vidimatio*) of country judges who authenticated state documents. Under the Bach System and Schmerling Provisorium that followed the 1848–49 revolution, the teaching of administrative law began and an independent professorship of administrative law was set up at the University of Pest. The first Hungarian university professor of administrative law was Emil Récsi, the member of the Hungarian Academy of Sciences. His monumental, a thousand and five-hundred-pages long, Hungarian-language monograph (Récsi, 1854a, 1854b, 1854c, 1855) introduced administrative organisational law, public service law, and the details of individual administrative bodies. From the point of view of procedural law, the procedures of the Imperial Council and the Hungarian municipal committees were noteworthy. The Austrian model placed an emphasis on the importance of administration. At the same time, it expanded the material and procedural legal practices of the Hungarian Royal Council of Governor-General (Latin: *Consilium regium Locumtenentiale Hungaricum*) (Patyi & Koi, 2019).

The separation of public administration and justice occurred in 1869. In addition to independent administration of criminal justice, the so-called administrative criminal law materialised from 1879 (Act XL of 1879 on Violations) (Boros, 2019, pp. 12–13) in the procedures of administrative bodies. In 1869, jurisdiction was withdrawn from the counties and Royal Free Cities to the Royal Courts of Appeal. Thereafter, the administrative bodies passed judgement only on the most minor offences (falling within administrative criminal jurisdiction). On the basis of the first law on boroughs (local councils) (Act XLII of 1870 on the Classification of Boroughs), the boroughs performed their own local governmental activities, took part in the provision of public administration, and facilitated state administration. The regulation of external and internal procedures was not strictly separated in the law, as it primarily regulated the procedures of boroughs. It nevertheless laid down the forum system and the right of appeal to the minister against adverse decisions (Section 4).

Administrative jurisdiction in Hungary was not unprecedented. Győző Concha (1846–1933), the member of the Hungarian Academy of Sciences, an outstanding scholar of the study of public administration (German: *Verwaltungslehre*), first addressed administrative jurisdiction in Hungary at an academic level (Concha, 1877). Act XLVIII of 1883 set up the Court of Financial Administration. The court dealt with financial, tax and duty cases, including enforcement complaints. The Council of Ministers decided in cases of

jurisdiction and competence. The right to adopt a decision prior to the emergence of administrative legislation was created at the last minute (Boncza, 1895). Act XXVI of 1896 on the Hungarian Royal Administrative Court (hereinafter referred to as the HRAC) set up the Administrative Court based on Austrian precedents. The law came into force on the 1st of January 1897, and the Financial Administrative Court was incorporated into the Administrative Court. The court had general jurisdiction, and was a judicial body for single-level procedures that acted as a special court (i.e. it was the only administrative court in the country). It decided on the validity and legality of individual decrees (ex post review). Its president and judges were equal to those of the Curia.

The financial division considered tax and duty cases, and the general administrative division other cases. The latter included cases on: parish, borough, and state pensions; public health; religious and public education; water rights; public roads and railways; animal health; forestry, hunting, and fishing; community housing (until 1920); and domestic servants, day labourers, and labourers (Martonyi, 1932; Martonyi, 1939; Martonyi, 1960; Patyi, 2002; Patyi, 2011; Koi, 2019; Patyi, 2019).

3. The Simplification Act, and the period of the first schemes for classification of administrative procedures (1901–1957)

The first law to explicitly deal with regulation of external administrative procedures was Act XX of 1901 on the Simplification of Public Administration, which was a very mixed piece of legislation in terms of its regulatory subjects. It regulated the criminal jurisdiction (concerning violations or, with a present-day expression, infractions) of the police, and the handling of the monetary proceeds of offences, as well as public and "orphan" money, but more importantly, it regulated the system of delivery and legal remedies of judgments. The effect of this legislation was to "establish the uniform system of legal remedies aligned with administrative judicial processes" (Lőrincz, 2000, pp. 36–37; Lőrincz, 2005). Therefore, with respect to the course of external processes, the legislation only regulated legal remedies and the system of delivery of documents. The main goal of framing the law in relation to legal remedies was to eliminate the remedies' "irregularities" through simplification in the nomenclature of classes and individual legal remedies. In accordance with the new rule restricting appeals, they could no longer be lodged against judgments of courts of third instance, just as they could no longer be lodged against judgments (measures) of courts of second instance of equal content as those of first instance. This law introduced (comprehensively regulated) the application for a *rehearing* of disputed cases.

Let us review the opinions of contemporary jurists following the advent of the law. Ferenc Vasváry (1872–1952), then a visiting lecturer at the University of Budapest, first dealt with administrative procedures from the explicit point of view of administrative law in the following sections of the chapter on Administrative Procedures in his 1902 textbook on administrative law: Administrative Regulation, Legal Remedies, Delivery, and Administrative Implementation (Vasváry, 1902). The term "code" as a name for administrative regulation (Paulovics, 2012) was first used in Hungary by Vasváry, presumably following the model of the German *Verwaltungs(gerichts)ordnung*. (In other words, the

technical term was known in national law before the appearance of József Valló). Vasváry points out that it was formerly characteristic of administration to lack proper (written) regulations, both in Western Europe and in Hungary. When substantive provisions and their real method of application arose, the administrative procedure was not bound to regulations, except (in Hungarian law) trading licenses, compulsory purchases, tax assessments, and military conscription, he points out following Georg Meyer (1883–1885) and Karl Stengel (1886). He also makes clear that the principles of procedures (including contentious and non-contentious administrative procedures) gained customary regulation at least in broad outline (Vasváry, 1902, pp. 135–140).

Andor Sigmond, a teacher and director of the Academy of Law in Nagyvárad (Oradea), wrote the first substantial Hungarian monograph on administrative procedural law (Sigmond, 1904). The sources of the work are not indicated, but the extensive 500-page volume basically builds on Hungarian legislation. The monograph describes the administrative authority and the parties as the actors of the administrative procedure. It distinguishes procedures between the authority and the parties, those between authorities, and the internal procedures of authorities (in Hungarian *"kebelbeli eljárás"*). (The latter is "inward representation" in case of individual authorities and collegiate bodies). The monograph also examines evidential and review procedures in detail (Sigmond, 1904, pp. 123–500).

Regarding the period after 1901, it is worth mentioning the expansion of inspection of the legality of state supervision over the local councils' jurisdiction by the Administrative Court, and the establishment of the Jurisdictional Court in 1907, while it is important, from the point of view of the administrative procedure, to mention Act XXX of 1929 on the Simplification of Public Administration. Section II of this act, entitled "Legal Remedies, Official Classifications and Procedural Regulations", contained some twenty paragraphs of procedural provisions. A minority of its provisions dealt with the issue of official procedures, in which area it mainly attempted to reregulate the system of legal remedies. One of the main goals of the act was to accelerate public administration procedures, and thus it sought to restrict appeals to reasonable limits and, during the setting of jurisdiction, to concentrate the majority of cases within *individual authorities*. Some assessments have emphasised the drawbacks and restricted nature of this legislation. In addition to defining the right of appeal in general terms and as a "customer's right", it generalised appeals against judgments on substantive issues by courts of first instance, but it tied appeals against (final) judgments of courts of second instance to the explicit provisions of later legislation. It reregulated petitions for review, petitions for exception, rehearing requests, and the location and deadline for the presentation of appeals, and it also provided for the suspensive effect of appeals, that is, for appeals to have a suspensive effect on enforcement, while petitions for review, appeals to the supreme court, and rehearing requests do not have this as a general rule. This act was the harbinger of thinking on comprehensive procedural regulation, particularly when supplemented by Act XVI of 1933 (which, unfortunately, was not enacted), which sought to introduce further simplification of the forum system and a complete single level of appeal, abolishing the legal remedy character of the ministerial and central authorities. Certain provisions of the 1929

act remained in force until the 1950s, and its final remaining provisions were repealed by paragraph (2) of Section 90 of Act IV of 1957.

The approach in the wake of Győző Concha, according to which the necessity for or, at any rate, the possibility of general regulation of administrative procedure is denied, was practically dominant up until the appearance of the scientific school led by Zoltán Magyary (1888–1945) (Szamel, 1977, pp. 161–265; Csizmadia, 1976, pp. 409–421; Csizmadia, 1979, pp. 434–451; Szaniszló, 1977, pp. 281–389; Szaniszló, 1993; Koi, 2015).[3] (The Magyary school, in addition to public administration law and studies, integrated the new trends of sociology, political science and, in particular, American scientific management, while preserving Hungarian national traditions of public law.)

In the 1880s in the United States of America, the public administration-related modern political sciences and scientific management-based thoughts appeared. This tendency strengthened by and large in 1930, and started to take over the thought-provoking role. In 1931, Magyary founded the Institute of Hungarian Administrative Sciences at Pázmány Péter University, Faculty of Law (today's Eötvös Loránd University of Budapest). It was not only a scientific institute, but a territory of scientific "experiment", which led to an integrative administrative mentality. In the same year, Zoltán Magyary was appointed Government Commissioner of the rationalisation of Hungarian public administration. It was not simply a political task, it was an administrative political task, because Magyary was never a politician, he was an expert. His task was the revision of substantial and procedural elements of the rules of procedure of public administration and administration of justice. Count István Bethlen, the Prime Minister of Hungary, supported the science-based reform aspirations. Magyary's wider foreign experiences, and his practice in the field of fact-finding survey, and experiences in the field of codification were widely determinant in his researches. The foundational researches of the rationalisation program verified the organisational insufficiencies. But this problem touched rather the central administration (the central government) than local governments. For the revision of this

[3] It is to be noted that,after the Communist takeover (1949) numerous Magyary disciples were pushed into the backround (career-starter graduated young people, and three assistant professors), including József Szaniszló, too. Later, Szaniszló was only librarian at the Department of State Administration Law, and the ward of Magyary's Archive. (Based on his memoirs, a feature film was created on the Magyary school, called *The Disciples* (in Hungarian *A tanítványok*, directed by Géza Beremény in 1985). Only two of Magyary's disciples became professors, namely János Martonyi Sr., and Iván Meznerics. His main research field was administrative judiciary. Martonyi was the dean of József Attila University of Szeged, Faculty of Law and Politics (1947–1948, 1958–1960). Later, he became the Vice Rector of the university (1952–1955). Iván Meznerics, as a Magyary disciple, also became a Professor of Financial Law at József Attila University of Szeged, Faculty of Law and Politics. Another colleague of Magyary, Károly Mártonffy (they were of the same age) was partly sympathiser, partly opponent of Magyary, and he was the Dean of Eötvös Loránd University, Faculty of Law, in Budapest (1949–1952; it was a rare occasion in case of pre-war professors, because nearly all of the legal scholars were dismissed from the universities and the Hungarian Academy of Sciences). (The Hungarian university professors did not serve the Nazi-sympathiser Hungarian Arrow-Cross Party, which came into office after the German occupation of Hungary [1944]. Notwithstanding, nearly all of the professors were forced into retirement, dismissed from professorship, and/or membership at the Hungarian Academy of Sciences. After 1949, some professors were deported to settlements of the Hungarian Puszta, and some driven to suicide). The book-series called *Államtudományi klasszikusok* (Classics of Political Science) appearing from 2017 commemorates them (presently in 7 volumes), putting in the centre the Staatslehre-type "Political" science, including the scholars of administrative law, constitiutional law, and Verwaltungslehre, too.

mistake, he recommended a more effective administration, and the modification of the internal structure of government. These measures would have been based on increasing the level of legal education and examinations. The condition of finalisation in public administration would have been a legal degree and three years of work in practice according to the new regulation, and a practical examination, too. The questions of reduction of workforce, abandonment of redundant administrative organs, and fusion of similar ministerial departments were brought up. In the question of organisation and competence he proposed the consolidation of competence of the Royal Administrative Court. In the case of the applicable case of judgment in the Royal Administrative Court he proposed reference to the competence of Royal Administrative Court after the procedures of the first instance. All these elicited an unbelievable resistance on part of both the government and administrative professionals. After Bethlen's death, the transition period hallmarked by Prime Minister Gyula Károlyi and Prime Minister Gyula Gömbös was not beneficial for the reform program. Apart from the practical examination, the other proposals of the reform were not realised. Magyary suggested two published and two unpublished proposals on administrative reforms (Magyary, 1930; Magyary, 1931), and he codified two legal texts alone. By the effect of rejection, he has resigned from the title of Government Commissioner in March 1933.

With his scientific programme in the 1930s, Zoltán Magyary gave shape to the amalgamating, complex examination of study of public administration, administrative law, scientific management and business organisation. His main slogan was effectiveness, and state of action. He formulated his scientific program in his monographs. The Institute of Hungarian Administrative Sciences, led by Magyary, was significantly supported by the Rockefeller Foundation, so that they could buy an important professional library. He completed many foreign study tours, in the following countries: Austria, Belgium, Canada, France, Italy, the United Kingdom, the United States of America, Switzerland, the Soviet Union. He gave a lecture in the Fifth World Conference in Vienna organised by the International Institute of Administrative Sciences (in French: Institut international des Sciences administratives). He was the first non-Western European Vice President of IIAS after 1936. He was the Dean of Pázmány Péter University, Faculty of Political and Legal Studies, from 1937 to 1938. In 1942, as the most important fruit of the Magyary school, the comprehensive monograph called *Hungarian Public Administration* (in Hungarian: *Magyar közigazgatás*) was published. The team of the Institute of Hungarian Administrative Sciences included nearly 450 researchers, who were affiliated to the institute strongly or weakly: university students, invited lecturers, co-authors, technicians, not only from the field of political studies or public administration, but from fields like history, sociography, geography, folklore, science of engineering; it was an integrative conglomerate based on the whole spectrum of social sciences. In a narrow sense, the number of the members of the Magyary school was 25 researchers. By and large 10–12 university students were the disciples of Professor Magyary; they became public administration scholars. These disciples benefitted from numerous foreign research trips made possible by the professor. They were, among others, Péter Elek, József Gőbel, Rudolf Gyürky, Kálmán Karay, Sándor Karcsay, István Kiss, János Lovász, János Martonyi Sr., Iván Meznerics, József Szaniszló. The institute enriched the Hungarian administrative sciences with a fifty-volume book series.

A scientific review, called *Science of Public Administration* (in Hungarian: *Közigazgatástudomány*), published by the institute, containing 330 papers (between 1938 and 1944). Although Zoltán Magyary was a respected scholar who published 12 original (individual) monographs, he was not recognised according to his merits by the Hungarian public or scientific life. After his death in 1945 (they committed suicide with his wife because of the atrocities of the Soviet troops), the continuity of his school, too, was interrupted. Nowadays, the Hungarian science of Public Administration looks respectfully on its distinguished and important predecessor (Szaniszló, 1977, pp. 301–321; Szaniszló, 1993, pp. 27–34; Csizmadia, 1979, pp. 434–451; Koi, 2013, pp. 107–154; Koi, 2014, pp. 293–334; Koi, 2018).

Probably as an effect of the Austrian public administration procedure law created in 1925, and the academic debates connected with its creation, in the second half of the 1920s a clear viewpoint on the unified and general regulation of official procedures emerged from the pen of Ede Márffy (1885–1947), who regarded the codification of procedural regulation, in addition to the justification of maintaining special regulations, as both possible and necessary (Márffy, 1926). Zoltán Magyary himself confessed that the legality and, to no small extent, the efficiency of public administration depends on the extent of unified and general regulation of procedures. The legality of public administration is not only guaranteed through the administration of justice, but also through the manner of regulation of public administration, and so an exceptionally important role is ascribed to the codification of public administration procedural law (Magyary, 1930, pp. 149–150).[4] While the laws up until then almost exclusively regulated legal remedies, general procedural regulation had to rest on a complete and comprehensive scientific foundation. This groundwork was carried out in 1937 by József Valló (1913–1976) within the framework of the Magyary school (Valló, 1937). In addition to laying the theoretical foundation, he prepared a draft of a potential procedural law. This draft was never passed into law, and the 1939 work of Jenő Szitás (Szitás, 1939) suffered the same fate. In his draft, which took into account the rules of criminal and civil procedural law, the Austrian code, and the generalised rules of particular procedural law provisions, Valló created a body of general procedural law, whose rules were in part primary, and in part provided for derogation (i.e. subsidiary or ancillary). According to his draft, their scope would not have extended to the areas of local administration of justice, criminal proceedings of police authorities, financial administrative proceedings, disciplinary proceedings and proceedings connected with electoral law. Valló prepared a second draft in 1942 (Valló, 1942), in which he took into account the Szitás draft. The draft of Jenő Szitás (1886–1958) and the first draft (1937) of József Valló, Assistant Lecturer and Magyary's follower, were unified in Valló's second draft (1942). Magyary points out that Szitás's proposal deliberately neglected

[4] It should be noted that the polyglott professor gave a lecture at the Warsaw IIAS World Conference (1936) as a keynote speaker (general rapporteur), and published it in French; the English and Hungarian monographic version was published in Polish, too: Magyary, 1937a; Magyary, 1937b. After the Warsaw Conference, Magyary was elected the Vice President of IIAS, the only world organisation of public administration studies. For his thoughts on administrative procedure law, see the relevant chapter of his main work: Magyary, 1942, pp. 592–624.

to say whether the regulation should take place in the form of a law or a decree, and the proposal in Section 149 was, instead, a work of procedural technique, which relied to a lesser degree (as the different critiques mentioned) on the characteristics of public administration procedure.

József Valló's last, united draft from 1942 on General Administrative Regulations contains the following main parts: 1) General provisions: the scope of the law; authorities; the parties and their legal representatives; deadlines; maintaining order at the courtroom; delivery. 2) Procedure in the first instance: starting of the procedure: summons and petition; report and record; preparation of decision-making process; exposition and evidence in general; evidences. 3) Resolutions and binding force. 4) Legal remedies. 5) Procedural charges. 6) Administrative enforcement. 7) Mixed and enacting provisions.

The scope of the law means the provisions of authorities (the administrative matters) applied in the competence of administrative authorities. The following procedures do not belong to the scope of the law (disqualified matters): criminal offence cases; discipline cases; tax and duty cases; municipal jurisdiction cases.

The challenge (in Hungarian: *aggályosság*) was a special legal institution, it was a special form of disqualification (in Hungarian: *kizárás*), meaning a substantiated doubt about the fact that the judge is unbiased. This case is different from general disqualification cases (such as those represented by next of kin, relatives to cousins, siblings of spouses, spouses of siblings, adoptive parent and foster child, legal representatives, witnesses, experts, as well as the civil servant, or the judge who adopted the attacked resolution). The most important legal institutions of the procedure are the decision-making, the binding force, or legal remedies.

4. Conclusion

It could easily be declared that after such a historical overview there are no conclusions, as the real conclusion is that it happened so. There are only lessons that can be concluded from the past, from the movements of the circa hundred years summarised in this paper. Therefore, these are the "lessons learned" that we can state as conclusions: by the 1940s, Hungary elaborated drafts of general administrative law codes. The first attempt of regulating administrative procedures occurred by the turn of the century (1901) and concentrated only on the remedies. However, it has to be underlined that the rules regarding the remedy system of administrative decisions always formed a crucial part of Hungarian administrative procedural law. Secondly, it should be remarked that the simplification of administration somehow always tended to mean simplification of procedures in Hungary. The Magyary school (and the Magyary Institute) introduced a comprehensive approach to all (not only procedural) aspects of simplification, including questions of public organisation, competences, effectivity and efficiency. Finally, it should be noted that the draft codes on general procedural rules regarding administrative procedures were elaborated in detail by the end of the Second World War. These codes were already regulating the most important administrative activities.

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