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Lectori Salutem

Lectori Salutem!

In recent years, an important task for the scientific community of the CEE countries has been to attempt a multifaceted analysis of the history of the 30 years following the change of their political regimes. It was thus our pleasure to launch a thematic issue on how and why the concepts of nation, state, public governance, politics and society in Central and Eastern Europe have changed in the last 30 years. The authors who have been invited to contribute are personalities who have shaped the Central and Eastern Europe of the last thirty years as public figures, politicians or scientists, or sometimes in more than one of these roles. The studies review the history, causes and consequences of a change that is important to them as a subject of scholarly enquiry, while also seeking new, common concepts and answers to the changes of the present, based on past experience.

Tibor Navracscics, a professor and researcher, former minister and EU Commissioner, aims to map some of the characteristics of the institutional changes that occurred due to EU membership through the example of Hungary. He overviews institutional changes related to the accession process and the membership itself as well as other changes which he finds were mainly a matter of personal political aspirations or restructuring. He claims that while the European Union's impact on the development of the institutional system is undeniable, this drive has not led to uniform patterns in institutional development. His conclusion is that when the inter-institutional equilibrium is taken into consideration, there is an unambiguous tendency towards reinforcing the position of the executive at the expense of the legislature.

Balázs Orbán, a deputy-minister and researcher, investigates changes to the concept of sovereignty in post-1989 Hungary. In his study, the concept of sovereignty is treated as a discourse element encompassing many disciplines, and is also a subject of public debate. In order to better understand the processes of Hungarian public life, his study examines the changes in the content of discourse concerning the concept of sovereignty in Hungary between 1990 and 2021 in two fields of law, international law (and with it the theory of international relations) and constitutional law. While professional and public dialogue in the 1990s and 2000s was characterised by a discourse which followed Western patterns in seeking to transcend traditional notions of sovereignty, the early 2020s have so far been characterised by a return to the classical concept of sovereignty of nation states, and a diversification of positions can likewise be observed in academic discourse on sovereignty in Hungary.

Lectori Salutem

Ervin Csizmadia offers an adaptation of Norbert Elias's transition theory – presented in his book *The Civilizing Process* – to Hungarian politics, specifically to the period between 1989–1990, following the regime change. In the first part of the essay the author summarises what figurational sociology meant for Norbert Elias and explains how his analysis is based on these two terms. In the second part, he shows the limits of the “condition”-centred political science of the period following 1990 and comes to the conclusion that there is a strong relationship between the mainstream teleological approach to democracy and “condition”-centred political science. In the third part, the author introduces the concept of an open-ended transition as the key element of post-regime change figurational political science and outlines a figurational approach to political science. The essay ends with a short summary which concludes that following the post-transitology era new approaches need to be used when describing Hungarian politics.

Professor Csaba Lentner's two-part study presents the three-decade-long market economy transition that has replaced the socialist planned economy. He begins by examining the harsh, neoliberal methodology of the transition, and contrasts it with current Hungarian fiscal practice, built on the application of non-conventional instruments of active government regulation and fundamentally based on the Fundamental Law adopted in 2011 and its chapter on Public Finances and its cardinal laws pertaining to public finances in particular. The study is a journey in time, encompassing three decades, but the Achilles heel of economic policy during this period was its dependence on the base conditions of the socialist planned economic system, which still exert an effect today. Finally, it outlines the taxonomical elements of three, significantly different yet interrelated economic eras taking place in a Central European country in the space of less than a century, and draws a macro-economic conclusion.

Professor Boglárka Koller contributes to the discussion by reviewing a recently published book, *The European Polis* by George Schöpflin. George Schöpflin's latest monograph provides a unique understanding of the politics of contemporary Europe in two ‘interconnected essays’. The first part focuses on a comprehensive interpretation of the EU's political

community, the European polis. The author argues that political innovation has slowed considerably in the last decade, particularly after the Lisbon Treaty entered into force and the EU was gradually transformed into a punitive polis. The second part of the book focuses on the relationship between Central Europe and the European Union. Central Europe is European, but differently European. The shortcomings of the eastern enlargement, Central Europe's misadventure in the European Union and the unseen and unintended consequences of the 2004–2007–2011 enlargement waves all contributed to develop a troubled relationship with the new members. Koller's conclusion is that the volume combines theoretical and practical aspects, therefore it is a relevant contribution to European Studies literature.

In the *outlook* section, a study on the emergence of artificial intelligence (AI) analyses two facets of its impact on employment: how AI is creating jobs and how it is eliminating them. Its conclusion is that in order for AI to maximise humanity's prosperity and well-being, moral considerations must be included in its employment, and legislation must be enacted to ensure that human commitment to intelligently deploying AI in commercial operations is compatible with its philosophical goal.

The second study discusses the relocation of creative people from capitals and metropolises to small cities due to the Covid-19 and the implications of this trend for city marketing. This empirical study from Ukraine argues that the reasons for relocation include the switch to remote working, the lower cost of living in smaller cities (reduced real estate prices and cheaper commodity bundle), closeness to nature, lower density of population and a safer environment. Its conclusion is that the public administration of small cities should consider the relocation trend an opportunity for attracting new inhabitants to their settlement, especially if their budget had previously depended on tourist revenue.

Norbert Kis, Editor-in-Chief
István Stumpf, Guest Editor

Tibor Navracsics

EUROPEANISATION OR SIMPLY INSTITUTIONAL CHANGE? THE IMPACT OF THE EU MEMBERSHIP ON THE POLITY OF HUNGARY

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The European integration has had a major impact on the institutional systems of the Member States. The case study traces some of the characteristics of the institutional changes brought about by EU-membership through the example of Hungary. The study concludes that rather than being subject to Europeanisation, there has been an institutional adaptation in the government's handling of European affairs in Hungary over the last 20 years. It also affirms, that close policy cooperation does not automatically lead to a single institutional model at EU level.

KEYWORDS:

case study, enlargement, Europeanisation, European Union, Hungary

1. ENLARGEMENT AND EUROPEANISATION

No one disputes today that European integration has had a major impact on the institutional systems of the Member States. Many see the European integration as a statebuilding process, and as such they look for signs that will lead to a single European institutional setup. Others expect the superiority of the European approaches to modernise their own country's institutional system and heal its deficiencies.

While there is a consensus that European integration has an impact on the political system of the member states, it remains debatable how this effect can actually be described. According to intergovernmental theories, the process of European integration does not weaken the Member States. Nation states remain the masters of European integration, and European integration itself not only does not weaken European states, but actually saves them.¹

Proponents of neofunctionalism and multi-level governance believe that nation states are being increasingly affected by integration and that their political and institutional systems are increasingly becoming a common 'European' system.² It is this interpretation that can determine how exactly to describe the impact of ever-closer international cooperation at the European Community level on the Member States. While this impact clearly affects the area of policy cooperation, the process is much more contentious with regard to polity. The process of unification in policies is much less pronounced or completely absent: the institutional system of the Member States of the European Union is as heterogeneous as it was 50 years ago.

Nevertheless, the debate on the Europeanisation of the institutional systems of Member States has been one of the defining elements of the literature on the European Union for many years. Although Johan P Olsen stated as early as 2002 that the concept itself was unsuitable for explaining certain phenomena,³ for many today, twenty years later, Europeanisation is still synonymous with European integration. While it may not be expected to have explanatory power, the ideology of the concept remains influential. Since the mid-1990s, Europeanisation has often been interpreted in a normative sense. This conception was primarily referred to at the time of the accession of Central and Eastern European countries. In this sense, Europeanisation means improving the quality of the political system. It represents a model of institutional transformation, in which the accession countries of Central and Eastern Europe adopt institutional approaches from the countries of Western Europe and from the European Union itself, thereby improving the quality of their own political systems.

¹ Alan Milward, *The European Rescue of the Nation-State* (Berkeley – Los Angeles: University of California Press, 1992).

² Ernst B Haas, *The Uniting of Europe: Political, Social and Economic Forces 1950–1957* (Stanford: Stanford University Press, 2nd edition, 1968).

³ Johan P Olsen, 'The Many Faces of Europeanization', *Journal of Common Market Studies* 40, no 5 (2002), 921–952.

The political context for this interpretation was provided by the Copenhagen criteria adopted by the European Council in 1993. This document set political requirements specifically for the applicant countries of Central and Eastern Europe. This conditionality was extended two years later by the adoption of the Madrid criteria. New criteria were added to the previous points, in particular on the quality of democracy, requiring the applicant countries to strengthen their administrative capacities.

In this interpretation, Europeanisation is a kind of pressure on Member States to adapt to political systems. The process applies not only to the area of policies, but also, especially in the Central European and Eastern European countries, involves reorganising and 'Europeanising' the institutional system. As such, the process of Europeanisation entails the modernisation of polities while at the same time it denotes a convergence of various institutional systems into a single European polity.

For other scholars, however, European integration not only represents the process of adapting member states' institutions, but also a change in the institutional balance of domestic policy: "From this perspective, Europeanization raises the important question of how political equilibrium is altered by the mechanisms triggered by EU integration."⁴ They put the emphasis not on the European but on the domestic effects of Europeanisation. This implies that the input coming from the European level in the form of external pressure brings about significant change in interinstitutional relations.

Undoubtedly, there are clear signs of Europeanisation in the area of policies. One of the most visible aspects of the process of European integration is the convergence of the policies of member states and the policy system emerging at European level. At the very first steps of integration, policies provided a common framework for it to be interpreted within. In the meantime, a new outlet for member states' policies also emerged at European level. The common agricultural policy and later also other policies at European level are clear evidence that there is a convergence between policy areas, which also means uniformity in some policies.

This process is much less clear-cut with regard to institutional systems. Some observers believe that institutionalised and intensive cooperation necessarily entails the convergence and the merger of political institutions.⁵ Others see innovation as the most important characteristic of Europeanisation. According to this view, the most important impact of Europeanisation on the institutional system is that European integration pushes Member States to create government units that did not exist before. Examples include the establishment of a special Ministry of the Environment in Portugal or the institutional

⁴ Kevin Featherstone and Claudio M Radaelli, 'A Conversant Research Agenda', in *The Politics of Europeanization*, ed. by Kevin Featherstone and Claudio M Radaelli (Oxford: Oxford University Press, 2003), 338–339.

⁵ Dietrich Rometsch and Wolfgang Wessels, 'Conclusion: European Union and National Institutions', in *The European Union and Member States: Towards Institutional Fusion?* ed. by Dietrich Rometsch and Wolfgang Wessels (Manchester: Manchester University Press, 1996), 351–352.

emergence of an overseas development policy department in the Greek government system.⁶

The change of the institutional balance of power through the strengthening of the executive power is another form of Europeanisation. This phenomenon appears to be universal. In all Member States, European integration has led to the executive becoming more politically visible and assertive, while national legislatures are weakening. At the same time, the impact of EU membership can restructure not only the balance of power between the branches of power, but also within them. One of the most significant signs of this internal repositioning inside the executive is the rise of the prime ministers. This development has been noteworthy even in countries where the prime minister's traditional role was simply to co-ordinate ministers.⁷

As these two aspects seem to be the most accepted ones in terms of the impact of the European Union on the institutional systems of the Member States, I will look at them in the two sections below on the institutional changes in the Hungarian political system. While the accession process itself has obviously had an impact on the institutional system and led to the creation of new institutions, the fundamental question for me here is whether this represents simple institutional change or adaptation, or whether it is actual Europeanisation, in the sense that the institutional change has something in common with the Member States of the European Union.

2. GOVERNMENT-LEGISLATURE RELATIONS: CHANGING EQUILIBRIUM

As a result of the democratic transition of 1989–1990, Hungary became a so-called chancellor's democracy, which is close to the German constitutional model. One of the fundamental features of this type of polity is that there is a very balanced relationship between the executive and the legislative power. Unusually, compared to classical parliamentary systems, the legislature has much more limited options to start motions of no-confidence and to overthrow the government. The same applies in reverse, since the government also has very limited options for disbanding the legislature and is less at the mercy of the potentially changing majority conditions in parliament.⁸

This institutional model has stood the test of time. Although the Hungarian Parliament adopted a new constitution in 2011, which introduced a number of novelties compared to the old one, the new constitution has perpetuated the already familiar and functioning

⁶ Hussein Kassim, 'The Europeanization of Member States Institutions', in *The Member States of the European Union*, ed. by Simon Bulmer and Christian Lequesne (Oxford: Oxford University Press, 2005), 291.

⁷ Andrew Moravcsik, 'Why the European Community Strengthens the State: Domestic Politics and International Cooperation', *CES Working Paper* no 52 (1994).

⁸ Hans Mommsen, 'The Origins of Chancellor Democracy and the Transformation of the German Democratic Paradigm', *German Politics and Society* 25, no 2 (2007), 11.

institutional model. Consequently, the institutional setup and relations established in the first year of Hungary's democratic transition, based on a balanced relationship between the two powers, still applies to this day. Beyond the constitutional system, however, the political equilibrium is constantly changing, partly because of the informal dynamics of mutable political developments and partly because of the impact of European integration.

One of the clearest signs of a change in the political balance is the strengthening of the executive at the expense of the legislative power.⁹ This shift usually does not lead to constitutional change in most countries, but it can have a serious impact on the degree of cooperation between different branches of power. General experience shows, however, that the big losers of European integration are the national parliaments.¹⁰

This process is also noticeable in Hungary. Since 1990, the Hungarian constitutional system has reflected German patterns. One of the defining features of the so-called chancellor's democracy is the government's considerable independence from parliament. In European affairs, relations between the Government and Parliament were defined in 2004. The government's activities in the European Union are monitored primarily by the Committee on European Affairs. On this parliamentary committee, representatives of the government and MPs discuss current issues concerning the European Union and the government's annual briefing on EU's policies.

Ahead of European Council meetings and other political events of strategic importance at European level, the task of the Hungarian Parliament's Consultative Body on EU Affairs is to provide the Prime Minister with the opportunity to discuss the Hungarian position. The Members of the Consultative Body are the Speaker, the Heads of the Parliamentary Political Groups and the Chairs of the Committees on European Affairs, Constitutional Affairs and Foreign Affairs, respectively.

The Government is obliged to consult Parliament on all matters of legislation in EU affairs. The Parliament may participate in the process of definition of a national position on drafts at any time. At its request, the Government is obliged to make all documents and information available to Parliament. It is important to note, however, that Parliament's opinion is not binding on the Government and its own position may differ from the Government line.¹¹

At plenary sessions of the Parliament, it is also possible to discuss issues relating to the European Union in the framework of a political debate. At this juncture, representatives of the Government, parliamentary factions and even MEPs can express their views on the subject. Although this has the potential to be one of the most efficient tools for Parliament to raise its profile in European affairs, to date the Hungarian legislature has not

⁹ John W Schiemann, 'Hungary: the emergence of chancellor democracy', *The Journal of Legislative Studies* 10, no 2–3 (2004), 128–141.

¹⁰ Robert Ladrech, *Europeanization and National Politics* (Basingstoke: Palgrave Macmillan, 2010), 27.

¹¹ Márta Dezső and Attila Vincze, *Magyar alkotmányosság az európai integrációban* (Budapest: HVG-ORAC, 2006), 199–200.

been very keen on using this instrument, according to the data, since in the seventeen years of EU membership only eleven parliamentary political debates were held in the Hungarian Parliament on the issue of European integration.

During these seventeen years of EU membership, the Hungarian Parliament has indicated twice, as part of the subsidiarity control mechanism, that an EU legal instrument poses a threat to national sovereignty. The first 'yellow card procedure' was triggered in 2013 in relation to the Commission's proposal for a Regulation establishing the European Public Prosecutor's Office. In October 2013, a majority of the Hungarian Parliament voted in accordance with Article 87/2013 (X.22.) OGY's decision, deciding that the draft regulation was in breach of the principle of subsidiarity. The other case was the Draft Posting of Workers Directive, which was announced by parliament in May 2016 in accordance with Article 9/2016 (V.10.) OGY's decision that the draft directive infringes the principle of subsidiarity.

As can be seen, the Hungarian Parliament is not a very active player in shaping Hungary's European political priorities. It is true, however, that the legal framework for the Government and Parliament supports a more consultative rather than substantive decisive role for the legislature. As a result, Hungarian public law essentially defines European affairs as a matter for the executive, which parliament prefers to participate in only on an advisory basis.

At the same time, the Parliament's subordination to the Government is further strengthened by the current political developments, in addition to the legislation. Over the last ten years, the parliamentary balance of power has clearly been characterised by the dominance of the ruling parties. Following the 2010 and 2014 elections, Fidesz and the KDNP (Fidesz's allied party in Parliament and Government) were able to achieve a two-thirds majority in parliament. A two-thirds pro-government majority provides a stable backdrop for achieving the government's goals. In these political circumstances the opposition, which holds only a third of the seats, cannot gain influence. This fact can also affect the activism and effectiveness of parliament's influence.

In any case, it is evident that the political balance between the executive and the legislative powers is changing in the area of European policy. Parliament, in line with the general European trend, plays a marginalised role in everyday policy-making procedures compared to that of the government. At the same time, it is notable that the Parliament applied the 'yellow card procedure' twice. This clearly indicates the Parliament's ambitions to play a part in influencing decisions of strategic importance. Consequently, the conclusion can be drawn that the Parliament's role is thus limited to addressing strategic issues, points of national sovereignty, rather than the continuous shaping of European policy.

3. INTRAGOVERNMENTAL RELATIONS: EUROPEAN AFFAIRS IN THE GOVERNMENT

As has been discussed with regard to interinstitutional relations, in the division of labour between the powers, the Hungarian experience after accession to the European Union was basically in line with European trends. The intensity of European cooperation put the executive power in a more favourable position than legislation, which is more responsive or reactive in nature. The Hungarian constitutional system, which has established a strong position Government, provided a favourable backdrop to this process. Thus, the role of legislation in European affairs is essentially limited to consultation and the expression of opinion on strategic issues and to lending legitimacy to decisions.

In most countries, a similar process also takes place within the government, i.e. within the executive power. The powers of governments have been extended while those of parliaments have been reduced. At the same time a process of centralisation has also taken place in the government. The increasing significance of central governmental units around the head of government – in Hungary, the Prime Minister's Office – and the rise of the Head of Government is one aspect of the process described as the presidentialisation of the Prime Minister's position.¹²

On the one hand, this means that more and more policy issues are becoming the subject of central government coordination, and the autonomy of ministries is limited by the prime minister's working units intervening in the area of coordination. On the other hand, it means that the Prime Minister stands out from the ranks of ministers, as one who not only coordinates, but in many cases determines individual policy steps. This process is particularly strong in European affairs, where the Prime Minister represents his country on his own at European Council meetings, so that he can take decisions on behalf of his country on his own when taking decisions of strategic importance.¹³

In recent decades, Member States usually use two methods to designate the centre for policy formation in European affairs. The first way, which can be considered more traditional, is when the Ministry of Foreign Affairs is the government unit with the right of coordination in European affairs. The popularity of this approach, which was evidently universal in the initial steps of European integration, is clearly related to the roots of the process: in its first decades, the European Economic Community was formed as an intergovernmental organisation for economic integration, within the framework of the traditional approach to foreign policy.

As the process progressed and European cooperation became ever closer and more inclusive, a new decision-making centre appeared, whereby the prime minister's

¹² Fanni Mandák, 'Presidentialisation of Politics and Good Governance in Hungary', in *Reflections on Good Governance in Visegrad and Beyond*, ed. by Polonca Kovač (Bratislava: NISPACEE Press, 2014), 57–62.

¹³ Hussein Kassim and Vanessa Buth, 'Europeanization and Member State Institutions', in *The Member States of the European Union*, ed. by Simon Bulmer and Christian Lequesne (Oxford: Oxford University Press, 3rd edition, 2020), 208.

coordination unit, the Prime Minister's Office, essentially became the focus of responsibility for European affairs. As integration progresses, the policies which became subjects of EU decision-making procedures gradually leave the realm of traditional foreign policy and increasingly enter the border zone between foreign policy and domestic policy. EU national governments need to make decisions quickly and in a coordinated way in EU decision-making. This makes coordination among the government's departments all the more important. To facilitate efficient coordination Prime Minister's Offices have to take over the leading role from Foreign Ministries. This process is also illustrated by the fact that in most Member States the government unit assigned to the Prime Minister now has a coordination centre for European affairs.

In addition to restructuring the political balance between and within institutions, European integration has also had a transformative effect on the institutional systems of the Member States. Certain changes will inevitably occur before membership, during the period of preparation. Examples of these include the emergence of European affairs units in government and legislation.¹⁴ These bodies were generally institutions with coordinating roles which aimed at developing coordinated national positions on specific policy issues.

In the process of preparing Hungary for EU membership, each ministry set up its own department specialising in European affairs. As negotiations and relations intensified, a need arose to establish a platform for government coordination in European affairs. This new institution for coordination, set up under the influence of the European Union, was the Inter-Departmental Committee for European Coordination, established in 1992. The European Affairs Departments of all the ministries were represented in the Committee. This institutional platform, led by the Ministry of Foreign Affairs, thus comprised a forum where the various ministries could coordinate their positions.

The next steps in the process of becoming a member, carrying out the tasks of the Europe Agreement, which entered into force on 1 February 1994, and submitting the application for accession in April 1994, necessitated the establishment of an even more centralised institutional system. Loose, case-by-case governmental coordination was no longer enough; a centre was needed that could also provide political leadership during the accession process.

For this reason, the State Secretariat for Integration was established in 1996 in the Ministry of Foreign Affairs [Regulation No 64/1996 (V. 3.) Gov. Decree]. The state secretariat became the focus of political leadership in European affairs in the first phase of the accession negotiations. It also integrated the skills and knowledge previously accumulated by various ministries on the issues of European integration accession. The Hungarian institutional system at this stage therefore followed the classic recipe for government coordination

¹⁴ Daniela Beyer, 'The neglected effects of Europeanization in the member states – policy-making in directly EU-influenced and sovereign domains', *Journal of European Public Policy* 25, no 9 (2018), 1299.

of European affairs by entrusting the Ministry of Foreign Affairs with the coordination and management of European affairs.

Also in 1996, the Parliament adopted the new Regional Development Act (Act XXI of 1996), which was intended to bring Hungarian territorial development policy into line with the regional development policy goals of the European Union. In 1998, further institutions were introduced in regional development policy. The government established regional development regions, which were intended by the then government to eventually become administrative units. Despite serious efforts made by the government to establish such new administrative regions based on the regional development units, this did not come to fruition in the period 2002–2006. The government specifically justified the creation of regional development regions on the grounds that Hungarian development policy and public administration would become Europeanised in this way.¹⁵

The creation of a special government unit for European affairs is consistent with the experience of other Central European countries. At the beginning of the accession process, each country felt the need to establish, in addition to traditional administrative units, a unit specifically focused on European affairs.¹⁶ These bodies were not only responsible for the accession negotiations, but also served as a point of communication – an interface – between the European Commission and the government of that country.

By the nature of their activities, these units quickly separated from the rest of the administration and existed as a kind of island within a government that dealt predominantly with domestic issues. This was also the case in Hungary, and this tendency was accentuated by the fact that the State Secretariat for Integration had its seat within the Ministry of Foreign Affairs. It was based within a ministry which, by the nature of its activities, was already separate from the rest of the administration.

The need for better coordination of European affairs and complaints about the preparedness of the Hungarian administration led the government which formed in the summer of 1998 to establish a new unit dealing with the PHARE program and independent in the Prime Minister's Cabinet. This new government structure made political responsibility for pre-accession programs more visible. Under the leadership of a minister without portfolio, the government set up a new office responsible for the PHARE program. This office later extended its activities to all EU funds and became known as the Office for National Development and later the National Development Agency from 2006. While the State Secretariat for Integration was responsible for negotiations with the European Union, the Minister without portfolio in charge of the PHARE program and his office were responsible for EU funds allocated to Hungary. The National Development Agency was

¹⁵ Navracsics Tibor, 'Az Országos Területfejlesztési Koncepció országgyűlési vitája,' in *Parlamenti pártok és törvényhozás 1997–1998*, ed. by András Láncki (Budapest: Magyar Politikai Intézet, 1999), 75.

¹⁶ Klaus H Goetz, 'The New Member States and the EU: Responding to Europe,' in *The Member States of the European Union*, ed. by Simon Bulmer and Christian Lequesne (Oxford: Oxford University Press, 2005), 272.

closed in 2014 and the units responsible for EU programs and funds were then integrated into ministries.

Hungary became a member of the European Union on 1 May 2004. However, membership itself does not necessarily lead to institutional changes, since in general, by the final period of accession negotiations, the European Union institutions and the institutions of the acceding country have already established an institutional framework for close cooperation. This was also the case in Hungary. In 2003, however, a minister without portfolio with responsibility for European affairs was appointed for the last phase of the accession negotiations. The former chief negotiator Endre Juhász was in office for less than a year. He left the government in May 2004 to become a judge at the European Court of Justice. He was not replaced by the government for nearly six months.

The minister's seat remained empty until October 2004. The new minister, Etele Baráth, became minister without portfolio in charge of European Affairs from 3 October 2004. He fulfilled this position until June 2006. After his departure the newly elected government abolished this role. The feeling that these developments were the result of improvisation is reinforced by the fact that the tasks of the minister without portfolio were not defined until the end of 2004. It was only then, in Government Regulation No 334/2004 (XII.15.) that the government outlined the minister's powers. Meanwhile, as a result of internal conflicts between the Minister for Economic Affairs and the Minister without a Portfolio for European Affairs over European affairs, the minister without portfolio strengthened his institutional background.¹⁷

Thus, as the successor to the State Secretariat for Integration of the Ministry of Foreign Affairs, Government Decision No. 356/2004 (XII.23.) established the Office for European Affairs. Simultaneously, the regulation transferred European affairs from the Ministry of Foreign Affairs to the Office of the Prime Minister. In addition to the Office for European Affairs, the regulation also subordinated the Office for National Development to the minister without portfolio. The latter became responsible for the use of EU funds, a decision which clearly confirmed that the minister without portfolio was responsible for shaping European policy.

However, apart from in the period 2003–2006, ministers without portfolios dealing with European affairs have not become a permanent element of the Hungarian government system. In 2006, with the formation of the new government, the position of Minister without Portfolio in Charge of European Affairs was abolished. The governmental coordination of EU affairs was returned to the Ministry of Foreign Affairs. The Department for European Union Affairs, established under the name of The State Secretariat for European Union Affairs, coordinated Hungary's position on EU affairs and the policy positions of various ministries, as well as preparing for the Hungarian Presidency in the first half of 2011.

This institutional setup was not restructured after the change of government in 2010, so until 2014 the coordination of European affairs was carried out under the auspices

¹⁷ Brigitta Szabó, 'Kóka-Baráth: első ütközet', *Népszabadság*, 07 December 2004, 17.

of the Ministry of Foreign Affairs. The situation changed in 2014, when European affairs were re-transferred to the Prime Minister's Office following the formation of a new government. However, the change in who was responsible for European affairs did not involve a conceptual change. It was, instead, a matter of personal political ambitions. In many cases, a change in the minister's person also paved the way for institutional change. This was the case in 2014, when European affairs were transferred to the Prime Minister simply because of the departure of the former Foreign Minister. In 2019, the new Minister of Justice, who had previously been under-secretary of state for European affairs in the Prime Minister's Office, simply took European affairs with her to her new ministry.

Thus, from 2019 onwards, European affairs were, rather unusually, allocated to the Ministry of Justice. To further complicate matters, from January 2021 a State Secretariat for European Affairs was also established at the Prime Minister's Cabinet Office. This new institution coordinates European affairs specifically for the Prime Minister.

4. CONCLUSIONS

This study has traced some of the characteristics of the institutional changes brought about by EU membership through the example of Hungary. As we have seen, over the last 20 years, many institutional changes have happened, most of them related to the accession process or EU membership itself. Others were mainly a matter of personal political aspirations or restructuring. Overall, it can be concluded that while the European Union's impact on the development of the institutional system is undeniable, this drive has not led to uniform patterns in institutional development.

First, regarding interinstitutional equilibrium, there is an unambiguous trend of strengthening the position of the executive at the expense of the legislature. This means that, in terms of the balance of powers, the development of the Hungarian institutional system is entirely in line with the experience of the other Member States of the European Union. The primacy of the executive in the handling of European affairs can clearly be observed. The Hungarian Parliament does not play an important role in shaping political priorities in European affairs. It can only have a more significant transforming effect on European affairs where the EU Treaties explicitly allow it. Instead, its role in the Hungarian constitutional system only extends to supervising the government and obtaining of information on the activities of the government.

Nevertheless, an interesting trajectory emerges for the observer when looking at the development of institutions within the executive power. Prior to 2004, when accession to the European Union was still only a goal and a task of primary importance, it is clear that policy aspects took precedence over other – amongst them party political – aspects. In the early 1990s, units specialised in European affairs were established in the ministries immediately after the first democratic elections. In 1992, an inter-departmental committee coordinating the development of a single government position was also established. This

tendency is clear-cut and transparent. Moreover, it appears to be universal: it can be compared to other Member States' experience.

However, this is not true for the institutional development at the political level. Unlike the situation at the administrative level, there was a surprisingly high degree of instability in the governance of European affairs over the years. In the first period up to 2003, the Ministry of Foreign Affairs was the government centre for European affairs. This seems similar to the experience of other countries. From 2003 onwards, however, the coordination of European affairs was shifted to a different government unit in each government cycle.

Strangely enough the Prime Minister's Office could not – or did not want to – keep its leading role in the government, in this area. Responsibility for European affairs alternated between the Ministry of Foreign Affairs and the Prime Minister's Office, while recently the Ministry of Justice gained the upper hand. This instability is even more unusual if we take into account that no change in government has taken place in the last eleven years. The frequent and quite inconsistent changes illustrate the fact that institutional changes in Hungary do not happen under the impact of a uniform pattern of Europeanisation, but are based instead on daily political considerations. Consequently, based on the experience of the last 17 years, it can be argued that the location of the government decision-making centre on European affairs depends on which coalition or personal party policy aspects prevail, not on some kind of Europeanisation process.

At the same time, the latest developments seem to support the thesis that European affairs are drawn into the Prime Minister's orbit. Reinforcing the tendency towards the presidentialisation of the Hungarian parliamentary system, the appointment of a new state secretary responsible for the European affairs in the Prime Minister's cabinet gives a good example of this tendency. This means that, from January 2021, the presence of EU affairs in the Prime Minister's environment not only doubles the number of potential decision-making centres in government but can also result in the formal involvement of the highest level in European affairs.

It can be concluded that, rather than being subject to Europeanisation, there has been an institutional adaptation in the government's handling of European affairs in Hungary over the last 20 years. Close policy cooperation does not automatically lead to a single institutional model at EU level.

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CHANGES TO THE CONCEPT OF SOVEREIGNTY IN POST-1989 HUNGARY

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The concept of sovereignty is a discourse element encompassing many disciplines, and is also a subject of public debate. In order to better understand the processes of Hungarian public life, the present study examines the changes in the content of discourse concerning the concept of sovereignty in Hungary between 1990 and 2021. It focuses on two fields of law, namely international law (and the theory of international relations) and constitutional law. While in the 1990s and 2000s professional and public dialogue were characterised by a discourse which followed Western patterns in seeking to transcend traditional notions of sovereignty, the early 2020s have so far been characterised by a return to the classical concept, and a diversification of positions can likewise be observed in the academic discourse on sovereignty in Hungary.

KEYWORDS:

sovereignty, realism, idealism, regime change, federalism, regionalism, constitutional law, European Union

The concept of sovereignty is, to a greater or lesser extent, perpetually present in virtually all countries and in different spheres of public debate. The term itself has a pronounced scholarly relevance, so that in parallel there exists an in-depth discourse on the concept within several disciplines. Among these disciplines, jurisprudence in particular stands out. Among the legal disciplines, the concept of sovereignty is regarded as a key research topic in both international law and constitutional theory. However, these scholarly debates typically do not remain confined within the realm of science, but also shape public thinking by entering public discourse. Therefore, if we take the changes in the concept of sovereignty in the post-1989 period as the object of our analysis, we must reflect on both scholarly and public discourses. However, as the concept of sovereignty is extremely broad, it may be methodologically desirable to subject the contents of the term “sovereignty” to conceptual analysis; that is, the following paper investigates the interpretative range within which the term lies in Hungary and how it changed historically. The reason why this is important is that, among the varying perceptions, the dilemmas and aspirations of a given age and social order often return in some form.¹ In the light of this knowledge, we can understand how and according to what logic the concept of sovereignty has changed in Hungarian public discourse since 1989.

1. RANGES OF INTERPRETATION OF THE CONCEPT OF SOVEREIGNTY, WITH REGARD TO POLITICAL DEBATES IN POST-1989 HUNGARY

The concept of sovereignty is, on the one hand, very difficult to define, yet on the other hand it is an unavoidable element of scholarly and public debate. The conceptual difficulties are further nuanced by the fact that the social organisation, power relations and political debates of a given age can always be discovered within individual conceptions of sovereignty, which logically change from age to age, and thus, the interpretations of sovereignty likewise change. Therefore, in order to understand the debates of the turbulent period which immediately preceded and followed the events of 1989 in Hungary, it is necessary to give an account of the possibilities of interpreting the concept of sovereignty within the framework of a short overview.

1.1. The concept of sovereignty in a historical context

The origins of the concept of sovereignty can be traced to the Middle Ages, when it was understood as the right of a medieval monarch to rule (with divine legitimacy) over his

¹ Nóra Chronowski and József Petrétai, ‘Szuverenitás’ [Sovereignty], in *Internetes Jogtudományi Enciklopédia* [Internet Law Encyclopedia], ed. by András Jakab, Miklós Könczöl, Attila Menyhárd and Gábor Sulyok (2020).

subjects.² Compared to this conception of sovereignty, which was founded upon certain Roman legal institutions which survived into the Middle Ages, the 16th century works of the Italian political thinker Niccolò Machiavelli and the French lawyer Jean Bodin marked a new departure. It was Machiavelli who first delineated the concept of the “state” (*stato*) in its present sense, while Bodin defined the substantive criteria of sovereignty (the creation of laws, the granting of mercy, the power to declare war and make peace, and judicial rights, but also the right to mint coins and set the units of measurement.³) Another important step in the evolution of sovereignty as a concept came with the age of bourgeois revolutions. The work of the theorists of that era (classically John Locke, Thomas Hobbes and Jean-Jacques Rousseau) was primarily aimed at separating the person of the ruler from the concept of sovereignty.⁴ Another important development was the international system arising from the Peace of Westphalia, which in a certain sense marked the transposition of legal and philosophical developments into the system of international law and international relations.⁵ The logic of the nation state-based international system remained essentially intact until the second half of the twentieth century. At the same time, within legal theory and political philosophy, the concept of sovereignty crystallised into an understanding of the state as a polity exercising exclusive power over a given population.⁶ This quick and broad-brush historical overview also shows how many different interpretations of the concept of sovereignty can exist, regardless of era and social organisation. But before turning to the specific Hungarian discourse, it is definitely worth reviewing how emphases can differ from the perspective of certain disciplines.

1.2. Disciplinary interpretations of sovereignty

The brief historical summary above also serves to illustrate how many differently focused and methodological approaches can be used to interpret the concept of sovereignty. If we look up, for instance, the scholarly handbooks published by the Oxford University, the so-called Oxford Handbooks, we find 35 different publications listed under the catalogue entry “Sovereignty”. Some of these are textbooks covering a broad disciplinary field, while others are more narrowly focused (examining, for example, the political system of a given

² The word is derived from French translations of the Latin term *superanus* as *soverain*, and thus, in its abstract, conceptual form, *soveraineté*. The emergence of the concept also signalled a crisis for medieval universalism, in that it did not presuppose any greater authority over the ruler of a given state beyond divine power. (Helmut Quaritsch, ‘Souveränität. Entstehung und Entwicklung des Begriffs in Frankreich und in Deutschland vom 13. Jahrhundert bis 1806’, *Schriften zur Verfassungsgeschichte* 38 [Sovereignty. Origin and Development of the Term in France and Germany from the 13th Century to 1806, Writings on the History of the Constitution 38] (Berlin: Duncker und Humblot, 1986), 12–15.

³ See Jean Bodin, *Les six livres de la République* [The Six Books of the Republic] (Paris: Jacques du Puys, 1576).

⁴ See Andrzej Rapaczynski, *Nature and Politics: Liberalism in the Philosophies of Hobbes, Locke, and Rousseau* (Ithaca: Cornell University Press, 1989).

⁵ Hugo Grotius, *On the Law of War and Peace* (Cambridge: Cambridge University Press, 2012).

⁶ Georg Jellinek, *Allgemeine Staatslehre*, 3rd edition (Berlin: O. Häring, 1914), 396.

country), but the mere fact that such a catalogue entry exists already indicates the diversity of interpretive frameworks. The article on sovereignty written by Johan D van der Vyver, published in *The Oxford Handbook of International Human Rights Law*, and which also covers interdisciplinary divergences in interpretation, can help us systematise these myriad conceptions of sovereignty.⁷ According to van der Vyver, from the point of view of international law, the concept of sovereignty is interesting in terms of its external content, such as state independence and exclusive control over state affairs, while from the point of view of a constitution, the concept of sovereignty forms the main source of political authority. In the following, we briefly present the dilemmas in these areas, and later we will discuss the Hungarian discourse in the light of the problems outlined here.

1.3. *International law and international relations*

The system of international relations we are familiar with today was created by the Peace of Westphalia, which established an international environment within which states mutually recognised one another's sovereignty. Under the peace system, the internal sovereignty of states became inviolable, so that states could not interfere in the internal affairs of each other. But international law and international relations essentially examine the question of sovereignty in its external dimensions. One of the most important principles of international law is that states are equal as actors in the international system. However, there can be huge *de facto* differences in resources, territory, population and influence between *de jure* equal and mutually recognisant states, differences which fundamentally undermine the theoretical equality between these entities.⁸ Thus, some form of legal system regulating the relations between sovereign states may be necessary, and even – according to some interpretations – a body with the power to enforce these rules.⁹ There may already be methodological differences between schools of thought whether states are assumed to be essentially cooperative or competing entities. As for the question of whether it would be possible to establish a body with genuine power over states, which would help settle interstate disputes and, if necessary, arbitrate between them, opinions differ.¹⁰

⁷ Johan D van der Vyver, 'Sovereignty', in *The Oxford Handbook of International Human Rights Law*, ed. by Dinah Shelton (Oxford: Oxford University Press, 2013), 1–2.

⁸ The topic is thoroughly presented in an article by Ákos Szalai: Ákos Szalai, 'Miért korlátozzák az országok a szuverenitásukat? Joggazdaságtani és közösségi döntések elméletén nyugvó magyarázatok' [Why Do Countries Limit Their Sovereignty? Explanations Based on Theories of Legal Economics and Community Decisions], *MTA Law Working Papers*, 54 (2014).

⁹ Gábor Kardos, 'Sovereign Equality of States', in *Internetes Jogtudományi Enciklopédia* [Internet Law Encyclopedia], ed. by András Jakab and Balázs Fekete, 2020, 18–24.

¹⁰ For more on this debate see Robert M A Crawford, *Idealism and Realism in International Relations* (Routledge, 2005); Vítor Ramon Fernandes, 'Idealism and realism in international relations: an ontological debate', *Janus. NET, e-journal of International Relations* 7, no 2 (2016), 14–25; Hans J Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, fifth revised edition (New York: Alfred A Knopf Inc, 1978); Kenneth N Waltz, *Theory of International Politics* (Waveland Press, 2010); Kenneth Waltz, *Man, the State and War:*

In the twentieth century, a number of international organisations were set up to regulate interstate relations. The question that arises with regard to these organisations, then, is how their rights and competencies relate to the nation states that created them.¹¹ One influential position holds that the sovereignty of nation states is always paramount, while others argue in favour of the sovereignty of supranational organisations.¹² Further debates concern the roles of various multinational and intergovernmental bodies and international NGOs.¹³ According to some interpretations, the latter actors have drawn level with traditional states in terms of both competence and actual capacity for action, and therefore the model of governance and the exercise of sovereignty no longer operates according to the classical hierarchical model, but more closely resembles the networked model.¹⁴ Indeed, some even argue that sovereignty has now lost its essential meaning, and is thus best avoided as an explanatory concept.¹⁵ The picture is further nuanced by the increasing frequency of humanitarian interventions since the second half of the twentieth century, which, as the term suggests, represent direct interference in the affairs of another state (although it is increasingly accepted that a state committing crimes against humanity against its own

A Theoretical Analysis (New York: Columbia University Press, 1954); David J Singer, 'The Level-of-Analysis Problem in International Relations', *World Politics* 14, no 1 (1961), 77–92; Klaus Eugen Knorr and Sidney Verba, *The International System: Theoretical Essays* (Princeton University Press, 1961), 77–92.

¹¹ For more see Robert Keohane, 'Sovereignty, Interdependence, and International Institutions', in *Ideas and Ideals: Essays on Politics in Honor of Stanley Hoffmann*, ed. by Linda B Miller and Michael Smith (Routledge, 1993); Kal Raustiala, 'Rethinking the sovereignty debate in international economic law', *Journal of International Economic Law* 6, no 4 (2003), 841–878; Robert O Keohane and Joseph S Nye, Jr, 'Power and interdependence in the information age', *Foreign Affairs* 77, no 5 (1998), 81.

¹² For more see Ernst B Haas, *The Uniting of Europe: Political, Social, and Economic Forces, 1950–1957* (Paris: University of Notre Dame Press, 1958); Ernst B Haas, *Beyond the Nation-State: Functionalism and International Organization* (Stanford University Press, 1964); Wayne Sandholtz and Alec Stone Sweet (eds), *European Integration and Supranational Governance* (Oxford: Oxford University Press, 1998).

¹³ Marie Törnquist-Chesnier, 'NGOs and international law', *Journal of Human Rights* 3, no 2 (2004), 253–263; Andrea Bianchi (ed.), *Non-State Actors and International Law* (Routledge, 2017); Anna-Karin Lindblom, *Non-Governmental Organisations in International Law* (Cambridge: Cambridge University Press, 2005); Steve Charnovitz, 'Nongovernmental Organizations and International Law', *The American Journal of International Law* 100, no 2 (2006), 348–372; Stephen D Krasner, 'Sovereignty', *Foreign Policy* 122 (2001), 20–29.

¹⁴ That is, so-called global governance does not have a fixed institutional structure, but can more accurately be described as a network-like interaction between many different actors at different levels and within different parameters. (See Alex Pongrácz, 'A szuverenitásfogalom változásának 21. századi fejleményei' [The Development of the Concept of the Nation States' Sovereignty in the 21st Century], *Pro Publico Bono – Magyar Közigazgatás* 6, no 2 [2018], 128–153.) At the same time, however, it is worth noting that the cornerstone of the debate on the European Union – as Béla Pokol points out – is whether the organisation is a federation or a federal state. In the former case, the sovereignty of the Member States precedes their obligations under EU law, while in the latter case it does not. (Béla Pokol, 'Globális uralmi rend és állami szuverenitás' [Global Order and State Sovereignty], *MTA Law Working Papers* 1, no 13 [2014], 8.)

¹⁵ See, for example, Mihály Bihari's theorem: "My starting theorem is that the classical content and explanation of sovereignty is incompatible with the concept and content of modern-day sovereignty." (Mihály Bihari, 'Theoretical Foundations of Modern Sovereignty: An Attempt to Develop the Foundations of a Functionalist Systems-Based Sovereignty Theory', *MTA Law Working Papers* 1, no 51 [2014], 1–2.)

people cannot be considered sovereign).¹⁶ At the same time, this latter axiom takes us into the realm of constitutional theory.

1.4. Constitutional theory

The interpretive framework of classical constitutional theory focuses primarily on the internal dimension of sovereignty. The different paradigms of interpretation are primarily concerned with who or what can be considered sovereign in a given state, and to what extent. Today's modern democracies typically derive sovereignty from the nation or people, and it is exercised by the political community through representation.¹⁷ At the same time, it is debatable whether the political community is able to establish the constitutional framework (legality) that gives legitimacy to the exercise of sovereignty.¹⁸ Some go so far as to state that the framework for legality in practice is never created by the political community but by the true sovereign.¹⁹ A similar line of argument posits that democracies are based on systems of values that cannot re-create themselves.²⁰ In addition, the question of who forms the political community in a given state may give rise to further debates. According to one interpretation, a community is made up of the citizens of a given state, which collectively make up the political nation.²¹ At the same time, the notion of a cultural nation simultaneously broadens and, in a sense, narrows the circle of those who make up a political community, because according to this interpretation, community members are a community of the same cultural identity, independent of state borders or citizenship. The relationship between citizens as a sovereign political community and the state can also be interpreted as a dilemma of constitutional interpretation, which in turn leads into the realm of political philosophy.

¹⁶ Such is the position of, for instance, Francis Deng, a UN humanitarian adviser. (Francis Deng, 'From Sovereignty as Responsibility to the Responsibility to Protect', *Global Responsibility to Protect* 2, no 4 [2010], 353–370.)

¹⁷ Chronowski and Pétrétei, 'Szuverenitás', 1–34.

¹⁸ Gábor György Wisnovszky, 'A szuverenitás valódi forrásának feltérképezése a nyugati államfejlődésen és a magyar rendszerváltáson keresztül' [Mapping the True Source of Sovereignty through Western State Development and the Hungarian Regime Change], *Polgári Szemle* 14, no 1–3 (2018), 44–56.

¹⁹ Carl Schmitt, *Political Theology. Four Chapters on the Concept of Sovereignty* (Trans. by George Schwab, Chicago: University of Chicago Press, 2005).

²⁰ Ernst-Wolfgang Böckenförde, *Staat, Gesellschaft, Freiheit* [State, Society, Freedom] (Frankfurt am Main: Suhrkamp Verlag, 1976), 66–67.

²¹ Gergely Egedy, 'Gondolatok a nemzetről. A politikai és a kulturális megközelítés' [Thoughts on the Nation. A Political and Cultural Approach], in *Nemzetfogalmak és etnopolitikai modellek Kelet-Közép-Európában* [Nation Concepts and Ethnopolitical Models in Central and Eastern Europe], ed. by László Szarka, Balázs Vizi, Balázs Majtényi and Zoltán Kántor (Budapest: Gondolat, 2007), 70–80.

2. INTERPRETATIONS OF SOVEREIGNTY IN POST-1989 HUNGARY

In the following we shall examine, in light of the concepts outlined above, the post-1989 discourse in Hungary concerning the concept of sovereignty, broken down into the research topics of the two fields of scholarly enquiry, with differing focuses. At the same time, this bifurcation – that is, a division between international law and constitutional law – is fundamentally theoretical in the sense that a statement or speaker does not necessarily have a background in that field, even if the topic belongs to the scholarly discipline in question.

2.1. International law and international relations

As outlined in the theoretical part of this study, international law and international relations are primarily concerned with the external dimension of sovereignty, that is, they seek the answer to the question of who the subjects of international law are. The classical answer to this question is that the subjects of international law are, of course, states.²² At the same time, with the end of the Cold War, this foundation of international relations and international law also dissolved. This process can be seen both in Western states and, as a receptor of the Western model, in Hungary, though supplemented with a number of local peculiarities. The domestic reception of the reinterpreted concept of sovereignty can be examined along three fundamental lines, all of which touch on international law and the theory of international relations: 1. transitology as political science; 2. an examination of NGOs, with special regard to their state-restricting role; and 3. the political issues raised by the duality of federalism and regionalism. These areas are examined below.

2.1.1. Transitology

“The ceremony of sovereignty seems to continue,
despite the fact that the gods have long since left the field.”²³

Transitology flourished as a trend in Western political science discourse in the 1980s and 1990s. The primary field of study within this discipline was the question of how to

²² See Jellinek, *Allgemeine Staatslehre*; Grotius, *On the Law of War and Peace*; Henry Kissinger, *World Order* (London: Penguin Books, 2014). At the same time, of course, contemporary scholarship distinguishes five levels of subjectivity: 1. states; 2. international organisations; 3. natural persons; 4. legal persons; 5. peoples. (János Bruhács, *International Law* [Budapest: Dialóg Campus, 1998], 6–7; Péter Kovács, *Public International Law* [Budapest: Osiris, 2011], 93–190.)

²³ Márton Eörsi, ‘Alkotmány és szuverenitás az Európai Unióban’ [Constitution and Sovereignty in the European Union], *2000* 15, no 3 (2003), 18.

democratise a country through the implementation of a Western institutional system. Initially, the former colonial nations of Africa and Latin America were the subjects of analysis, but after the fall of the Iron Curtain in 1989, the implementation of the findings of this academic discipline greatly influenced the Central and Eastern European region as well.²⁴ In its essence, transitology is not merely a descriptive discipline, but rather serves as a guide for countries wishing to democratise.²⁵ The guidance given is that building a stable and functioning democracy is only possible through the swift adoption of Western institutions.²⁶ However, after the Cold War, the theory of international relations was also determined by the school of transitology, that is the vision of the era meant a unipolar world order realised with the aid of supranational organisations forming a global network of governance.²⁷ For this reason, the adoption of the Western institutional system generally entailed the most rapid possible incorporation into these Western international institutions. This, in turn, implied that traditional notions of state sovereignty were superseded.²⁸ The scientific and intellectual discourse in Hungary tended to accept this narrative, if only because, in a sense, thinkers on the reform Left saw in transitology a corrective trend to socialist modernisation efforts.²⁹ Paradoxically, however, the Hungarian elite of the era saw in the takeover of institutions and integration into the international order a potential safeguard against socialist reorganisation.³⁰ Therefore, the main thrust of contemporary Hungarian discourse chiefly portrayed integration into the institutions of the Western international system as a desirable development. There was also a retort from within this discourse to the fact that this meant sovereignty, at least as it had traditionally been

²⁴ The key literature on this trend includes the following: Dankwart A Rustow, 'Transitions to Democracy: Toward a Dynamic Model', *Comparative Politics* 2, no 3 (1970), 337–363; Stephan Haggard and Robert R Kaufman, 'The Political Economy of Democratic Transitions', *Comparative Politics* 29, no 3 (1997), 263–283; Lucian W Pye and Sidney Verba, *Political Culture and Political Development* (Princeton: Princeton University Press, 1965); Clive Staples Lewis, *The Abolition of Man* (Oxford: Oxford University Press, 1943); Seymour Martin Lipset, 'Some Social Requisites of Democracy: Economic Development and Political Legitimacy', *American Political Science Review* 53, no 1 (1959), 69–105; Phillips Cutright, 'National Political Development: Measurement and Analysis', *American Sociological Review* 28, no 2 (1963), 253–264; Myron Weiner, 'Political Integration and Political Development', *The Annals of the American Academy of Political and Social Science* 358, no 1 (1965), 52–64.

²⁵ Ervin Csizmadia, *A magyar politikai fejlődés logikája* [The Logic of Hungarian Political Development] (Budapest: Gondolat, 2017), 52–62.

²⁶ John Haskell and Boris N Mamlyuk, 'Capitalism, Communism and Colonialism? Revisiting "Transitology" as the Ideology of Informal Empire', *Global Jurist* 9, no 2 (2009), 1–35.

²⁷ Charles Krauthammer, 'Universal dominion: Toward a unipolar world', *The National Interest* 18 (1989), 46–49.

²⁸ Rudolf Tőkés, "'Transitology': Global Dreams and Postcommunist Realities", *Books – Budapest Review of Books – English Edition* 9, no 1 (1999), 16–23.

²⁹ Jordan Gans-Morse, 'Searching for Transitologists: Contemporary Theories of Post-Communist Transitions and the Myth of a Dominant Paradigm', *Post-Soviet Affairs* 20, no 4 (2004), 320–349.

³⁰ "In the end, only a successful modernization strategy can maintain a balance of power in Europe. A frustrated and destabilizing Central and Eastern Europe could have a disruptive effect on Western Europe." (András Inotai, 'A Nyugat és a közép- és kelet-európai átalakulás' [The West and the Transition of Central and Eastern Europe], *Közgazdasági Szemle* 40, no 11 [1993], 937.)

conceived, would be curtailed in several respects. Thus, a number of authors argued that the traditional notion of sovereignty had become obsolete and incomprehensible.³¹

If we examine the Hungarian discourse surrounding sovereignty in 2020, a completely different picture emerges. The debate has clearly become bipolar. Moreover, articles arguing that sovereignty as a concept has been transcended seem to have lost their persuasive power, while articles preaching the virtues of the traditional concept of sovereignty and advocating adherence to it – thus implicitly criticising international organisations – have gained influence. In essence, the latter position can be seen as the opposite of the globalist consensus of the 1990s, with the classical concept of sovereignty serving in their argumentative framework as a form of protection against the harmful effects of globalisation (economic instability, migration-induced tensions).³²

³¹ László Valki, 'Az Európai Unióhoz csatlakozó Magyarország szuverenitása' [The Sovereignty of Hungary Joining the European Union], *Magyar Tudomány* 44, no 8 (1999), 1006; Béláné Havasi, 'Nemzeti érdekek – szuverenitás – integráció (Magyarország és az Európai Közösségek)' [National Interests – Sovereignty – Integration (Hungary and the European Communities)], *Külgazdaság* 35, no 10 (1991), 58; Sándor Kurtán, 'Az Európai Közösség – Egy előadás-sorozat áttekintése' [The European Community – An Overview of a Lecture Series], *Mozgó Világ* 17, no 8 (1991), 36; Ernő Fábrián, 'A „mi” és a „mások” identitása' [The Identity of 'We' and 'Others'], in *Az értelem keresése* [In Search for Reason], ed. by János Gyurgyák, Csaba Lőrincz, Zsolt Németh, Zoltán Lépesfalvi and Andrea Horváth (Budapest: Századvég Kiadó, 1994); Mihály Samu, 'Plurális demokrácia – kisebbségi politika: kollektív jogok és a kisebbségek államalkotó minősége' [Plural Democracy – Minority Politics: Collective Rights and the State-Building Quality of Minorities], *Valóság* 35, no 4 (1992), 53; László Kiss J, 'A szuverenitás változó normái a nemzetközi kapcsolatokban: területiség és funkcionalitás, állam és nemzet' [Changing Norms of Sovereignty in International Relations: Territoriality and Functionality, State and Nation], *Valóság* 38, no 3 (1995), 3; Kálmán Kulcsár, 'A magyar modernizáció politikai összefüggései' [Political Contexts of Hungarian Modernization], *Valóság* 38, no 11 (1995), 22; Kálmán Kulcsár, 'Az európai integráció és Magyarország' [European Integration and Hungary], *Magyar Tudomány* 40, no 10 (1995), 1147; Kiss J, 'A szuverenitás változó normái', 15; Kálmán Kulcsár, 'A kulturális jogok és a demokratikus biztonság Európában' [Cultural Rights and Democratic Security in Europe], *Magyar Tudomány* 41, no 3 (1996), 270; Veronika Kőrö, 'Az állami szuverenitás egyes kérdései az európai integráció tükrében' [Some Issues of State Sovereignty in the Light of European Integration], *Magyar Közigazgatás* 54, no 1 (2004).

³² See János Hoós, 'Globalizáció, nemzeti szuverenitás és demokrácia: Magyarország helyzete a globális világban' [Globalization, National Sovereignty and Democracy: Hungary's Position in the Global World], *Közgazdaság – Review of Economic Theory and Policy* 7, no 1 (2012), 37–66; Alex Pongrácz, 'A globalizált világ aktuális kérdései: államelhalás vagy államépítés?' [Current Issues in a Globalized World: State Death or State Building?], *MTA Law Working Papers* 1, no 18 (2014); Alex Pongrácz, 'Nemzetállamok és új szabályozó hatalmak a globális erőtérben' [Nation States and New Regulatory Powers in the Global Power Space], PhD thesis; András Zs Varga, 'Állami szuverenitás versus intézményi autoritás' [National State Sovereignty Versus Institutional Authority], *Pro Publico Bono – Magyar Közigazgatás* 4, no 4 (2016), 24–30; Tibor Navracsics, 'Nemzeti érdek és Európa' [National Interest and Europe], *Pro Publico Bono – Magyar Közigazgatás* 2, no 4 (2014), 100–104; László Trócsányi, 'Közösségi intézmények és nemzeti érdek' [Community Institutions and National Interest], *De iurisprudentia et iure publico* 2, no 1 (2008).

2.1.2. Multinational corporations and non-governmental actors (iNGOs)

“Nevertheless, it would be a mistake to ignore the particular Janus-faced character of NGOs: sometimes as a ‘government’, sometimes as self-nominated organizations, they oppose democratically elected governments.”³³

Various civic initiatives played a key role in the process of the post-1989 regime change in Hungary. Hungary’s current governing party, Fidesz, started as a civic initiative (the Bibó István College for Advanced Studies), but even the Hungarian Democratic Forum or MDF, which would go on to form Hungary’s first post-1989 government, began as a civil initiative (the *Lakiteleki találkozó* or Lakitelek meeting). Likewise, the liberal Alliance of Free Democrats (SZDSZ) was first launched as a civic initiative (*Szabad Kezdeményezések Hálózata* or Network of Free Initiatives). These groups took part in the work of the Opposition Round Table, also coordinated by a non-governmental organisation, the Independent Legal Forum, and from this platform grew the National Round Table which negotiated with the state socialist party. As early as the eighties, a number of civic initiatives were being launched, solidifying the political transition. Among these, it is worth noting the Danube Circle, which prevented the construction of the Bős–Nagymaros dam, and in doing so fundamentally challenged the power of the state party. What is more, these groups had a theoretical as well as a practical importance. The current prime minister of Hungary, Viktor Orbán, wrote his dissertation – in 1986! – on the political role of non-governmental organisations, but the topic was also researched in remarkable detail by future ombudsman Máté Szabó, who was likewise part of the process of regime change at that time.³⁴ This NGO-focused thinking was also seen in the discourse on sovereignty, which was only reinforced by the marked influence of the school of transitology discussed earlier. In the globalisation-focused, network-based international system of the time, focused as it was on abolishing nation state hierarchies, various national (NGO) and international

³³ László Kiss J, ‘A „külpolitika vége?“, avagy a kül- és biztonságpolitika új modellje’ [The “End of Foreign Policy?”, or the New Model of Foreign and Security Policy], *Külgügyi Szemle* 1, no 1 (2002), 18.

³⁴ See Viktor Orbán, *Társadalmi önszerveződés és mozgalom a politikai rendszerben (A lengyel példa)* [Social Self-Organisation and Movement in the Political System (The Polish Example)], dissertation, 1986; Máté Szabó, ‘Katasztrófa vagy társadalmi változás? Az Ökológiai Mozgalom Elméleti Modelljei’ [Disaster or Social Change? Theoretical Models of the Ecological Movement], *Világosság* 25, no 6 (1984), 376–384; Máté Szabó, ‘Társadalmi mozgalom, politikai rendszer, modernizáció’ [Social Movement, Political System, Modernisation], in *Magyar Politikatudományi Társaság Évkönyve*, 1986, 95–120; Máté Szabó, ‘A társadalmi mozgalmak és új típusaik elméleti elemzéséhez’ [Towards a Theoretical Analysis of Social Movements and Their New Types], *Társadalomkutatás* 4, no 3–4 (1986), 114–122; Máté Szabó, ‘Spontán szerveződő ifjúsági csoportok a nyolcvanas években Magyarországon’ [Spontaneously Organised Youth Groups in Hungary in the 1980s], *Ifjúsági Szemle: Az Ifjúkommunista Kiadványa* 9, no 3 (1989), 9–19. Other related literature: András Arató, ‘Civil társadalom Lengyelországban és Magyarországon’ [Civil Society in Poland and Hungary], *Politikatudományi Szemle* 1, no 2 (1992), 53–80; Gábor Halmai, *Az egyesülés szabadsága* [Freedom of Association] (Budapest: Atlantisz, 1990).

(iNGO) non-governmental actors and multinational corporations were assumed to take over the role of nation states as subjects of the international system and thus also in a new interpretation of sovereignty.³⁵ This model of thinking was essentially dominant in Hungarian discourse around sovereignty in the years immediately after 1989.³⁶

By 2020, this discourse had also undergone significant changes. Although many non-governmental organisations operate and flourish in Hungary, as in other countries, there is increasing criticism in Hungary of NGOs and international NGOs that do not fit into the paradigm defined by the traditional notion of nation state sovereignty.³⁷ An important

³⁵ Relevant international literature: Christopher Kilby, *Sovereignty and NGOs*, 1998; Krasner, 'Sovereignty'; Iain Atack, 'Four Criteria of Development NGO Legitimacy', *World Development* 27, no 5 (1999), 855–864; Daniel C Thomas, 'International NGOs, State Sovereignty, and Democratic Values', *Chicago Journal of International Law* 2, no 2 (2001), 389; Thomas J Biersteker, 'State, Sovereignty and Territory', in *Handbook of International Relations*, ed. by Walter Carlsnaes, Thomas Risse and Beth A Simmons (London: Sage Publications, 2002), 157–176; Shamima Ahmed and David M Potter, *NGOs in International Politics* (Kumarian Press, 2006); John Boli and George M Thomas (eds), *Constructing World Culture: International Nongovernmental Organizations since 1875* (Stanford, California: Stanford University Press, 1999); Martha Finnemore, *National Interests in International Society* (Ithaca, N.Y.: Cornell University Press, 1996); Margaret E Keck and Kathryn Sikkink (eds), *Activists beyond Borders: Advocacy Networks in International Politics* (Ithaca, N.Y.: Cornell University Press, 1998); Paul Wapner and Lester Edwin J Ruiz (eds), *Principled World Politics: The Challenge of Normative International Relations* (Lanham: Rowman and Littlefield, 2000); Alexander Cooley, 'Imperial Wreckage: Property Rights, Sovereignty, and Security in the Post-Soviet Space', *International Security* 25, no 3 (2000), 100–127; Hendrik Spruyt, *The Sovereign State and Its Competitors* (Princeton, N. J.: Princeton University Press, 1994).

³⁶ The Hungarian reception of the above: Ferenc Kondorosi, *Civil társadalom Magyarországon* [Civil Society in Hungary] (Budapest: Politika és Kultúra Alapítvány, 1998); Gyula Ocskay, 'A lokális diskurzusok és a globális hatalom. Egy hálózatépítési modellprogramról' [Local Discourses and Global Power. On a Model Network-Building Programme], *Tér és Társadalom* 16, no 1 (2002), 17–40; Károly Grüber, 'Magyarország és az európai alkotmányozási folyamat: az Európai Konvent' [Hungary and the European Constitutional Process: The European Convention], *Tér és Társadalom* 19, no 1 (2005), 155–161; Eszter Bakonyi, 'A globalizáció kiáltványának kritikai olvasata' [A Critical Reading of the Manifesto of Globalisation], *Információs Társadalom* 5 (2005), 95–104; Ádám Kéglér, 'Lobbizás az Európai Unióban' [Lobbying in the European Union], *Politikatudományi Szemle* 13, no 1–2 (2004); Péter Somlai, 'Globalizáció és világpolgári szolidaritás. Töprengés Jürgen Habermas új munkáiról' [Globalisation and Global Civic Solidarity. Reflecting on the New Works of Jürgen Habermas], in *Írások Huszár Tibor 70. születésnapjára* [Writings for Tibor Huszár's 70th Birthday], ed. by Erika Iványi and Zsuzsa Solymosi (Budapest: ELTE Szociológiai és Szociálpolitikai Intézet, 2000), 398–405; Gábor G Szabó, 'A decentralizált világrend eszméje és a globális irányítás realitása' [The Idea of a Decentralised World Order and the Realities of Global Governance], *Politikatudományi Szemle* 13, no 3 (2004), 41–58; Máté Szabó, 'Civil társadalom–globalizáció–regionalizmus' [Civil Society–Globalisation–Regionalism], *Magyar Kisebbség* 8, no 2–3 (2003); Attila Fábián, 'Demokrácia a globalizáció korában' [Democracy in the Age of Globalisation], in *Magyarország jövője*, ed. by Lajos Juhász (Sopron: Nyugat-magyarországi Egyetem Közgazdaságtudományi Kar, 2005); Ferenc Miszlivetz, 'Remények, célok, realitások 1989 előtt és után' [Hopes, Goals, Realities before and after 1989], *Kritika* 29, no 2 (2000), 11.

³⁷ Critical Hungarian literature: Gábor Máthé, 'A posztmodern jogállam' [Post-Modern Rule of Law], *Polgári Szemle* 15, no 1–3 (2019), 193–203; Hortenzia Hosszú, 'A kormányzás állam-központú elméleteinek reneszánsza' [A Renaissance of State-centered Theories of Governance], *Új Magyar Közigazgatás* 11 (2018), 1–8; Századvég Alapítvány, *Az NGO-k mint politikai szereplők* [NGOs as Political Actors], 2016; Csaba Varga, 'A Joguralom és Színeváltozásai idealizáció és ideokratikus nyomásgyakorlás között' [The Rule of Law and Its Shifts between Idealisation and Ideocratic Pressure], *Pázmány Law Working Papers* 12 (2006); János Frivaldszky, 'Az állami szuverenitás problematikájának érvénytelenítése: (Good) Governance avagy mi a jó kormányzás és a helyes hatalomgyakorlás?' [Overriding the Issue of State Sovereignty: (Good) Governance

element of this was the law imposing obligations on NGOs that receive significant support from abroad.³⁸ If only because this Hungarian legislation protecting sovereignty has attracted the attention of various international organisations (European Commission, Court of Justice of the European Union, the Venice Commission), which have made this legislation an object of thorough scrutiny.³⁹ This fact also represents a serious reversal in the nature of Hungarian discourse, because unlike during the period immediately after 1989, when Hungarian thinking was characterised by the adoption of Western trends, the so-called ‘NGO Law’ turned this phenomena on its head, making a Hungarian law a subject of international contention. At the same time, the case is not that simple, because due to the ruling of the Court of Justice of the European Union (CJEU), the law in question has been repealed, and a new NGO supervisory regime was introduced which assigns the task to the Hungarian State Audit Office.

2.1.3. Federalisation and regionalisation

“The federalist political organization is suited
To ensuring national and even minority
self-identity and freedom of action.”⁴⁰

The Hungarian public discourse of the 1990s on federalisation and regionalisation also fitted in with the spirit of the age. In the post-Cold War discourse, there was a strong belief that the international system based on nation states should be replaced over time by supranational federations that would range from sub-nation state regions to continents.⁴¹

or What is Good Governance and Good Power?], in *Az állam szuverenitása – Eszmény és/vagy valóság. Interdiszciplináris megközelítések*, ed. by Péter Takács (Budapest–Győr: Gondolat, 2015). Pro-NGO Hungarian texts: Gergely Bárándy, ‘Civilek és az állam. Törvényalkotási kronológia 2014–2018’ [NGO-s and the State. Chronology of Legislation 2014–2018], *Jura* 24, no 2 (2018), 300; László Kákai, ‘Kettős szorításban a magyar civil szervezetek’ [Hungarian NGOs under Double Pressure], *Pólusok* 1, no 2 (2020), 1–30; Bálint Magyar, *Post-Communist Mafia State. The Case of Hungary* (Budapest: Central European University Press, 2016).

³⁸ Act LXXVI of 2017 on the transparency of organisations that receive financial support from abroad.

³⁹ For more on this topic see Venice Commission Opinion No. 919/2018 OSCE/ODIHR Opinion No. Opinion-Nr. NGO-HUN/326/2018; European Commission for Democracy through Law (Venice Commission) Compilation of Venice Commission Opinions Concerning Freedom of Association (revised in December 2019); Judgment in Case C-78/18 Commission v Hungary; Krisztina Szabó, Balázs Szent-Iványi and András Tétényi, ‘While the Cat’s Away, Will the Mice Play? Government–NGO Relations and the Politics of Aid in Hungary, in *Aid Power and Politics*, ed. by Iliana Olivié and Aitor Pérez (London: Routledge, 2019).

⁴⁰ Péter Balázs, ‘Az európai föderalizmus’ [European Federalism], *Mozgó Világ* 17, no 8 (1991), 34.

⁴¹ Relevant international literature: John Loughlin, ‘Federalism, Regionalism and the European Union’, *Politics* 13, no 1 (1993), 9–16; Tanja A Börzel, ‘From competitive regionalism to cooperative federalism: The Europeanization of the Spanish state of autonomies’, *Publius: The Journal of Federalism* 30, no 2 (2000), 17–42; Kathryn Stoner-Weiss, ‘Federalism and Regionalism’, in *Developments in Russian Politics* 4, ed. by Stephen White, Alex Pravda and Zvi Gjelman (London: Palgrave, 1997), 229–250; Joyce Quin, *Regionalism in the European Union* (Intellect Books, 1999).

Hungarian public discourse also adapted to this idea.⁴² At this point, it is worth mentioning that in the former Eastern Bloc, national borders frequently do not coincide with national boundaries, a problem to which regionalisation and federalisation – also connected to sovereignty in a political philosophical sense – were offered as potential solutions. Moreover, due to the events of the Balkan wars, participants in the Hungarian discourse were already sympathetic to the federal concept from the outset, fearing that ethnic conflicts between nation states could spread to the entire region.

The federalism debate in 2020 is a defining element of the Hungarian discourse concerning sovereignty, and perhaps the issue that has become the most polarising. While the protection of nation state sovereignty is one of the main priorities of the Hungarian Government, the plan for the establishment of a United States of Europe has been formulated by the Hungarian opposition.⁴³ In this sense, the professional and intellectual Hungarian discourse has become essentially reactive, as both studies and writings on the topic criticising and supporting federalism have been published.

2.2. Constitutional theory

In post-1989 Hungary, the debate on the internal dimension took on a particular aspect. Accession to the Western institutional system, and especially to the European Union, presupposed a certain degree of legal harmonisation, which also entailed the necessity

⁴² Relevant Hungarian literature: Zoltán Józsa, 'Regionalizmus és önkormányzatok' [Regionalism and Local Governments], *Magyar Közigazgatás* 50, no 4 (2000), 209; Balázs, 'Az európai föderalizmus', 34; Gusztáv Molnár, 'Miért kell a konföderáció?' (Why Do We Need a Confederation?), *Beszélő* 4, no 18 (1993); Krisztina Vida, *A föderalizmus hatása az európai integráció fejlődésére és szerepe az alkotmányozási folyamatban* [The Impact of Federalism on the Development of European Integration and Its Role in the Constitutional Process], PhD thesis (Budapesti Corvinus Egyetem, 2004); György Beke, 'Fatális lét? Beszélgetés Balázs Sándor kolozsvári filozófussal' [Fatal Existence? Conversation with Sándor Balázs, a Philosopher from Kolozsvár/Cluj-Napoca], *Kritika* 20, no 12 (1991), 18; Kálmán Kulcsár, 'A jogállam dimenziói' [Dimensions of the Rule of Law], *Társadalmi Szemle* 4, no 7 (1994); János Kis, *Túl a nemzetállamon. Az állam semlegessége* [Beyond the Nation State. Neutrality of the State] (Budapest: Atlantisz, 1997).

⁴³ A selection of texts espousing the nation state position: Attila Marján, 'A föderalizmus fogalmának európai kontextusban való értelmezhetőségéről és néhány ezzel kapcsolatos intézményi kérdéstről' [On the Interpretability of the Concept of Federalism in the European Context and Certain Related Institutional Matters], *Pro Publico Bono – Magyar Közigazgatás* 1, no 3 (2013), 23–41; Attila Marján, 'Az európai föderalizmus kérdésének néhány gazdasági és politikai aspektusa' [Some Economic and Political Aspects Regarding the Issue of European Federalism], *Külgügyi Szemle* 12, no 2 (2013); András Zs Varga, 'Magyarország szuverenitása', in *A magyar közjog alapintézményei*, ed. by Lóránt Csink, Balázs Schanda and András Zs Varga (Budapest: Pázmány Press, 2020). József Dúró, *Ellenzők, kritikusok, kétkedők* (Budapest: Századvég Kiadó, 2017); Béla Pokol, *Globális uralmi rend. 2. kötet* [Global Order. 2nd Volume] (Budapest: Kairosz, 2008). Béla Pokol, 'Egy politológusi Európa-tanulmányi megközelítés kritikája', *Jogelméleti Szemle* no 2 (2019), 75–81. Selection of texts mostly promoting the idea of European Federalism: Endre Varga, 'Szuverenitás és europaizálódás' [Sovereignty and Europeanisation], *Jogi Tanulmányok* 14, no 2 (2010), 135–146; Éva Bóka, 'Búcsú a Föderalizmustól?', in *Az EU: problémák és alternatívák*, ed. by Éva Bóka (Grotius Könyvtár, 2013). Bihari, 'Theoretical Foundations of Modern Sovereignty'.

of clarifying the relationship between EU law and the laws of Hungary. To put it more simply, in order to complete Hungary's accession to the European Union, it was necessary to open the way, in a constitutional sense, for EU law within the Hungarian legal system. As the applicability of EU law essentially entailed a transfer of sovereignty, the primacy of EU law had to be declared at the constitutional level.

The constitutional amendment authorising EU law has been referred to as the 'accession clause' by the relevant scientific literature since the beginning of the debate. The thinking on what formal and substantive solutions this clause might employ began in earnest after the Hungarian Parliament declared its intention to join the European Community.⁴⁴ (It was the first state in the region to do so.) An amendment to the Constitution, that is the integration of the accession clause into the Constitution, was ultimately necessary because, although the Constitution in force at the time stated only in general terms that Hungary's legal system accepted, respected and upheld the provisions of international law, it did not provide specific guidance for situations in which EU legal provisions and those of the Hungarian legal system conflicted. However, there was little consensus on the wording or content of the accession clause at the turn of the 1990s and 2000s. That this matter could be the subject of further discussion has already been shown by two relevant decisions of the Constitutional Court, which sought in advance to clarify the relationship between EU law and the Hungarian Constitution. Barna Berke, who was a judge at the Court of Justice of the European Union, has lodged several petitions with the Constitutional Court, arguing that the provisions of the Constitutional Court Act (Act XXXII of 1989) are unconstitutional, as they vouchsafe the Constitutional Court only a preliminary, normative review when it comes to international treaties. According to the petitioner, the constitutional rights of citizens are violated if they cannot be enforced *ex post* within the framework of normative control of international treaties.⁴⁵

In response to this petition, the Constitutional Court issued a resolution in Decree 4/1997 (I.22.), in which it explained that the possibility of *ex post* normative control fully extends to the laws promulgating international treaties. Only Imre Vörös, a constitutional judge, attached a dissenting opinion to the decision, arguing that the possibility of preliminary normative control can arise only from the text of the norms of the constitution in force at that time. Also following the motion of Barna Berke, the Constitutional Court ruled in favour of 30/1998 (VI.25.), which went even further, if that were possible, than the previous decision, essentially declaring that national law took precedence over EU law, basing this decision on the basis of sovereignty. A quote from the decision in question:

⁴⁴ Act I of 1994 on the promulgation of the Europe Agreement establishing an association between the Republic of Hungary and the European Communities and their Member States, signed in Brussels on 16 December 1991.

⁴⁵ Barna Berke's proposal and the motion itself are analysed in detail in László Kecskés, 'Magyarország EU-csatlakozásának alkotmányossági problémái és a szükségessé vált alkotmánymódosítás folyamata (I. rész)' [Constitutional Problems of Hungary's Accession to the EU and the Process of Constitutional Amendment (Part I)], *European Law* no 1 (2003), 21–30.

According to the Constitution, the aspect of democratic legitimacy based on popular sovereignty and democratic rule of law imposes a requirement regarding the legal norms applicable in the Republic of Hungary that their creation be traceable to the ultimate source of public authority. [...] The European Union is an independent system of public authority separate from the Republic of Hungary, with its own autonomous legal order and legal personality under international law.

These two decisions of the then-Constitutional Court prompted reflection on the domestic reception of EU law. As László Kecskés formulated in his question, the Constitutional Court essentially ‘created dogma’.⁴⁶ At the same time, the constitutional discourse of the time typically did not welcome the two Constitutional Court resolutions, as they saw in them a barrier to EU accession.⁴⁷ It is also worth noting that the former Constitutional Court based its position on the fact that Hungary was not a member of the European Community at the time the decisions were made. The two decisions thus made it clear that the issue of accession should be settled at a constitutional level. The manner of this, and even more so its content, were far from clear. Hungarian constitutional discourse was aware of the international literature concerning the relationship between EU law and national constitutions.⁴⁸ In this context, the Hungarian literature essentially argued for the direct

⁴⁶ Kecskés, ‘Magyarország EU-csatlakozásának alkotmányossági problémái’, 27.

⁴⁷ Some relevant Hungarian literature: László Sólyom, ‘A jogállami forradalomtól az EU-csatlakozásig. Az alkotmányfejlődés keretei’ [From the Revolution of the Rule of Law to EU Accession. Frameworks for Constitutional Development], in *És mi lesz az alkotmánnyal?* [And What of the Constitution?], ed. by László Majtényi and Zoltán Miklósi (Budapest: Eötvös Károly Közpolitikai Intézet, 2004), 9–24; András Sajó, ‘Az EU-csatlakozás alkotmányosságra gyakorolt hatása az új tagállamokban’ [The Impact of EU Accession on Constitutionality in the New Member States], trans. by Gyöngyi Borsody, *Fundamentum* 7, no 2 (2003), 14–26; Péter Paczolay, ‘A magyar alkotmány jövője és az uniós csatlakozás’ [The Future of the Hungarian Constitution and EU Accession], *Politikatudományi Szemle* 13, 1–2 (2004), 31–48; László Blutman, ‘A magyar Lisszabon-határozat: befejezetlen szimfónia luxemburgi hangnemben’ [The Hungarian Lisbon Decision: An Unfinished Symphony in a Luxembourgish Key], *Alkotmánybírói Szemle* 1, no 2 (2010), 90–99; Pál Vastagh, ‘A magyar alkotmányfejlődés jellemző vonásai, különös tekintettel az európai uniós integrációra’ [Characteristic Features of the Development of the Hungarian Constitution, with Particular Regard to European Union Accession], *Európa* 2002 2, no 4 (2001), 48; Imre Vörös, ‘Az EU-csatlakozás alkotmányjogi, jogdogmatikai és jogpolitikai aspektusai’ [Constitutional, Legal and Political Aspects of EU Accession], in *Jogalkotás, jogalkalmazás hazánk EU-csatlakozása küszöbén*, ed. by Jenő Czuczai (Budapest: Complex Kiadó, 2003), 60; Jenő Czuczai, ‘Magyarország EU-csatlakozásának közjogi feltételei’ [Public Law Conditions for Hungary’s Accession to the EU], in *Jogalkotás, jogalkalmazás hazánk EU-csatlakozása küszöbén*, ed. by Jenő Czuczai (Budapest: Complex Kiadó, 2003), 22.

⁴⁸ Relevant international literature: Dominik Lasok and John William Bridge, *Introduction to the Law and Institutions of the European Communities* (London: Butterworths, 1987); Neil Walker, ‘Sovereignty and Differentiated Integration in the European Union’, *European Law Journal* 4, no 4 (1998), 355; Theodor Schilling, ‘The Autonomy of the Community Legal Order: An Analysis of Possible Foundations’, *Harvard International Law Journal* 37, no 2 (1996), 389; Joseph Weiler, *The Constitution of Europe: ‘Do the New Clothes Have an Emperor?’ and Other Essays on European Integration* (Cambridge: Cambridge University Press, 1999); Federico G Mancini, ‘Europe: The Case for Statehood’, *European Law Journal* 4, no 1 (1998), 29.

applicability of EU law, and also expected its implementation from the accession clause which was still to be written.⁴⁹ The clause ultimately became Article 2/A of the Constitution.

There are a number of constitutional and interpretative debates behind the normative text that was finally adopted. The contemporary literature agreed that the European Union could not be understood as a traditional state actor or an international actor in the classical sense, but should be interpreted as a specific international subject, a *sui generis* formation, which could not be placed in either category. The dynamic and evolving nature of European integration distinguishes the EU from classical international organisations. This evolving nature also raises further questions, in particular whether the accession clause creates the possibility of a later federal European Union. Most analyses in the literature were of the opinion that the logical consequence of the ever-closer cooperation of Member States could ultimately be a European federation, the constitutional foundations of which were opened on the 'Hungarian side' by the accession clause. Barna Berke alone argued that:

However specific this form may be, with its supranational nature, the so-called normative supranationalism of its legal system and enforcement system, it is fundamentally about states forming the EU as individual political, constitutional-legal constructs. Thus, there can be no federation under this accession clause.⁵⁰

Another important issue with the accession clause is the extent to which it enables a transfer of authority (sovereignty transfer). The normative text of the clause in this respect states that powers are transferred by the Hungarian state to the European Union 'to the extent necessary'. This provision of the accession clause essentially empowers the European Union to exercise constitutional legitimacy through the delegated powers. At the same time, it is a constraint upon the organisation. This wording allows for a broad range of possible understandings, and thus many interpretations have been made with regard to it. According to László Kecskés, already quoted, the clause creates a sharp, yet unnecessary boundary line, which worsens the positions of the Hungarian legislation in the case of parallel legislation.⁵¹ Still, when the clause was adopted, the matter of which principles Hungary expected to adhere to with regard to the powers delegated to the European Union

⁴⁹ Vörös, 'Az EU-csatlakozás'; Vastagh, 'A magyar alkotmányfejlődés'; András Bragyova, 'Igazságtétel és nemzetközi jog. Glossza az Alkotmánybíróság határozatához' [Justice and International Law. Note on the Decision of the Constitutional Court], *Allam- és Jogtudomány* 3, no 1 (1993), 217–218; István Kukorelli and Imre Papp, 'A magyar alkotmány EU-konformitása' [EU Conformity of the Hungarian Constitution], *Európai Jog* 2, no 6 (2002), 3–9; Zsuzsa Cserhalmi, 'Kié a végső szó' [Who Has the Last Word], *Európa* 2002 3, no 1 (2002); Jenő Czuczai, 'Utószó' [Afterword], in *Jogalkotás, jogalkalmazás hazánk EU-csatlakozása küszöbén*, ed. by Jenő Czuczai (Budapest: Complex Kiadó, 2003), 137.

⁵⁰ Barna Berke, 'Az európai közösségi jogrend strukturális elveiről' [On the Structural Principles of the Common European Legal Structure], in *Ius privatum ius commune Europae. Liber Amicorum Studia Ferenc Mádl Dedicata*, ed. by Miklós Király (Budapest: ELTE ÁJK Nemzetközi Magánjogi Tanszék, 2001), 52.

⁵¹ Kecskés, 'Magyarország EU-csatlakozásának alkotmányossági problémái', 28.

did not even arise.⁵² Moreover, the contemporary literature considered the imposition of such conditions to be fundamentally unnecessary; indeed contemporary thinking considered the imposition of conditions that deepened the degree of integration desirable. The formulation of restrictive expectations, as we will see, only emerged as a real alternative in the 2010s.

In summary, then, the discourse on the internal content of sovereignty in the post-1989 period was essentially aimed at the harmonisation of law and the transfer of powers in connection with accession to the European Union. Although difficulties regarding the transfer of competences concerning sovereignty were already arising at that time, the basic direction of the discourse was primarily about opening up the Hungarian legal system; in other words, how to 'let EU law in' to the Hungarian legal system. In contrast, as we shall see, for the 2020s, the discourse focused precisely on the limits of the transfer of sovereignty.

The discourse that began in the second half of 2010 was most influenced by what was at once a legislative and an international political event. The legislative event was of course the constitutional process of 2011 which resulted in the new constitution of Hungary, the Fundamental Law which entered into force on 1 January 2012. Based on the normative text adopted in 2011, the Fundamental Law essentially transferred the provisions of the accession clause of the previous Constitution to Article E of the Fundamental Law, so its content also essentially focused on four areas: paragraph (1) assumes integration as a state goal to the extent necessary, and paragraph (2), as in the previous constitution, empowers the European Union to exercise, to the extent necessary, constitutional sovereignty jointly with other Member States through its institutions. Paragraph (3) recognises that European Union law may, within the framework of paragraph (2), lay down a generally binding rule of conduct. The authorisation granted under paragraph (4) to recognise the binding effect of an international treaty as defined in paragraph (2) shall require a two-thirds majority vote in parliament.⁵³

However, Article E paragraph (2) of the Fundamental Law in force today contains a number of new clauses. The seventh amendment to the Fundamental Law of Hungary changed the text of this paragraph, which is supplemented in its current form by the following sentences:

The exercise of the powers listed under this paragraph shall be in conformity with the fundamental rights and freedoms set forth in the Fundamental Law and shall not restrict Hungary's inalienable right of disposition over its territorial unity, population, form of government and state system.

⁵² Adél Sasvári, 'Magyarország a XXI. századi Európátság kapujában' [Hungary on the Threshold of 21st-century Europeanness], *Magyar Közigazgatás* 54, no 8 (2004), 492.

⁵³ Márta Dezső and Attila Vincze, *Magyar alkotmányosság az európai integrációban* [Hungarian Constitutionality in European Integration] (Budapest: HVG-ORAC, 2012), 21–22.

What may lie behind this additional content is easy to see. The seventh amendment to the Fundamental Law was adopted by the Hungarian Parliament in the summer of 2018, three years after the migration crisis, when the ‘mandatory resettlement quota’ was planned to be introduced by the EU Commission. The idea was opposed by Hungary. The seventh amendment limits the applicability of EU law with reference to concepts related to classical sovereignty, such as population and territorial integrity. In this respect, it is also worth looking at the legislative justification for the relevant part of the seventh constitutional amendment:

It is therefore appropriate that the political community of a State, through the Constituent Assembly, enshrine in the Constitution certain elements of the national identity of the State.⁵⁴

It is clear that the amendment and the justification introduced a hitherto little-emphasised concept, the concept of identity, into the discourse, placing it on a constitutional level and reintroducing constitutional identity as a concept limiting EU law. This concept is likewise recognised in the international literature.⁵⁵ At the same time, the concept of constitutional identity can be interpreted with reference to Hungarian peculiarities as well. The Hungarian Fundamental Law declares that it respects the achievements of the Hungarian historical constitution based on customary law and the identity arising therefrom. The content of this is described in detail by former Constitutional Judge András Zs Varga in a relevant Constitutional Court decision examining the applicability of EU law:

Constitutional self-identity is not a universal legal value, it is a feature of specific States and of their communities, of the nation, that does not apply (the same way) to other nations.⁵⁶

⁵⁴ T/332. The seventh amendment to the Fundamental Law of Hungary. (The author’s translation.)

⁵⁵ Liav Orgad, ‘Cultural Defence’ of Nations: Cultural Citizenship in France, Germany and the Netherlands’, *European Law Journal* 15, no 6 (2009), 719–737; Gary J Jacobsohn, *Constitutional Identity* (Cambridge, Mass.: Harvard University Press, 2010); Michel Rosenfeld, ‘Constitutional Identity’, in *The Oxford Handbook of Comparative Constitutional Law*, ed. by Michel Rosenfeld and András Sajó (Oxford: Oxford University Press, 2012), 756, 757; Leonard FM Besselink, ‘National and constitutional identity before and after Lisbon’, *Utrecht Law Review* 6, no 3 (2010), 36; Pietro Faraguna, ‘Constitutional Identity in the EU – A Shield or a Sword?’, *German Law Journal* 18, no 7 (2017), 1617–1640; Elke Cloots, ‘National Identity, Constitutional Identity, and Sovereignty in the EU’, *Netherlands Journal of Legal Philosophy* 45, no 2 (2016), 82; Monica Claes and Jan-Herman Reestman, ‘The protection of national constitutional identity and the limits of European integration at the occasion of the Gauweiler case’, *German Law Journal* 16, no 4 (2015), 917–970.

⁵⁶ 2/2019 (III.5.) Constitutional Court ruling [70], or originally Constitutional Court Ruling: 22/2016 (XII.5.), Reasoning [110]. The following study provides a substantive analysis of the decision in question, namely Decision 22/2016: Veronika Kéri and Zoltán Pozsár-Szentmiklósy, ‘Az Alkotmánybíróság határozata az Alaptörvény E) cikkének értelmezéséről’ [Decision of the Constitutional Court on the Interpretation of Article E of the Basic Law], *Jogesetek Magyarázata* 8, no 1–2 (2017).

The Constitutional Court decision in question was issued at the request of the Hungarian Government, and was intended to decide whether Hungary was obliged under EU law to grant asylum to third-country nationals and, if so, in the case of a fundamental conflict between the granting of asylum and the obligation to preserve constitutional identity, whether a panel other than the Constitutional Court had the right to an authentic interpretation of the Hungarian Fundamental Law. The Constitutional Court held that only it was entitled to an authentic interpretation, and that the obligation to protect constitutional identity took precedence over the application of EU law, in this case the obligation to grant asylum, since its application was also a condition of constitutional authorisation. It is worth noting that this is not the only Constitutional Court decision that has reached a similar conclusion with regard to EU law and national law, but the concept of constitutional identity related to the refugee issue is a characteristic element of the sovereignty discourse.⁵⁷

The discourse described above can essentially be characterised as a dialogue between the legislator, that is the Hungarian Parliament, and the judiciary, the Constitutional Court, in which the Parliament, which possesses fundamental legislative power, together with the Hungarian Constitutional Court, the only body which can supply an authentic interpretation of the Fundamental Law, laid down the theoretical framework within which the concepts of constitutional identity and sovereignty could be interpreted in Hungary by 2020. Nor has the profession of constitutional law remained outside the debate, meaning that the discourse surrounding this topic has taken on a multi-polar character. Some scholars have explicitly welcomed the emergence of the concept of constitutional identity in the discourse on sovereignty. At the same time, many authors have pointed out that the content of the concept is so subtle that the obligations created by the concept can also be used to achieve direct policy goals. A number of long-term analyses have also been produced, shedding light on the substantive correlations in several refractions. This also shows how generative this topic has been within the discourse on domestic sovereignty.

Summarising what has been described so far, we can see that both in the 1990s and at the end of the 2010s, the Hungarian Constitutional Court took a fundamentally more sovereigntist position, proclaiming the primacy of domestic law over EU law. However, on the first occasion the Constitutional Court was not supported by either the political establishment or the profession of constitutional law, as the primary concern of the latter was the opening of domestic law to EU law. By 2020, however, the situation seemed to have changed, with post-2010 governments typically supporting the sovereign aspirations of the Constitutional Court and professional opinions being more divided, rather than unanimously proclaiming the primacy of EU law, as had been the case in the early 2000s. The reversal of this trend is partly due to the new Fundamental Law and partly

⁵⁷ Constitutional Court decisions with content tending in a similar direction: 9/2018 (VII.9.) Constitutional Court decision; 17/2013 (VI.26.) Constitutional Court decision; 22/2012 (V.11.) Constitutional Court decision; 3/2019 (III. 7.) Constitutional Court decision; 22/2016 (XII.5.) Constitutional Court decision.

to geopolitical events such as migration, to which both the legislation and the domestic constitutional discourse have responded.

3. CONCLUSIONS

Based on the above, it is clear in what direction the professional and public discourse surrounding the concept of sovereignty has moved in the thirty years following the change of regime. While the events of 1989 held out the promise of regaining independence and sovereignty, contemporary public opinion – partly as a failsafe against a return to the past – essentially chose the deepest and most rapid possible integration into Western institutional structures as a national strategic goal. The legal professional discourse fits this goal insofar as it adapted Western professional discourse to Hungarian circumstances. From the point of view of international law, the transcendence of the traditional concept of sovereignty became the dominant paradigm, while constitutional discourse was characterised by an early, constitution-based opening of domestic public law to EU law, showing the importance and urgency which characterised the process of sovereignty transfer.

Entering the 2020s, we see a completely different picture. The relevant professional discourse has become much more diverse, and numerous professional texts and arguments have been published which are open to the traditional understanding of sovereignty and represent the concept in public life. This process is closely related to the international and geopolitical events of the 2010s, which have had a significant impact on Hungary precisely due to the previous, partial abandonment of the traditional concept of sovereignty.

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DEMOCRACY AS A PROCESS – THE APPLICABILITY OF NORBERT ELIAS’S THEORY TO POLITICAL SCIENCE

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This essay adapts Norbert Elias’s transition theory – presented in The Civilizing Process – to Hungarian politics, specifically to the period between 1989–1990, following the change of regime. The first part of the essay summarises what figurational sociology meant for Norbert Elias and outlines how the analysis will be based on these two terms. The second part explores the limits of “condition” centred political science in the period following 1990 and comes to the conclusion that there is a strong relation between the mainstream teleological approach to democracy and “condition” centred political science. In the third part, the author introduces the concept of an open-ended transition as the key element of post-regime change figurational political science and outlines a figurational approach to political science. The essay ends with a short summary which states that, following the post-transitology era, new approaches need to be applied when describing Hungarian politics.

KEYWORDS:

teleology, condition centred political science, figurational political science, regime change, change

1. INTRODUCTION

For a long time after the regime change, Hungarian democracy was a favourite with Western analysts and observers. Since 2010, however, the regime hallmarked by the name of Viktor Orbán has often been described not as a democracy but as a hybrid system, partly dictatorship and partly democracy. This raises the question of change in a democratic system. Is a democracy permitted to change, and if so, in what direction, and how? In principle, everyone agrees that it is, of course. However, those who use the term “hybrid system” clearly do not believe that the changes introduced under the Orbán regime fit into the ‘range of change’ within a democracy.¹ Of course, supporters of the government side sharply disagree with this group of critics. They believe that the illiberal (or, more recently, Christian Democratic) system introduced by the government remains largely within the democratic framework, i.e. what happened between 2010 and 2021 is a ‘natural’ change or development of democracy.²

Political science has long been aware that democracy is a fragile system³ and is highly exposed to change. Yet research into the nature and dynamics of change is a relatively neglected area of the discipline.⁴ This is all the more true of democracies that did not evolve as a result of long historical development. The Hungarian democracy established in 1989–1990 is a good example of this, as the last thirty years have seen a number of unforeseen and unexpected changes. Moreover, the nature and drivers of these changes are not fully understood.

In this paper, I attempt to make a break from the usual explanations. I shall not be content to assert that democracy has become non-democracy. Instead, I shall try to provide a *change theory* explanation of the three decades of development of Hungarian democracy. This concept is not unknown in political science, and I have tried to apply it elsewhere – albeit focusing primarily on parties.⁵ The problem I want to address now does not really concern changes in democracy, but the question of whether changes can or should be interpreted as transitions between *states* or as phases of a *process*. Reviewing the political science of the more than thirty years between 1990 and 2021, one may be left with the impression that the discipline regards democracy as a state, or a layering of states, rather than a process. In the debate on state versus process (if there is a debate at all), I will

¹ András Bozóki and Dániel Hegedűs, ‘A kívülről korlátozott hibrid rendszer – Az Orbán-rezsim a rendszertológia tükrében’, *Politikatudományi Szemle* 26, no 2 (2017), 7–32. See also Balázs Böcskei and Andrea Szabó, *Hibrid rezsimok – A politikatudomány X-aktái* (Budapest: MTA Politikatudományi Intézet – Napvilág Kiadó, 2019). For more comprehensive information on hybrid systems, see Mariam Mufti, ‘What do we know about hybrid regimes after two decades of scholarship?’, *Politics and Governance* 6, no 2 (2018), 112–119.

² Gallai (2020) argues in this direction.

³ William A Galston, ‘The Enduring Vulnerability of Liberal Democracy’, *Journal of Democracy* 31, no 3 (2020), 8–24.

⁴ Gergely Rajnai, ‘Miért sebezhető a liberális demokráciák?’ *Méltányosság Politikaelemző Központ*, 2020.

⁵ Ervin Csiszmadia, *Politikai változáselemlet. Miért változnak pártok, kormányok, politikusok?* (Budapest: L’Harmattan, 2007).

draw on the work of Norbert Elias (2004). Although his book was written a long time ago and he did not deal with theoretical issues of democracy himself, his works offer ample references and explanations to help better understand the problem at hand. Elias argues against static sociology from a process sociology perspective. I intend to do the same in the field of political science.

The first part will briefly summarise what static versus process sociology meant to Norbert Elias, noting that I consider these categories to be useful for future reference. In the second part, I will sketch the outlines of the static interpretation of the post-1990 period, concluding that static political theory stems from a teleological interpretation of democracy. In the third part, I introduce the concept of open-ended regime change as a key element of a process-oriented approach to the post-transition period, and attempt to develop a process-oriented approach. Finally, I will conclude with a brief summary.

2. ELIAS AND THE THEORY OF PERMANENT CHANGES

German sociologist Norbert Elias is not a contemporary thinker: he died, at ninety-three, in 1989 – the year of the regime change in Hungary. When seeking guidance on how democracies work today, this fact in itself would put Elias at a disadvantage. Besides, Hungary is by no means the subject of the work I will be referring to, although it might be included as such by extension. After all, the monumental tome entitled *The Civilizing Process*⁶ is an attempt to interpret, in a way, the whole of human history. Finally, it should be noted that Elias was a sociologist, his theory was a sociological one, and the tenets he questioned were posed by other sociologists – hence, it may seem a bit far-fetched to focus on him in the context of contemporary political science.

What makes Elias relevant for this subject is precisely his viewpoint: it elaborates a process-centred approach. While his book first appeared in 1936, it should be borne in mind that the second edition saw the light of day in the summer of 1968. For the new edition, Elias wrote a fifty-page introduction to summarise his views on the development and the dynamics of social processes. I will quote only a few excerpts that are pertinent to prove how relevant his message is when examining the last thirty years of Hungarian democracy.

The first thing to consider is duration. Elias focuses a process of civilisation that really cannot be seen as short-term. He is concerned with ‘long-term transformations of social structures’, and in this our aims converge. However, ‘long-term’ means one thing from a historical perspective, and another if the focus is on the period after 1990. At any rate, starting from the premise that it is possible to refer, for example, to the Horthy and

⁶ Norbert Elias, *The Civilizing Process. Sociogenetic and Psychogenetic Investigations*, 2nd edition (Oxford: Basil Blackwell, 2000).

Kádár regimes and, more recently, to the Orbán regime, then such periods can be seen as somewhat long-term.

In the study of long-term historical processes, Elias notes that, ‘we take leave of the metaphysical ideas which connect the concept of development either to the notion of mechanical necessity or to that of a teleological purpose’.⁷ This approach is indeed fully applicable to Hungarian democracy since 1990. As will become apparent, the problem with most contemporary mainstream theories consists precisely in the fact that they are much too teleological – they set out to ‘follow’ a certain state of democracy as it develops. As a result, they have difficulty digesting the fact that in the process of democracy, things do not always work out as planned or expected.

This issue was also the culmination of Elias’s debate with his peers. He criticised other prominent scholars of his time, above all Talcott Parsons, whose name is better known in Hungary and who is regarded as the founder of systems theory. Elias thought (whether rightly or wrongly is not the issue here) that Parsons’s approach was a static approach to sociology, i.e. one describing states without grasping the factors that lead to change. For our present purposes, it is enough to state that Elias distinguished between static sociology and process sociology.

Static sociology implies ‘the hypothesis that every society normally exists in a state of [...] equilibrium’.⁸ This state of rest is only occasionally shaken by various events, which are derivatives of the state of rest, accidental and transient. Elias’s main criticism of static sociology is that ‘[i]n this way the problems of social change are in a sense frozen and rendered innocuous to statically-orientated sociology’.⁹

Elias also criticises Parsons’s model of society as a ‘social system’, which is also ‘at rest’ – it only changes under the influence of other systems. Elias disagrees with the position of traditional sociology which equates society with the social system, nor does he agree with its claim that the ‘normal’ form of existence of the social system is a state of rest. In Elias’s view, this is not true because changes do not affect people from the outside, but from within: the nature of human relationships undergoes transformations, and this, in turn, brings about change.

This brings us to possibly Elias’s most relevant idea for the present study: his theory is meant to be about *human beings*. The reason why he does not consider Parsons’s idea to be human-centred enough is precisely that it is equilibrium-centred and static. In Elias’s view, there is no need to abstract from the process character of both the ‘individual’ and ‘society’. ‘Indeed’, he writes, ‘it is indispensable that the concept of process be included in [...] theories relating to human beings’.¹⁰

It is worth recalling, of course, that Elias examines process character and human-centricity in terms of civilisation (more specifically, the emergence and development

⁷ Elias, *The Civilizing Process*, 451.

⁸ Ibid. 456.

⁹ Ibid. 457.

¹⁰ Ibid. 455.

of feudalism). This is clearly very far from the problems of Hungary in recent decades. In a conceptual sense, however, there is an overlap between studying the process of civilisation and examining the process of the period after the Hungarian regime change. Drawing on these ideas of Elias, two questions will serve as the starting point for this paper: 1. how can the post-regime change era be construed, not as a teleological narrative (realisation of a pre-existing pattern) but as an open-ended process; and 2. how can this era be interpreted in a process-centred manner?

3. TELEOLOGICAL PURPOSE: A STATIC POLITICAL THEORY NARRATIVE OF THE POST-REGIME CHANGE ERA

For political science, it is evident that things keep changing. But how do we interpret the notion of change? The task is relatively simple in the case of old and well-functioning democracies, where change is part of their normal operation, and minor or even major setbacks are seen as the natural concomitants of democracy. It is a peculiarity of new democracies, in contrast, that internal change cannot (at least initially) be viewed as part of their normal operation; changes are regarded as more of a risk than a natural self-development.

Indeed, in political science, a new field of study called transitology¹¹ emerged with the intention of interpreting the democratic transition and subsequent changes in East Central Europe. Transitology was invented to explain what was going on in transition countries. Admittedly, it did in many ways live up to that promise. In 2002, however, the end of transitology was announced by a renowned political scientist.¹² It came to an end because, although it was sensitive to change in a sense, it was insensitive in substance, unable to properly interpret the dynamics of the post-transition situation. As Elias might have put it, it remained static; it failed to become process-centred. It is still worth considering, however, what transitology's specific interpretation of change meant.

The starting point for this paradigm as a whole is the claim that democratisation itself follows a universal pattern: the victory of democracy in East Central Europe *is* the final victory of democracy on a historical scale. As this victory becomes irreversible in East Central Europe (since with the collapse of the Soviet Union, there are no longer any systemic opponents), the new democracies in the region must follow the path of democracy building as quickly as possible. Thus, transitology was, to its credit, more than merely a study of transition. It did not stop at indicating what a direct transition from dictatorship

¹¹ Wikipedia has a separate page devoted to the conceptual presentation of transitology, and mentions its major authors.

¹² See Thomas Carothers, 'The End of the Transition Paradigm', *Journal of Democracy* 13, no 1 (2002), 5–21. On transitology and the lessons it offered, see Ervin Csizmadia, 'A tranzitológiának vége, felejtjük el? – Az átmenet tervezett intézményeitől a tervezetlen hibridizációig', *Politikatudományi Szemle* 25, no 2 (2016), 135–153.

to democracy should be like, but went on to trace the phases that must be followed within democracy for the global victory of democracy to be completed.

All of this required a tremendous transformation of Western political science, one that took place between 1970 and 1990. In 1970, Dankwart Rustow wrote one of the first theories of transition. While his work described transitions that took place in the early 20th century, it did not lend itself to be applied to subsequent developments in East Central Europe. Rustow's model comprised a three-stage transition made up of a pre-transition crisis, a democratic transition, and the consolidation of democracy. Rustow himself describes the model as dynamic, that is to say, the transition does not end with one state being replaced by another, but is in fact a state of continuous change. Rustow's work was rediscovered during the period of regime change in East Central Europe; it was a common perception at the time that regime change might last for a lengthy period. In the spirit of this 'long regime change', the slogan was that it was easy to change a system, but it was much more difficult to change the economy, and it was even more difficult to change and democratise civic behaviour. To put it another way, some authors distinguished between early and mature democracy, identifying the latter with the expansion of democratic attitudes.¹³ In other words, they saw a development taking place between opposing camps. There are exemplary democracies on the one hand, and new democracies trying to catch up and adapt on the other. The aim of the latter, in this scheme, is simply to follow the path that the theorists of transitions have laid out for them, as quickly as possible. This can be considered a teleological plan or (in the words of Elias) a 'teleological purpose', albeit with the demonstration of some kind of democratic development dynamics.

Subsequent developments largely justified this notion of the progress to democracy, a teleological and somewhat mechanical process: by the mid-1990s, Hungarian democracy had passed the early democratic phase and begun to consolidate. In the second half of the decade, many domestic and foreign observers alike believed that Hungary had come close to a state of mature democracy. During this period, little attention was paid to an essay written by Fareed Zakaria (1997), in which he described the strengthening of illiberal systems – albeit not in relation to East Central Europe.

The picture painted by transitology, then, focused on the progress of democracy. From this perspective, it seemed clear that democracy could only move towards its fulfilment, and that any error in the mechanism could only be caused by politicians and/or parties 'misinterpreting' the democratic agenda. The problem with this approach was not that it failed to register changes, but that it interpreted them *narrowly and teleologically*. Consequently, it failed to do justice to the dynamics that Rustow had considered so important, or interpreted them only in terms of democracy taking shape in a predetermined manner.

¹³ From the extensive literature, see Attila Ágh, 'A korai konszolidáció és az EU-alkalmazkodás Közép-Európában', *Politikatudományi Szemle* 10, no 1–2 (2001), 25–44.

That being so, transitology was capable of no more than capturing a static image of Hungarian democracy. It could have done better, however, had it been more faithful to its own propositions. After all, one reason why transitology became popular in the late 1980s was that it did not only supply a blueprint for democracy building but also helped reinterpret the role of political actors. Until the late 1980s, Western political scientists had not thought it feasible to take action against dictatorships; from then on, however, it was found that action did indeed make sense. It was precisely the actors taking the stage during this period that created the conditions and specific characteristics for a democratic transition following the transitological blueprint. It was this circle that – partly within the ramparts of power, partly on its outskirts, and beyond – became the custodians of Western thinking and whose articles on the subject were printed in journals and newspapers. And yet, no matter how thoroughly transitology had charted out the nature and sequence of the stages of democratisation, it had little to say about the intergenerational succession of political actors or the conflicts between consecutive generations, now within a democratic framework. The teleological vision of democracy building offered an ‘indivisible’ image of the actors, and it did not anticipate that political actors ready to reach consensus at the time of the regime change would later come into conflict with one another, or that some of them would end up stretching the boundaries of established forms of democracy.

Of course, in the mid-1990s, transitology also started to deal, among other things, with the increasingly active Fidesz generation, but an in-depth analysis of the changes the party went through remains unwritten to this day. As a rule, mainstream literature has sought to describe the metamorphosis of Fidesz as a phenomenon in its own right, and not as the result of interaction with other factors. Related to this viewpoint is the one-sidedness that is a recurring feature of interpretations of the Fidesz story. The mere observation that Fidesz ended up a populist party fails to explain why, if at all, it did so, and what factors external to Fidesz played a role in this. Hence, a great number of papers on the topic neglects the analysis of the mutual and contextual relations between parties and other political actors, or between parties and events. In fact, politics is a team game in which the actions of each actor are determined by many factors, but mostly by the movements of rival actors. Hence, the issue of interactions is very closely linked to that of changes, and I would suggest that this can be proved not only by looking at the current political scene but can also be applied to the broader processes of the development of political parties in Hungary.

To summarise: transitology was fraught with two problems. On the one hand, it was teleological and could only describe changes as components of a democratic plan, while on the other hand, it was incapable of doing justice to the generational perspective in interpreting the movements of political actors, nor did it take sufficient account of the fact that, in addition to the protagonists of transition, other actors might also take the stage and pursue their own agendas. As a result, transitology recorded a sequence of states and not a dynamic process. Admittedly, the dynamics of a process are not easy to trace. To accomplish this, it is necessary to set aside the teleological approach and interpret

democracy not as the implementation of a predetermined democratic plan, but as an open-ended game.

4. A PROCESS-ORIENTED APPROACH TO OPEN-ENDED TRANSITION AND THE POST-REGIME CHANGE ERA

Transitology was the prevailing theoretical approach during the process of democratisation. In contrast, with thirty years of experience, and with the benefit of hindsight, the weak points of the early theory can be better discerned. I described these above. The task now is to create a better theoretical framework, and in order to do so at all, we must first give up the teleological nature of transitology. As I pointed out, Zakaria noticed as early as 1997 that a group of illiberal systems was emerging which cast doubt on the theory of the global victory of liberal democracy, that is, it had already become clear even by that stage that the original theory was not working. Taking a cue from Zakaria, a huge body of literature began to deal with what was actually happening and why the early optimistic agenda had failed to materialise.¹⁴

Clearly, it is best to assert at the outset that the process starting with a regime change has no teleological purpose. Describing civilisation, Elias says that in the human world, there are many figurations that no human being intended, and yet they arise. He argues that the organisation of the human will is the key. The change of regime in Hungary, however, seems to have been of a different character, as the elites here really wanted something – they wanted to create democracy. Elias even says that civilisation is not rational – nor is it irrational – but ‘is set in motion blindly, and kept in motion by the autonomous dynamics of a web of relationships’.¹⁵

While it would be an exaggeration to talk about ‘blind progress’ in connection with the Hungarian transition, it is certainly worth considering the concept of open-ended regime change.¹⁶ Such a viewpoint opens up a completely different perspective than the ‘closed-ended’ theory (which interprets changes as events taking place within a specific form of democracy).

To switch from the transitologist approach to the perspective of an open-ended regime change, two conceptual adjustments are needed. The first is to replace the idea of a ‘planned

¹⁴ Basically, this literature is grouped around three concepts (populism, illiberalism, hybrid system).

¹⁵ Elias, *The Civilizing Process*, 367, 467.

¹⁶ I write about this in detail in another study: Ervin Csizmadia, ‘Ellenzékiség, aktorok és a demokrácia nyitott kimenetele – Az 1990 utáni Magyarország példája’, *Politikatudományi Szemle* 28, no 4 (2019), 89–116. Körösenyi and Gyulai argue in a similar way against teleological approaches (András Körösenyi and Attila Gyulai, ‘A hibridrezsim-fogalom korlátai és egy alternatív megközelítés: a plebiszciter vezérdemokrácia’, in *Hibrid rezsimok – A politikatudomány X-aktái*, ed. by Balázs Böcskei and Andrea Szabó (Budapest: Politikatudományi Intézet – Napvilág Kiadó, 2019), 159–178.

transition¹⁷ with a transition wrought with a great deal of uncertainty and plenty of unpredictable elements. This does not, of course, amount to saying that the Hungarian transition had no conscious constituents. Yet the best-laid plans of mice and men often go awry – reality tends to take directions that no one ever anticipated. The other adjustment is warranted by the dynamically changing dominance relations within the political elite, which again can reshape the conditions prevailing at the beginning of the process. Thus, it is necessary to take a closer look at these two factors, by first examining the notion of ‘open outcome’ and the reasons why the planned image of democracy is not being realised, and then identifying the changes in dominance relations.

The static approach rests on the hypothesis that the idea of democratisation was, by the end of the 1980s, ready and waiting to be transposed and implemented. The theory of an open outcome of democracy is a dynamic approach, precisely because it assumes that this was by no means a given, and that there was less consensus about the implementation of democracy than was previously assumed. In order to understand what is at stake here, it is necessary to dispense with the view that only one scenario prevailed during the transition, and that it made steady, inevitable progress.

The Western expectation can be described as follows: 1. The paradigm of transition arises. 2. In the target countries, an elite capable of leading the transition gets organised. 3. The old system is swept away by combined Western and domestic influences. 4. In the new system, Western-type democracy building begins, which progresses continuously through various phases.

John Gray (1993), however, points out that there are non-mainstream trends in political science with completely different roadmaps for democracy, and that there are more ways for countries seeking to catch up than the one expected by the mainstream. This ‘unexpected’ mode introduces an important new element: *the nation’s own history*, which Gray describes as pre-Soviet particularism. ‘Openness’ is thus already registered at the early stage of democracy, which implies a reading of regime change different from the ‘closed’ theory of democratisation. Accepting that the historical past of a country plays a role in democratisation right from the outset brings a different kind of dynamics to its processes than the approach where democratisation means the transposition of Western patterns. Although transitology did not recognise the existence of simultaneous rival theories, they did in fact exist. Without a doubt, the rival theories were far from less prominent than they later became. Until the mid-2000s, these theories, rooted in national history, did not even seem to be important components of the transformation of the competition between parties.

From this realisation, a more dynamic interpretation readily arises. It becomes clear that (at least) two readings of the Hungarian regime change have coexisted from the beginning: one called for the transposition of Western patterns, while the other expected

¹⁷ The best explanation of the term can be found in Claus Offe, ‘A kelet-európai átmenetek intézményeinek tervezése’, *Politikatudományi Szemle* 3, no 3 (1994), 5–32.

the reconstruction of Hungarian political and historical traditions. The impression that *all* the relevant actors after 1990 were proponents of adopting Western examples eventually turned out mistaken. Of course, no one wanted an Eastern type of democracy, but there were already differences of opinion regarding the extent to which the traditions of pre-1945 Hungarian political history would come to life in the new democracy.

Another dynamic factor was also present: the rearrangement or concentration of the party system. The best analysis of this is that of Csaba Tóth (2001). He rightly observed that domestic analysts were judging the role of the parties statically, so he focused his interest instead on the process of concentration. His investigation was discontinued, even though the really interesting dynamic changes occurred after 2001 when the Western and ‘differently Western’ camps clearly and perhaps conclusively separated. Yet it bears repeating that this change cannot be deduced from the transitological paradigm, whose representatives never imagined such a change taking place during the development of democracy.

Of course, just as on the eve of the regime change and afterwards, the dynamics hinged on the elites. Yet the limitation of a static approach is that it pays little attention to the dominance relations between elites. This is all the more crucial, since in terms of dominance, the last thirty years have seen very important changes indeed.

To begin with, the prevailing notion of the West was linked to a specific intellectual elite from an early stage of the transition. In essence, they reinterpreted a well-known attitude of Hungarian political history: you take your cue from the West. This was of great utility during the years of transition. However, the emergence of this intellectual elite did not put an end to the ‘process of selection’ of the relevant actors. Other groups also existed that, at the time, were not willing or able to get involved, or, if they were prepared to do so, their role was marginal in the early days. The early stage can also be understood in the sense that the Westernness of the regime change was represented by a *certain* political generation, the one that considered action to be meaningful; in this case, action meant the dismantling of the dictatorship and the creation of democracy. In a teleological view, this generation (or perhaps other generations sharing the same view) should have succeeded in implementing democracy. The point is that political action has a canonised direction, and deviation from it is seen as deviance. However, if it is true that (as was mentioned above in connection with John Gray), at the time of the transition, another – however embryonic – paradigm of thinking emerged along with the mainstream one, then this suggests that the history-centric conception of newer generations produced its own advocates, and the newly organised elites sought a new approach, which presents us with a different picture than that projected by the mainstream perception. This different perspective is one in which nothing is pre-ordained, where the path to democracy is not pre-set.

The relationship between the static and dynamic approaches is best illustrated in this generational cross-section. First of all, there was the generation of the regime change that took on the historic task of creating democracy in Hungary. Understandably, this generation built on the international trend of a global victory for democracy, and concludes from this that once democracy is introduced, what remains is only an ‘expansion’ of democracy

or, as many expressed it at the time, the implementation of *mature* democracy after *early* democracy.¹⁸ What is static about such a model? The claim that development is purposeful and one-way; that it can be no other way. The younger generation in politics refuted this picture of development through its own generational organisation: the Fidesz generation was interpreting democracy differently than the older generation from as early as the mid-1990s.

This can be illustrated by taking the example of consensual democracy. The prevailing attitude of the regime change envisaged that a consensual democracy should be established in Hungary – after a short transition. Why? Because this was regarded as almost a requirement for a transition. Alternatives to the interpretation of consensual democracy are well illustrated by one of András Körösenyi's (1993) early writings, but it only became clear later that the younger generation were, to put it simply, *no* believers in consensual democracy.¹⁹ It is now irrelevant which party was, or is, right on this issue. What is important is only to state that the interpretation of democracy is definitely a dynamic factor and overrides the static attitude which assumes the consolidation of early democracy. Since the Fidesz generation finally matured in a political sense, the conception of democracy it represents entered the bloodstream of public life, and since then it has been the crucial factor in motivating political competition.

The mere affirmation that Fidesz eventually became a populist party misses the point. To wit, the point can be grasped in two dimensions. The first is the dimension of present versus history. According to the static approach, the present has priority over history. The second dimension is consensual versus majority democracy. The static position here is that only the *first* interpretation of democracy is acceptable.

In both dimensions, I argue that the dynamic approach is most appropriate. Namely, as 1. Hungarian political history has been playing an important role in the (trans)formation of political processes since the beginning of the transition; and 2. since the emerging form of democracy could not initially be classified as one or another 'pure' democratic model, a struggle started to ensure that the 'mixed' model would prevail.²⁰ The left and liberal sides continue to prefer the consensual model, while Fidesz has preferred the majority model since the mid-1990s. Viewing things in terms of populism, reveals nothing of this, nor is it obvious that there were a number of moot issues in the party competition which needed to be resolved or, at least, raised.

On this basis, it can be concluded that dynamics is a key concept to use when interpreting the last thirty years of Hungarian democracy. It is only possible to attempt to

¹⁸ Ágh, 'A korai konszolidáció'.

¹⁹ To the best of my knowledge, Körösenyi was the first author who did not interpret the situation after the change of regime according to the consensus principle that was customary at the time.

²⁰ This is best described by Andrew Roberts (2006). He points out that, in contrast to Western democracies (where 'pure' models of democracy prevail), rivalry has existed between various conceptions of democracy in the East Central European region right from the outset. Moreover, the new institutions created are not uniform either, as both majority and consensual institutions can be found among them.

answer the question posed at the beginning of the introduction (how it happened) if it is approached not in a closed but in an open manner.

5. CONCLUSION

This paper was written to express my respect and appreciation for Norbert Elias's comprehensive theory. I found that the two categories he applied to social science (static vs. process sociology) can also be applied to political science. Of course, it was not my intention to deal with Elias's theory of civilisation or debate the way he portrayed the development of Europe as a process. This would have stretched to the utmost the framework of a paper whose focus is on analysing the history of the Hungarian regime change.

However, an Eliasian line of reasoning may help reflect on our framework for interpreting politics. This framework, as applied to the regime change, was dictated by transitology, a worldview whose consequences are still being felt, even though transitology has passed. Transitology and its successor theories drew a straight-line, relapse-free, rather static picture of democracy, which led to the commonplace statement that the ideal state of democracy in Hungary was abolished by Fidesz. However, in such a summary format, this approach does not hold water. I am convinced that the last thirty years have been full of challenges, and that changes have taken place in a process, through the interaction of the movements of actors. Fidesz is only one player in this process, albeit the one actor who managed to decide the debate, present from the beginning of the period, on consensual and majority democracy to its own benefit (favouring the principle of majority).

Taking the hybrid system or populism as an interpretive framework is a futile effort to detect the key points in the process. From such a perspective, the importance of interaction between actors will be missed and populism will be erroneously described as a deformation in itself. Conversely, the process approach allows this misinterpretation to be corrected, and may help us arrive at a deeper understanding of, and a better explanation for, the developments in post-regime change Hungary.

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Csaba Lentner

FROM AN ACTIVE STATE-LED FINANCIAL POLICY TO AN ACTIVE STATE-LED FINANCIAL POLICY – A TAXONOMICAL OUTLINE OF HUNGARY’S PUBLIC FINANCES IN THE PAST THIRTY YEARS¹

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The aim of this study is to trace the three-decade-long market economy transition that has replaced the socialist planned economy in Hungary, a process which is divided into two parts by the author. He begins by outlining the harsh, neoliberal methodology of the transition, and the Hungarian fiscal practice which developed from it, built on the application of non-conventional instruments of active government regulation and fundamentally based on the Fundamental Law (Hungary’s constitution) adopted in 2011, particularly its chapter on Public Finances and the cardinal laws pertaining to public finances. The study is a journey through time, encompassing three decades, demonstrating that the Achilles heel of the transition was its dependence on the basic conditions of the socialist planned economic system, which still exert an effect today. It provides an outline of the taxonomical elements of three, significantly different yet interrelated economic eras taking place in a Central European country in less than a century, and draws a macro-economic conclusion. The purpose of the study of more than three decades is to provide a historic set and, based on this, an outlook for the future for prognosis, which is especially important now at the time of Covid-19 problems.

KEYWORDS:

planned economy, harsh market economy transition, J M Keynes system, unorthodox method, Hungary

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1. THE BASIS FOR A STILL INFLUENTIAL BASE DEPENDENCE: SOCIALIST PLANNED ECONOMY INFUSED WITH MARKET ELEMENTS

Several Western theorists and the younger Hungarian generation have a perception of post-war Hungary as a country which applied a normative, Soviet-type planned economic system, together with the other Central and Eastern European countries. Undoubtedly, Hungary – due to the fate which befell it as a result of the Yalta Conference, determining the division of Europe after the war, and, in particular, its geopolitical position – was included in the Soviet sphere of interest and came under the auspices of the socialist world economic system, but in some important respects it deviated from the other socialist countries in its planned economic practice, and infused its conditions with market elements, for example in the reform attempt of 1955–1956, or the New Economic Mechanism launched in 1968 in particular. Although the basic elements of the Hungarian planned economy were built on state and cooperative ownership and the primacy of the people's economic plan, setting the frameworks of the system, the consideration of market aspects and the prevalence of a material interest appeared in a broad circle of companies owned by the socialist state, agricultural cooperatives and workers. The regulatory practice applied to the economy and, more importantly, the one-party control over it allowed for a stronger assertion of the material interests of employees (endogenous factors) to a certain extent. From the 1970s onwards, the rental (and small concession)² of certain state- and cooperative-owned components was possible, which represented a rudimentary form of enterprise, allowing the establishment of economic work teams and the achievement of higher income positions. In 1962, at the 8th Congress of the Hungarian Socialist Labour Party, it was announced that the socialist restructuring of agriculture, under which agricultural cooperatives and state farms had become common operating units, had finished. However, peasant members of the cooperatives were able to exercise some initiative in the form of small-scale farming they carried out, in close cooperation with and backed by large-scale agriculture, while the employees of state farms were allotted some land for their own use.³ The system was built on the alloy of the peasants' diligence and a perceivable financial gain, which succeeded in enhancing the efficiency of the Hungarian agriculture. In the late 1970s, Hungarian agriculture was competing with the economies of scale of farms in North America.

At the same time, problems arose with this system.⁴ The success of Hungarian reforms was accompanied by internal, retrograde forces and the aversion and counter-interests

² Small concessions were common primarily in catering, in case of shops and stores.

³ The Hungarian version of small-scale farming was inconceivable in the Soviet Union or for example in Romania.

⁴ A more detailed examination of the unsustainability of the socialist planned economy, can be found in the works of János Kornai. See, for example, János Kornai, 'A szocialista rendszer' [The Socialist Regime], in *Kornai János válogatott munkái II* [The Selected Works of János Kornai Vol. II] (Pozsony: Kalligram, 2012),

of the Communist Party of the Soviet Union, since they could be perceived as challenging the essence and presumed efficiency of socialism; therefore, forces opposed to this change slowed the momentum of the model built on interior market elements, which was manifested in a lack of material interest, work indiscipline, an alienation towards social property, and a massive occurrence of negative tendencies. Starting from the 1970s, the planned economic system was able to guarantee full employment, free education and healthcare and further subsidies deriving from the paternalism of the system only by means of external loans.⁵ In the 1970s, it absurdly tried to achieve the general goal set by socialism, i.e. to exceed the capitalist way of production, by continuing its operation while relying on the loans of the capitalist world. By the time of the regime change, it had accumulated debts amounting to USD 21 billion. Exchange rates were unfavourable in relation to both the U.S. dollar and the transferable rouble. Even paying interest rates posed a problem. Hungarian society at this time, socialised to state paternalism and producing deteriorating performances in workplaces, did, however experience benefits from the loans provided by the Western world, albeit modest ones. A mindset was adopted in this era which remains influential to this day, according to which declining performance may (still) result in income growth and a higher standard of living. The approach and practice – still very much alive today – that loss-making companies can continue to operate as the state would help them out anyway emerged at this point.⁶ Furthermore, all this was possible both systematically and continuously. The draining effect of the arms race between the two global powers and the oil boom in the world market did not bring about a substantial correction or modernisation of the poorly operating Hungarian market, and as a result of the accumulation of all these shortcomings, the foundations of the system were shaken. By the late 1980s, a transformation of an open market economy nature and an economic regime change, looking towards external resources had started to take place.

2. TAXONOMY OF THE MARKET ECONOMY TRANSITION

By the late 1980s Hungary was suffering from chronic shortages of working capital and portfolio capital, and consequently, there was a growing need for these missing funds. As a result of the opening of national borders and the population becoming familiar with the Western standard of living and way of life, demand for high-quality products and services had skyrocketed. It was necessary to re-integrate the workers laid off in hundreds

670; János Kornai, 'A puha költségvetési korlát' [The Soft Budget Constraint], in *Kornai János válogatott munkái IV* [The Selected Works of János Kornai Vol. IV] (Pozsony: Kalligram, 2014), 383.

⁵ An interesting example from the past: basically, the same derivative of hydrocarbon (gasoline) was used for heating provided by oil stoves, widely used from the 1970s, and the diesel motor vehicles used by companies. However, the fuel oil product sold to residents was substantially cheaper, as it was subsidised by the state.

⁶ Basically, this describes the soft budget constraint, identified by János Kornai. For details see Kornai, 'A puha költségvetési korlát'.

of thousands from their jobs in socialist industry and agriculture into the labour market. The Hungarian state governance of the time was incapable of meeting these challenges. In Western Europe and North America regions, however, free working capital and cash funds were available, and East Central Europe, including Hungary, was regarded as a promising area for investment. The Hungarian political leadership conducting the regime change and the corporate sector were stricken by the lack of assets and skills while the Western world was characterised by an excess of capital and skills. The regime change of the Hungarian economy aimed at the alignment of market (demand and supply) conditions, under an excessive demand pressure/need.⁷ Although there were some attempts to rectify this and government schemes to strengthen Hungarian enterprises with weak resource allocation in the market space, all of them failed, a well-capitalised corporate circle did not emerge, and neither did its social reflection, a Hungarian middle class on a social scale, backed by a predictable private property base.⁸ The system was dominated by imported working capital and imported portfolio capital (financial capital) required for further financing government debt. A regulatory practice “familiar” to and favourable to international companies was also imported with this structure, which was “operated” by foreigners since their regulatory policy also seeped (integrated) from their countries of origin into the Hungarian practice. In terms of the technical basis and regulatory methodology, an imported market economy emerged in Hungary, which, as the Soviet-type planned economy launched in 1947, was likewise not the consequence of organic development.

István Stumpf argued that “a normative legislative instrument enabled the process of the regime change to be launched in line with the requirements of the new boundaries of the rule of law and the first democratic, multi-party elections to take place. Even upon closer scrutiny, no coherent principles of state and social philosophy can be detected among the laws preparing the regime change and the scenarios constructed for the regime change”.⁹ This description of the situation by Stumpf, encapsulated as the “birth defect” of the regime change, has had far-reaching consequences, which can still be felt even today. The Hungarian market economy transition was characterised by its continuously running deficits, which was not even changed by the fact that the country joined the EU. Indeed,

⁷ Obviously, foreign working capital was interested in the profitable share of state assets and those with which it used to compete in the market. In this case, they tended to acquire markets.

⁸ The implementation of the idea of a social market economy was a dominant aspiration of the political elite conducting the regime change and the Hungarian Democratic Forum (Magyar Demokrata Fórum, MDF) in particular. However, its pattern and practice had been put in place in Western Europe, in Germany led by Konrad Adenauer and Ludwig Erhard, and in France under De Gaulle several decades previously, but had been severely eroded by the end of the 20th century. From today’s perspective, it is basically impossible to revive a bygone economic and social model on the ruins of socialism. It also raised concerns among intellectuals recognising the situation. See my thoughts written on the occasion of former MDF MP, Dénes Csengey’s death: Csaba Lentner, ‘Szociális piacgazdaságról és gazdasági függetlenségről. Nekrológ Csengey Dénesért’ [On social market economy and economic independence. Obituary for Dénes Csengey]. *Hítel: Független Irodalmi és Társadalmi Kritikai Lap* 28, no 2 (2015), 101–109.

⁹ István Stumpf, *Erős állam, alkotmányos kormányzás* [Strong State, Constitutional Limits] (Budapest: Századvég Kiadó, 2014), 18.

current account and fiscal deficits got really out of control after 2004.¹⁰ Coercive measures to improve budgetary and external positions became a regular occurrence, including the economic policy adjustment package of 1995 and the convergence path adjustment launched in the autumn of 2006 (which soon stalled), which focused on increasing the budgetary burdens of the population and small enterprises, that had a limited capacity to promote their own interests, while at the same time dismantling their state subsidies. These programmes shared the feature that they could generate close-to-balance a position temporarily but they caused an economic recession and significant unemployment, while the solvent demand and social benefits for the population also dropped.¹¹

One of the main aims of the economic policy of the regime change was to “revamp” via changes in ownership the technological base on which the outdated structure of production was based, which was supposed to culminate in raising foreign working capital to remedy the insufficient capital accumulation in the country. The other component of developing a market economy was the application of a free market institutional system and the implementation of a set of free market principles, and consequently, the dismantling of protectionist instruments protecting the domestic market. New tax laws were introduced to serve these main goals of economic policy, but they had severe social consequences. The wide-ranging tax allowances and state investment aids enjoyed by international companies which relocated their operations in Hungary, providing the backbone of the output of the national economy rendered the budget asymmetrical. On the one hand, they did not contribute to the revenue side of the budget according to their tax capacities (as was allowed by legislation), while on the other hand, they did not sufficiently solve the country’s employment problems, as had been hoped at the beginning of the regime change, and they integrated the Hungarian SME sector in their corporate systems only to a moderate extent (as outworkers).¹² The state budget had been exhausted by the demands of supplying state aids granted to a permanent number of people with a low social status, the demand of Hungarian small companies for subsidies and the interest burden of the government debt, which multiplied sevenfold between 1990 and 2010, and in fact, the deficit was growing. The room for manoeuvre in Hungarian economic policy had chronically shrunk.

¹⁰ A collection of essays was published in honour of university professor Ernő Huszti in 2007. Some forty papers by leading fiscal experts and members of the left-wing and right-wing intellectual elite analysed the process of the regime change. None of the authors at that time could describe the preceding one and a half decades as a success story. See Csaba Lentner (ed.), *Pénzügy-politikai stratégiák a XXI. század elején* [Financial Policy Strategies in the Early 21st Century] (Budapest: Akadémiai Kiadó, 2007), 584.

¹¹ Basically, austerity measures were taken; growth potential was sacrificed for the sake of attaining financial equilibrium.

¹² The author of this study does not dispute the innovation impact of international companies on the Hungarian national economy, but unfortunately they have become island-like formations and have failed to lead the economy or society into the circle of developed market economies and welfare societies, although as a result of a more constructive economic policy of recent years, they have formed stronger bonds with the country, especially through their stronger integration in the discharge of public burdens and strategic agreements concluded with the government. Moreover, their role in employment has remained rather limited.

The economic policy prevailing between 1999 and 2002, the main component of which was the Széchenyi National Development Plan based on and developing endogenous factors, was a breath of fresh air in a harsh market economy transition which had essentially been inspired by neoliberalism. Despite the adverse developments happening in the world – the impact of the Asian crisis in 1997–1998 – the economic development programme, “organised by fiscal measures”¹³ steered the Hungarian economy onto a growth path, achieving two-and-a-half times the average growth rate of the European Union while simultaneously the government debt and inflation were also reduced. Lending relationships established with the International Monetary Fund practically ceased.¹⁴ In the years around the turn of the millennium, a period of rapid catching-up could be observed, during which Hungary undoubtedly overtook the other Visegrád countries in terms of GDP per capita.¹⁵ The loose fiscal policy introduced in 2002, however – following the change of government – led to fiscal imbalances that could not be offset by tightening monetary policy, and Hungary began to lag behind the regional level of development again,¹⁶ despite the fact that from the middle of the decade the world was experiencing an economic boom.¹⁷ Not only did the restrictions applied by the central bank fail to offset the effects of the loose fiscal policy, but, based on Leeper’s theorem, it was even proven in detail¹⁸ that neither a monetary policy endeavouring to cut debt by inflation nor one sacrificing growth for price stability was able to counter the effects of the fiscal conduct of excessive spending.

As a result of a poorly organised economic policy, labour market problems intensified.¹⁹ Wages and employment failed to improve, which generated an enormous need for loans in households, and this need was met by adopting liberal banking laws and supervisory practice (adopting a free banking approach). Households and companies were tempted by foreign currency loans, which were easier to access and cheaper but which carried

¹³ It was backed by a Hungarian state-owned bank and implemented by under-planning inflation and earmarking, using the generated extra budgetary resources in a targeted way.

¹⁴ For the results of the economic policy course related to the development of mostly endogenous factors and the realisation of internal sources of funding “in our own way, organised by ourselves”, see György Matolcsy, *Élő emlékeink. A Széchenyi Terv világa* [Our Living Memories. The World of the Széchenyi Plan] (Budapest: Heti Válasz Kiadó, 2003), 222.

¹⁵ Gergely Baksay and Dániel Palotai, ‘Válságkezelés és gazdasági reformok Magyarországon, 2010–2016’ [Crisis management and economic reforms in Hungary, 2010–2016], *Közgazdasági Szemle* 64, no 7–8 (2017), 699–700.

¹⁶ The average government deficit in the Visegrád region was only half the figure registered for Hungary, and its level decreased in a trend-like manner compared to the Hungarian processes (based on Baksay and Palotai ‘Válságkezelés’, 700).

¹⁷ Gábor Karsai, ‘Ciklus és trend a magyar gazdaságban 1990–2005 között’ [Cycles and trends in the Hungarian economy, 1990–2005]. *Közgazdasági Szemle* 53, no 6 (2006), 509–525.

¹⁸ Eric M Leeper, ‘Equilibria Under ‘Active’ and ‘Passive’ Monetary and Fiscal Policies’, *Journal of Monetary Economics* 27, no 1 (1991), 129–147.

¹⁹ Károly Fazekas and Ágota Scharle (eds), *Nyugdíj, segély, közmunka. A magyar foglalkoztatáspolitikai két évtizede, 1990–2010* [From Pensions to Public Works. Hungarian Employment Policy from 1990–2010] (Budapest: Szakpolitikai Elemző Intézet – MTA KRTK Közgazdaságtudományi Intézet, 2012), 306.

high repayment risks,²⁰ and these provided additional financing to offset the economic uncertainty caused by the weakening economic environment and an escape route from higher forint loans, the repayments of which were inherently more difficult to keep up. The growth model maintained by the increasingly indebted public finances and the primary income owning sectors indebted in foreign currency came to a dead end in 2006 and was already becoming unsustainable,²¹ but since the global economic crisis unfolding in 2007–2008 caused an unwelcome change in the rates of the external resources denominated in foreign currency and in their interest rates, the effective inoperability of the budget, the corporate and the household sectors, financed as they were from external sources, became obvious and the country needed international help to avoid national bankruptcy.

The prelude to the situation which unfolded by the autumn of 2008 was the government's intention to adjust the 2006 convergence trajectory, which focused largely on revenues and increased tax burdens on primary income owners while simultaneously reducing their incomes, but, since it hardly made any effort to address structural deficiencies, it was able to alleviate these problems only temporarily. From 2006 to 2007, the budget deficit to GDP decreased from 9.3 to 5.1 per cent, but due to a drop in external resources and the fact that the budget had previously been fuelled by overspending and then tightened, economic growth decreased from 3.9 to 0.4 per cent, while in the rest of the Visegrád region²² it was 7 per cent on average over this period. The destructive effects of the world economic crisis found the Hungarian budget in an already exhausted state.

According to the calculations of György Matolcsy, “in the five years between 1998 and 2002, Hungary was the country fastest converging to the EU average in terms of GDP per capita among the new EU Member States in the region, but then in the second five-year cycle between 2003 and 2007 it became the slowest one in integration. In the first five years, we converged to the EU average by 8.8 per cent, and only by 1.1 per cent in the second”.²³ The evolution of the purchasing power of the national currency also reflected the unstable conditions. According to data by Ernő Huszti,²⁴ between 1995 and 2002 the purchasing power of the national currency increased by 24.2 per cent (to 75.8%), while between

²⁰ Csaba Lentner (ed.), *A devizahitelezés nagy kézikönyve* [The Great Handbook of Foreign Currency Lending] (Budapest: Nemzeti Közszolgálati és Tankönyv Kiadó, 2015), 611.

²¹ Gábor Orbán and György Szapáry, ‘Magyar költségvetési politika: quo vadis?’ [Hungary’s fiscal policy: Quo vadis?], *Közgazdasági Szemle* 53, no 4 (2006), 293–309.

²² Slovakia, the Czech Republic, Poland.

²³ György Matolcsy, *Éllovasból sereghajtó. Elveszett évek krónikája* [From Vanguard to Lagman. A Chronicle of Lost Years] (Budapest: Éghajlat Kiadó, 2008), 13. György Matolcsy also describes how, between 2003 and 2007, in addition to a slowdown in integration, the convergence advantage gained in the previous five years was also lost, and he even suggests that the period between 2003–2007 had more favourable opportunities in terms of external sources.

²⁴ Ernő Huszti, *Egy valuta története. A forint forgalma a stabilizációtól az euró előszobájáig* [The Story of a Currency. Forint Circulation between Stabilisation and the Hallway to the Accession to the Euro Area] (Budapest: LHarmattan, 2011), 160–167. It must also be added that the inflationary conditions generated in part by the high budget deficit compelled monetary policymakers to take a restrictive (compensatory) approach, which led to the strengthening of the price stability mandate and the inflation targeting system.

2003 and 2010 (taking the data of the first term year as 100% again) it decreased by 27.3 per cent (to 72.3%).

After the turn of the millennium, both government debt and the interest burden increased significantly. Net foreign debt rose from 16.5 per cent of the GDP in 2002 to 28.2 per cent by 2005. The government debt-to-GDP ratio had increased from 54.6 per cent (in 2002) to 64.1 per cent by 2006. In this period, Hungary's fiscal deficit was around 7 per cent of its GDP. By 2006, the country's operation had become unsustainable,²⁵ and the situation was further aggravated by the crisis of 2007–2008. As a result, a reform in state operation and public finances became a pressing necessity. Following the change of government and the subsequent adoption of a new economic policy in 2010, Hungary no longer received security loans from the World Bank and the International Monetary Fund, and the EUR 12.5 billion borrowed from IMF during the 2008 crisis, the EUR 6.5 billion borrowed from the European Union and the loan package (a drawdown) of EUR 1 billion from the World Bank were repaid.²⁶

Due to poor macroeconomic data and an uncertain and contradictory economic environment, in the context of international events in the autumn of 2008, which also led to a loss of confidence in finances, most investors withdrew from the government securities market and numerous manufacturing companies switched to reduced reproduction processes.

During this period, undesirable processes also emerged in the local governmental subsystem of public finances. Following the change of regime, the undermining of the political and economic independence of local governments, declared after the regime change, started almost from the very beginning of the political transition. The government, struggling with budgetary issues, was continuously conferring the performance of duties to the municipalities, but this decentralisation of duties was not followed by a corresponding allocation of resources. An operational deficit evolved, and then – paradoxically – the scale of the accumulated deficit reported was also enormous from 2004. With Hungary's accession to the EU, investment funds became also available to Hungarian local governments, but they could not provide the necessary matching contribution, but, pursuant to a government resolution, local governments were able to take out a loan to “verify” their own contribution, and, through their banks, issue foreign

²⁵ Why was the financing path unsustainable? For details see Iván Bélyácz and Mónika Kuti, 'A makrogazdaság fenntartható finanszírozási pályájának elérhetőségéről' [On the availability of a sustainable financing path for the macro-economy], *Közgazdasági Szemle* 59, no 7–8 (2012), 781–797.

²⁶ In the summer of 2010, during and after the change of government, requiring a loan from IMF and the WB consortium was on the agenda for years; however, as a condition, the government would have had to abandon its programme based on non-conventional means as well as reverse the measures it had already taken (e.g. abolishing the banking surtax). In the meantime, international credit rating agencies rated Hungary in the unfavourable (not prime) category, and its reputation on the international lending market was very poor. Thus, the government was able to exit the European Union's excessive deficit procedure without any external help, with its tax policy reforms in 2013. The credit line required in the autumn of 2008 was not entirely drawn down, but the amount drawn down was not used in a professional manner (see Csaba Lentner, *East of Europe, West of Asia* (Paris: L'Harmattan, 2020), Chapters V–VI.

currency bonds. In taking advantage of this opportunity, however, the local government sector became trapped in a severe debt spiral. After the deterioration of foreign exchange rates in 2008, they drifted to the verge of inoperability, and this problem was only resolved by the government which came to power after 2010.²⁷

The “lack of funds in the budget”, the lack of future sustainability, the “shadows” of the global financial crisis of 2007–2008 cast on Hungary and, in particular, the government and the central bank’s insufficient response to these challenges discouraged the Hungarian society from supporting the neoliberal cause.²⁸

3. THE POST-2010 HUNGARIAN MODEL: ON NON-CONVENTIONAL FOUNDATIONS

In the period before the global financial crisis of 2007–2008, Hungary was characterised by poorly regulated public finances, flawed and unsustainable fiscal policies, and non-transparent fiscal management. In the autumn of 2006, the government decided to introduce a package of HUF 2,500 billion to adjust the convergence trajectory, but this intervention also ended up in failure. Overspending was financed from external sources. This financing model became dysfunctional. Verifiably, the fiscal practice followed in the period before 2010 became exhausted and was impossible to continue.

After 2010, reforms were introduced and fiscal regulation changed, which was accompanied by the establishment of adequate and effective state control, and a rule-based fiscal policy became the norm. Hungary’s Fundamental Law, which entered into force in 2012, raised the issue of public financial responsibility to the constitutional level.²⁹ The chapter on public funds in Hungary’s constitution contains regulations pertaining to the central budget, government debt, national assets, transparency, public burden sharing, the Central Bank of Hungary, the Fiscal Council and the State Audit Office. The key principle of the chapter is ensuring a balanced, transparent and sustainable

²⁷ Several experts think that state consolidation has also injured the autonomy of local governments. See, for example, Tamás Vasvári, ‘Hardening the Budget Constraint: Institutional Reform in the Financial Management of Hungarian Local Governments’, *Acta Oeconomica* 70, no 4 (2020), 571–592. For the debt map of local governments in a European comparison, including the Hungarian consolidated situation, see László Vértesy, ‘Debt Management Strategies of Local Governments in the EU’, *Pro Publico Bono – Magyar Közigazgatás* 8, no 1 (2020), 146–169. It is important to note that the entire debt of local governments have been assumed and a considerable part of their functions have been also transferred within the competence of the state.

²⁸ I agree with Professor Norbert Kis on the successful pursuit of economic policy; he considers the issue of social trust essential for building a successful policy approach (Norbert Kis, ‘The Role and Impact of Trust on the Operation and Sustainability of the State’, *Public Finance Quarterly* 63, no 3 [2018], 289–302). Without support from the society, especially, if households and companies are adversely affected, it is hardly possible to implement an economic programme. This is related to the 4th element of Dane Rodrik’s institutional matrix, that is the necessity of social legitimacy. For further details see Lentner, *East of Europe, West of Asia*, Chapters I, VII.

²⁹ For the general ethos of the Fundamental Law, see István Stumpf, *Reinventing Government. Constitutional Changes in Hungary* (Budapest: Gondolat, 2017).

fiscal management. In the Fundamental Law, the fiscal centre of gravity is the reduction of public debt. Pursuant to Article 36 (4)–(5) of the Fundamental Law, “(4) Parliament may not adopt an Act on the central budget as a result of which (the) state debt would exceed half of the Gross Domestic Product”, and “as long as state debt exceeds half of the Gross Domestic Product, Parliament may only adopt an Act on the central budget which provides for state debt reduction in proportion to the Gross Domestic Product”. According to section (6): “Any derogation from the provisions of paragraphs (4) and (5) shall only be allowed during a special legal order and to the extent necessary to mitigate the consequences of the circumstances triggering the special legal order, or, in the event of an enduring and significant national economic recession, to the extent necessary to restore the balance of the national economy.”

One of the most important components of the fiscal reforms implemented after 2010 is the reduction in labour taxes, while increasing the proportion of consumption and sales taxes, broadening the family tax credit system and levying taxes on extra profit, while imposing taxes on mostly foreign-owned banks and telecommunications companies in a way that is more proportionate to their tax capacity. In addition to tax reforms, the social security system was also reformed. By the end of 2010, the budget deficit caused by mandatory private pension funds had been growing for some time, as a significant part of the pension contributions payable to private pension fund members (obviously) flowed to private funds, and (automatically,) the current revenues available for covering public pension expenditures fell sharply, and the gap thus generated needed to be closed by the central budget. As a solution to the problem, the mandatory pension fund system was abolished, and a significant number of the private pension scheme members returned to the state pension system.

Upon the entry into force of the Fundamental Law, discipline in and control over public finances became stricter. Act LXVI of 2011 on the State Audit Office, a cardinal law, resulted in the expansion of the State Audit Office’s audit powers, allowing it to act more efficiently when taxpayers’ money is used and in order to protect national assets.³⁰ The Fundamental Law raised the Fiscal Council to a body of constitutional status. The Council is a body which supports the legislative work of the National Assembly, performing its tasks in compliance with the Fundamental Law and other statutory regulations. It participates in drafting the Central Budget Act, and, acting in support of the legislative activity of the National Assembly, it reviews and issues an opinion on whether the central budget gives a true and fair view, and is called upon to give its preliminary consent to the approval of the Act on the Central Budget in order to ensure compliance with the so-called public debt rule.³¹ The introduction of the Stability Act contributed to the debt cutting process, while the Act on National Assets provides the legal background for the transparent and

³⁰ László Domokos and Magdolna Holman, ‘The Methodological Renewal of the State Audit Office of Hungary in Light of the Protection of Public Funds’, *Polgári Szemle* 13, English Special Issue (2017), 83–99.

³¹ Árpád Kovács, ‘Rule-Based Budgeting: The Road to Budget Stability: The Hungarian Solution’, *Polgári Szemle* 13, English Special Issue (2017), 39–63.

responsible management of national assets and the preservation and protection of national values. During this period, the consolidation of debt and the subsequent transformation of Hungary's local government system were carried out, in which the relevant provisions of the Stability Act (Act CXCV of 2011) and of the Act on National Assets (Act CXCVI of 2011) played a part.³²

The Central Bank of Hungary is Hungary's national bank and is responsible for monetary policy in a way determined by a specific cardinal law (Act CXXXIX of 2013 on the Central Bank of Hungary). The primary aim of the Central Bank of Hungary is to achieve and maintain price stability. Without jeopardising its primary aim, it also supports the economic policy of the Government with the available monetary policy means. The monetary policy which has been pursued since 2013 has played a major role in stimulating economic growth, through both the Funding for Growth scheme and by encouraging commercial banks to lend more actively. The continuous reduction of the central bank's base rate helped the interest rate conditions for both financing government debt and lending by commercial banks, as the financing of government debt and bank's interest rates became cheaper. The central bank operates on a macroeconomic level and in a social context, and one of the major achievements of the latter focus was the consolidation of corporate foreign currency loans (within the framework of Pillar 2 of the Funding for Growth scheme) and households' foreign currency loans to the detriment of the reserves of the central bank. The resulting change of the monetary regime ended the previously homogeneous practice, pursued since 1987 (with an "inclination" to gradually withdrawing from the refinancing of the real sector and government debt), which had limited the central bank only to the management of inflation.³³

The immediate crisis management measures taken and the regulatory changes made after the spill-over of the crisis in 2008³⁴ were incapable of tackling the problem of households' foreign currency loans adequately. The solution was the complete phasing out of household foreign currency loans and mortgage loans denominated in foreign currency, which began in the autumn of 2014.³⁵ The conversion from foreign currencies into Hungarian forints took place at the earliest opportunity when it was legally possible and economically

³² For details on the consolidation of local governments see Csaba Lentner and Szilárd Hegedűs, 'Local Self-Governments in Hungary: Recent Changes through Central European Lenses', *Central European Public Administration Review (CEPAR)* 17, no 2 (2019), 51–72.

³³ For the achievements of the monetary policy after 2013 see György Matolcsy, *Egyensúly és növekedés – 2010–2019. Sereghajtóból újra éllovas* [Balance and Growth – 2010–2019. From Lagman into Vanguard Again], second, revised edition (Budapest: Magyar Nemzeti Bank, 2019), 702.

³⁴ Csaba Lentner, 'A gazdasági válság hatása a globális, uniós és hazai szabályozási környezetre' [The impact of the economic crisis on the regulatory environment in the world, the European Union and Hungary], in *A gazdasági világválság hatása egyes jogintézményekre Magyarországon és az Európai Unióban. Interdiszciplináris és jogösszehasonlító elemzés* [The impact of the global financial crisis on specific legal institutions in Hungary and the European Union. An interdisciplinary and comparative analysis], ed. by Ádám Auer and Tekla Papp (Budapest: Nemzeti Közszolgálati Egyetem, 2016), 45–84.

³⁵ On taxonomical aspects see Csaba Lentner, 'The Structural Outline of the Development and Consolidation of Retail Foreign Currency Lending', *Public Finance Quarterly* 60, no 3 (2015), 297–311.

viable.³⁶ By 2014 the reserves of the MNB had reached a level that guaranteed the safe implementation of the conversion. At the end of September 2014, the portfolio of household foreign currency loans and mortgage loans denominated in foreign currency amounted to HUF 3,350 billion (EUR 10.8 billion) in the banking system. A portfolio of EUR 9 billion was subject to conversion. Banks covered almost the entire portfolio of foreign currency loans converted through the tenders of the Central Bank of Hungary.³⁷

The coordination of fiscal and monetary policies was indispensable for economic growth. A monetary turnaround took place in Hungary in 2013 and after that monetary policy played a more proactive role in fuelling economic growth, in addition to ensuring price stability. As a result of a gradual reduction in the base rate (from 7 to 0.9 per cent by 2016 and in the first step to 0.75 per cent and then to 0.6 per cent in the summer of 2020), the financing costs of the private sector fell, and investment and consumption picked up. After 2013, the Central Bank of Hungary launched several schemes to strengthen financial stability and boost economic growth, including the Funding for Growth scheme, the aim of which was to re-establish corporate lending. Between 2013 and 2017 this scheme increased the GDP by 2–2.5 percentage points,³⁸ and it has been instrumental in fuelling growth ever since.³⁹ From 2014–2016, the Hungarian state repaid foreign currency debts of nearly EUR 11 billion from forint issues, and a significant number of strategic sectors (mainly public utilities), which had been privatised under duress in the 1990s, were re-acquired as national assets. The processes of the state economy have been heading in the opposite direction since 2010. However, it is necessary to say, despite our successes that the fundamentally changing fiscal and monetary policy has been consistent with international organisations with a strong criticism. From the beginning of the public financial reform, the effects of tax reforms have enforced and from 2013 the intensive monetary policy of the Hungarian National Bank also contributed to the consolidation. These criticisms alighted, maybe there are more a praise word, still present. We are currently missing partial failure of structural reforms. It is a fact that the previous decade was successful for us, which also increases our chances under Covid-19.⁴⁰

³⁶ Péter Pál Kolozsi, Ádám Banai and Balázs Vonnák, 'Phasing out Household Foreign Currency Loans: Schedule and Framework', *Financial and Economic Review* 14, no 3 (2015), 60–87.

³⁷ On the emergence of foreign currency lending and the need for consolidation see Levente Kovács, 'A devizahitelek háttere' [The background of foreign currency loans], *Hitelintézeti Szemle* 12, no 3 (2013), 183–193.

³⁸ György Matolcsy and Dániel Palotai, 'Hungary is on the Path to Convergence', *Financial and Economic Review* 18, no 3 (2019), 5–28.

³⁹ Kolozsi et al., 'Phasing out Household Foreign Currency Loans.'

⁴⁰ See more in OECD Economic Surveys, 'Hungary', July 2021 and International Monetary Fund, 'IMF Country Report No. 21/135, Hungary', June 2021.

4. SUMMARY – A MESSAGE TO THE FUTURE

The internal market components of the planned economy⁴¹ were pushed into the background during the market economy transition inspired by neoliberalism, and a radically new model imported largely from Anglophone countries and equipped with content elements, including capital and regulation, was adopted as the way forward. The most important characteristics of the realistic but harsh market economy, which emerged in Hungary from the late 1980s, was an economy founded on private ownership, mainly using foreign working capital due to a lack of or in lieu of sufficient internal resources, the rules of which were introduced without an adequate adaptation period. All this took place alongside increasing indebtedness, mostly because foreign enterprises doing business in Hungary were taxed below their taxation capacities and the domestic sector was poorly funded, which led to the financial stability of the country continuing to deteriorate, although the country, as a result of the EU integration process, became a full member of the European Union in 2004.

The economic policy implemented between 2010 and 2019 can be regarded as the most successful of the past 100 years, within the framework of which the budgetary and external balance improved considerably, while simultaneously seeing the start of economic growth (see Figure 1). The foundations of the model behind the results are fiscal discipline ensured by strict statutory regulations and a stringent control environment, the expansion of public burden bearing and a focus on the Central Bank's policy to support growth and stability, accompanied by measures to increase the solvent demand of the population and preserve purchasing power, making society "interested" in the growth path.⁴² In effect, an active state-led economic policy was implemented, under market economy conditions. Between 2010 and 2019, the general government debt-to-GDP ratio decreased from 85 per cent to 65 per cent, the net external debt decreased from 55 per cent to 10 per cent, and the share of foreign debt within government debt decreased from 65 per cent to 30 per cent.

Another positive element of the period between 2010 and 2019 is that social-type income growth, increasingly unbacked by any economic performance under Kádár's regime and then expanded to a broad circle of people during the market economy transition, where it became a major form of making a living in certain groups of society, was reined in, as the policymakers tried to eradicate the social benefit-based society.⁴³

⁴¹ Small-scale farms, widespread in the form of agricultural cooperatives, and the ways of production based on the land allotted to the workers of state farms, rudimentary enterprises based on the small concessions of state- and cooperative-owned property as well as economic work teams "had melted" by the time of the regime change. Small enterprises, established under Act VI of 1988 (the Corporate Act) and enterprises with a so-called Start Loan and established under employee shareholding schemes mostly met the same fate.

⁴² The family tax allowance, the Family and Housing Support and other beneficial social measures are the positive feedback to the people ("encouragements") of an economy put on a growth trajectory.

⁴³ These theses may also correspond to Péter Mihályi's concept exclusively emphasising market conditions, but it is important to note that while Mihályi regards the completion of market conditions justified in an almost exclusive and comprehensive manner, the main point of my work and my other research findings

In order to maintain full employment, guaranteed by the socialist planned economy system, the leadership of the time – as the performance of work was deteriorating – took out foreign loans to sustain loss-making companies and shore up inefficient workplaces. The loan taken out by the state was practically distributed freely among the population, and ultimately, this system continued to function. The philosophy and conduct (attitude) of the workforce, based on not particularly high work efficiency and a collective share in loans survived the regime change, which was even further promoted by deregulation, an inefficient economic policy and a policy of encouraging commercial banks to “overlend” to borrowers. In addition to government debt, the post-transition period saw the appearance of local government debt, and, in particular, an excessive use of credit by households or individuals. This conduct of taking out such loans carelessly (without any borrowing power), without thoroughly considering how they would be repaid, particularly among the population, can be regarded as the legacy of Kádár’s regime, which resulted in the non-repayment of loans on both the household and local governmental levels. The state acted as a consolidator both for local governments and households after 2010,⁴⁴ but after this financial bail-out stringent regulations and controls preventing indebtedness were adopted. This consistent, controlled rule-based ethos has become one of the main characteristics of the economic policy, which became active rather than passive in nature.

Considering the analysis of seven decades, encompassing three economic approaches, and within those, focusing on the last thirty years, it can be concluded that good fiscal policy should be simultaneously based on the economic historical background of the country, aligned to the needs of the prevailing market and social forces, particularly internal (endogenous) factors, while following international progressive trends. A sense of perspective is important when considering how to fulfil these triple requirements, since, for example, international trend-following cannot be given priority over the economic historical background, or to the detriment of internal market players or social operators. No economic policy approaches can be forced onto a country, as this disrupts the harmony and optimal functioning of production conditions and productive forces, and indifference and lack of motivation will prevail in both the corporate and the employee sectors.

Taking all this into consideration, the policy approach followed from 2010–2019 can be characterised as highly effective, since it basically aims at meeting internal needs optimally,

published is that an adequate transition period should be ensured and market considerations cannot be applied to the entire sphere of corporations, households and public finances. A kind of social sensitivity must be demonstrated, either due to the historical background or the “fragmentation” of certain layers of society. For Mihályi’s concept, see Péter Mihályi and Iván Szelenyi, ‘The Two Forms of Modern Capitalism: Liberal and Illiberal States. A Criticism of the Varieties of Capitalism Paradigm’, *Comparative Sociology* 19, no 2 (2020), 155–175; Péter Mihályi, *Diszkriminatív, piac- és versenyellenes állami gazdaságpolitika Magyarországon, 2010–2015* [Discriminative anti-market and anti-competitive state economic policy in Hungary, 2010–2015] (Budapest: MTA KRTK Közgazdaságtudományi Intézet/Institute of Economics, Centre for Economic and Regional Studies of the Hungarian Academy of Sciences, 2016).

⁴⁴ That is, the soft budget constraint, formulated by János Kornai, continued to prevail, which was heavily criticised by Kornai (see his works cited).

with a focus on the income growth of the society, and simultaneously following detectable trends of the international arena, by, for example, applying a more robust state control or implementing the central bank's non-conventional crisis management. The components of the post-2010 model are largely similar to the policies pursued following the Austro-Hungarian Compromise of 1867.⁴⁵

The continuity of the current course, i.e. its resilience, will be provided and proven by the responses given to the crisis which began in the spring of 2020.⁴⁶ The economic downturn caused by Covid-19 is not the consequence of the fiscal policy followed by Hungary or the earlier operation of the central bank, but of an external factor – the global pandemic. During crisis management, both public financial institutions have pursued an active policy stimulating demand and have made efforts to mitigate the adverse consequences of the crisis.⁴⁷ Nevertheless – demonstrating the severity of the crisis⁴⁸ – Hungary's GDP fell by 13.6 per cent, the volume of industrial production plummeted by 25 per cent, the tourism sector shrank by 80 per cent and the hospitality sector by 60 per cent in Q2 of 2020. A similar, although smaller decline is expected for Q3 and Q4 of 2020 and even for the first six months of 2021, and as a result, the GDP of Hungary is likely to decline for 2020 as well as 2021, which will certainly weaken the fiscal stability of the state. The overall government debt-to-GDP ratio, which had decreased from 85 per cent to 65 per cent in nine years, soared up to 85 per cent again within a year. Instead of, or besides the competitiveness strategy, safety-oriented debt management is expected to come increasingly to the fore (again) (see Figure 1 for the growth path of 1996–2020).

Regarding crisis management, it should be noted that the economic policy of the period between 2010 and 2019 was fundamentally satisfactory but not in all aspects. The large-scale implementation of the Competitiveness Programme, launched by the Central Bank of Hungary in 2017, started at a lower speed than expected in the years preceding the pandemic crisis. The economies of scale of small enterprises were not developed, the fusions it was supposed to encourage did not materialise, personal income tax did not become a one-digit number, corporate tax did not decrease further by fiscal means and through representation by chambers of commerce and industry. As a result, helping out fragmented small enterprises in a crisis consumes several orders of magnitude more public funds than it might. Fixed income-type taxes dampened the (investment) solvent demand of households and corporations; therefore, the crisis management measures

⁴⁵ For the economic system of the dualist state model see Lentner, *East of Europe*, Chapter II.

⁴⁶ The dualist economic model was caused by World War I, that of Bethlen's consolidation was caused by World War II, that of the planned economy was caused by the arms race of the Cold War and the increasingly severe and complex issues of the planned economy. That of the market economy transition (the period lasting until 2010) was caused by an economic model imported and applied without proper consideration (see the logic of Lentner, *East of Europe*).

⁴⁷ Since 2010 the Hungarian practice has been following a version of the active policy stimulating demand, developed by J M Keynes.

⁴⁸ According to the forecast of the World Bank, the global economy is currently facing a crisis which is two and a half times more severe than that of the 2007–2008 was.

of both the Central Bank and the government “cost more” amidst the current crisis, leading to the present situation where Hungary is not top ranking in terms of international convergence or, consequently, the efficiency of crisis management.⁴⁹ If these competitiveness measures had been taken, both the household and the corporate sector would have had improved capitalisation, and a lesser need for state bail-out would have arisen.⁵⁰

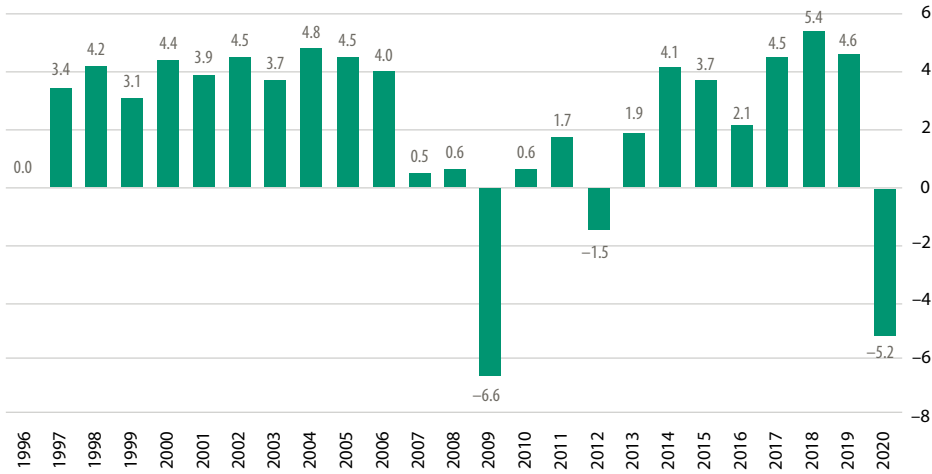


Figure 1 • Annual growth rate of Hungary’s GDP (%)
 Source: Hungarian Central Statistical Office.

Considering the international arena: between 2009 and 2020 Estonia caught up from 64.6 per cent of the EU average to almost 84 per cent, catching up to the level of developed European countries by nearly 20 percentage points. Only Lithuania was capable of an even faster rate of convergence. Hungary was able to close the gap by only 10 per cent. In the case of Estonia, its accumulated growth of 40 per cent is also outstanding, two-thirds of which was generated by services. The Estonians carried out a service-based re-industrialisation, which was built upon the IT sector and a comprehensive digital transition, involving especially the public sector. In addition, they achieved the EU’s third highest investment

⁴⁹ One can agree with László Csaba’s criticisms of the ruling political system on several points. He had referred to the weak efficiency of the Hungarian economic policy in an international context much earlier. (For example see László Csaba, ‘Unorthodoxy in Hungary: an Illiberal Success Story?’ *Post-Communist Economies* (2019); László Csaba, ‘Illiberális kapitalizmus’ [Illiberal Capitalism], in *Gazdasági, politikai és társadalmi kihívások a 21. században. Ünnepi kötet a 65 éves Halmi Péter tiszteletére* [Economic, Political and Social Challenges in the 21st Century. A Celebratory Volume in Honour of 65-Year-Old Péter Halmi], ed. by Tamás Halm, Hilda Hurta and Boglárka Koller (Budapest: Dialóg Campus, 2018), 95–103.

⁵⁰ All these suggest that the set of goals and the toolkit of fiscal and monetary public financial institutions should not only converge in the same direction but also at the same speed. In this case, monetary hyperactivity was not followed by the intensity of the fiscal policy, instead, its measures slowed down.

rate on a 10-year average with a level of over 25 per cent, while unemployment dropped from 16 per cent to 4 per cent. Lithuania was even more successful than Estonia in this respect, rising from 56.9 per cent to around 84 per cent, improving their arrears by 27 percentage points. Romania ranked number 3 of the 9 Eastern and Central European countries; they had risen from 52.2 per cent in 2009 to nearly 70 per cent by the end of 2019. Latvia came closer to the EU average by 16 percentage points, Poland did so by 13 percentage points. In this ranking, Hungary takes sixth place, then comes the Czech Republic, both with a catch-up performance of less than 10 per cent. Measured on its own historical basis, the Hungarian growth path between 2010–2019 was successful, but it is at the bottom of the middle pack in an international comparison,⁵¹ which may largely be due to the lack of development of economies of scale in the small enterprise sector⁵² and an untimely halt in tax competitiveness.

⁵¹ Slovenia and Slovakia have an even less favourable catching-up record than Hungary.

⁵² Hungarian micro and small enterprises are not able to export enough, the minimum wage is also a problem in many cases and they cannot employ a highly qualified workforce, which would be the basis for the renewal of their production and technical base and export capacity. The Hungarian SME sector employs 75 per cent of the workforce, but accounts for only 40 per cent of GDP, while it accounts for just 20 per cent of investment in the national economy. This series of numbers in itself suggests an inefficient structure.

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Boglárka Koller

BOOK REVIEW: *THE EUROPEAN POLIS* BY GEORGE SCHÖPFLIN¹

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George Schöpflin's latest monograph provides a unique understanding of the politics of contemporary Europe in two 'interconnected essays'. The first part focuses on a comprehensive interpretation of the EU's political community, the European polis. The author argues that political innovation has slowed considerably in the last decade, particularly after the Lisbon Treaty entered into force and the EU was gradually transformed into a punitive polis. The second part of the book focuses on the relationship between Central Europe and the European Union. Central Europe is European, but differently European. The shortcomings of the Eastern enlargement, Central Europe's misadventure in the European Union and the unseen and unintended consequences of the 2004–2007–2011 enlargement waves all contributed to the development of a troubled relationship between the EU and its new members. The volume combines both theoretical and practical aspects, making it a relevant contribution to European Studies literature.

KEYWORDS:

European Union, Central Europe, political community, punitive polis, rule of law

¹ George Schöpflin, *The European Polis* (Budapest: Ludovika University Press, 2021).

This monograph provides specific, original perspectives for understanding the politics of contemporary Europe in two related but separate parts, or as the author puts it, ‘interconnected essays’. The first part makes a comprehensive interpretation of the EU’s political community, while the second examines the relationship between Central Europe and the European Union. Although the author outlines the diverse disciplinary foundations of the volume right at the beginning of the book, adding that these all are viewed through the lens of a former politician,² the genre of the book frequently shifts from paragraphs and subchapters written by an academic scholar with a background in political theory, nationhood, identity theory and theories of power,³ to others that contain more practical insights and normative judgements of a politician, but in less theoretical depth. This does not detract from its readability, and even makes reading of the volume more enjoyable, as we can better understand the author himself and his own, mostly Christian democrat opinion on European politics. As he indicates at the beginning, guided by the motto of the London School of Economics where he spent most of his academic career: ‘*rerum cognoscere causas*’, he seeks to learn the causes of the things, and is not afraid of drawing conclusions.⁴ This self-assuredness is clear from this volume.

In the first part, the author uses the Greek term *polis* to describe the European political community, encompassing all the components of identity, common narratives, myths and habits of the community but also including other elements of the ‘ecosystem’ such as the EU institutions, member states, elites, lobbyists and civil society activists in the broadest sense.⁵ Therefore, although this work also raises the important question of what the EU really is,⁶ noting that it is not a monarchy, not a republic, neither a federation nor a confederation, not a commonwealth, not a protectorate and obviously not a state, it provides a different answer to this question than some of the leading contemporary political science/European studies literature⁷ on the subject, which mainly focus on analysing the operation of the *political system* through executive, legislative and judicial politics or on interpreting *European governance*.⁸ While Schöpflin acknowledges the ‘*sui generis*

² He served as a member of the European Parliament for Fidesz and of the Group of the European People’s Party 2004–2019.

³ He has numerous renowned publications in these areas: George Schöpflin, *Politics in Eastern Europe, 1945–1992* (Oxford: Blackwell, 1993); Stefano Bianchini and George Schöpflin, *State Building in the Balkans. Dilemmas on the Eve of the 21st Century* (Ravenna: Longo, 1998); George Schöpflin, *Nations, Identity, Power* (New York: New York University Press, 2000); George Schöpflin, *Politics, Illusions, Fallacies* (Tallin: Tallin University Press, 2012); George Schöpflin and Geoffrey Hosking (eds), *Myths and Nationhood* (New York: Routledge, 1997).

⁴ Schöpflin, *The European Polis*, 11.

⁵ *Ibid.* 15.

⁶ *Ibid.* 34.

⁷ Simon Hix and Bjørn Høyland, *The Political System of the European Union*, 3rd edition (London: Bloomsbury Publishing, 2011); Neill Nugent, *The Government and Politics of the European Union*, 7th edition (Basingstoke: Palgrave Macmillan, 2010).

⁸ Hooghe, Liesbet, *The European Commission and the Integration of Europe. Images of Governance* (Cambridge: Cambridge University Press, 2001); Tanja A Börzel and Thomas Risse, ‘When Europe Hits Home: Europeanization and Domestic Change’, *European Integration online Papers* 4, no 15 (2000).

nature' of the political community, for him it is an incomplete polis that is structured by asymmetries of power, with sovereignties voluntarily transferred to it by the member states with a weak to non-existent demos, resembling an empire that is mostly anti-national in character and pursuing a mission which is not explicitly but implicitly almost civilisational in nature ('ever closer union'). The first part provides a valuable analysis of the interactive relationship between law and politics, touching upon the concept of juristocracy.⁹ The first part also makes a brief summary and provides unique interpretations of the history of European integration, where the technocratic nature of integration, especially at the time of its launch after 1945 is highlighted, as well as the changes it underwent later in the process. In so doing, there is no reference to the shift from a 'permissive consensus'¹⁰ to the recent politicisation in the European political system or focus on the signs of 'constraining dissensus'¹¹ that are widely referred topics in European studies literature.¹² It would have been interesting to read his views on the possible positive side-effects of the current politicisation on the responsiveness to the public of the EU. The author argues that political innovation has slowed considerably in the last decade, particularly after the Lisbon Treaty entered into force, and while the European Union formerly aimed at conflict resolution and was dedicated to executing its soft power in a positive way, it 'has become conservative in the bad sense, of having become set in its ways, it has become slow to recognise contemporary realities, it has established definite truths for itself (like being post-national) and will not change'.¹³ The European polis was gradually transformed into a punitive polis mainly due to the demands of left-wing political forces.¹⁴ Further reflecting on the punitive nature of the European polis, the author argues that the rule of law, as one of the European values listed in the Treaty (Article 2), was selected arbitrarily and 'weaponised' against some member states like Poland and Hungary.¹⁵

⁹ Béla Pokol, *Juristocracy: Trends and Versions* (Budapest: Századvég Kiadó, 2021).

¹⁰ *Permissive consensus* was the initial technocratic approach of launching European integration, which means that the European public passively approved the construction of integration, or at least did not actively reject it. Until the 1990s this was the defining logic of European integration. See Liesbet Hooghe and Gary Marks, 'A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus', *British Journal of Political Science* 39, no 1 (2009), 1–23.

¹¹ *Constraining dissensus* is a recent concept used to describe the more politicised European integration where political-type debates occur more often. Although in terms of the development of the democratic nature of the EU, the public is essential but at the same time can make decision-making more difficult. Hooghe and Marks, 'A Postfunctionalist Theory'; Krisztina Arató and Boglárka Koller (eds), *Az Európai Unió politikai rendszere* (Budapest: Dialóg Campus, 2019).

¹² See for example Pieter de Wilde, Anna Leupold and Henning Schmidtke (eds), *The Differentiated Politicisation of European Governance* (London – New York: Routledge, 2018).

¹³ Schöpflin, *The European Polis*, 23.

¹⁴ *Ibid.* 55.

¹⁵ *Ibid.* 70–87. It is worth noting here that the possibility of triggering the Article 7 procedure first came to light in relation to Austria in 1999 because of the ÖVP-FPÖ coalition and not due to the actions of (East) Central European members.

At this point, the author narrows his focus and the analysis down to a single case, the recent turning point in Hungary's EU politics: the *Sargentini Report*¹⁶ which was passed by the European Parliament in 2018. The author criticises its voting mechanism, claiming that abstentions were not counted as votes cast and questions the legal basis of the rule of law mechanism as well as the content of the report. In the spirit of objectivity, the book includes long appendices with extracts from the related legal documents:¹⁷ the Sargentini Report and the Hungarian Government's official response to the Article 7 procedure before the Council.¹⁸ Although the author's intention is understandable and legitimate, these appendices do not fit well with the genre of the essay and slightly disrupt the structure of the book. It would perhaps have been better to display and comparatively analyse some of the most important content elements in the main text and refrain from attaching long legal documents.

The second, shorter part of the volume examines Central Europe's experience in the European Union. The main argument of the author is that Central Europe is European, but 'differently European'. The shortcomings of the eastern enlargement, Central Europe's misadventure in the European Union and the unseen and unintended consequences of the 2004–2007–2011 waves of enlargement all contributed to the development of troubled relationship between the new members. Nevertheless, there are also historical reasons and certain identifiable trapfalls¹⁹ that contributed to the instability of Central Europe. Schöpflin assembles several valuable analytical propositions that can help to understand the uniqueness of the region, starting from its cultural traumas and ideological thinking, continuing with the hybridity of the region, before moving on to describe the emergence of a binary opposition in the post-enlargement period in the EU. As the author argues: 'The failure to offer Central Europe the affirmation of group worth was all the harder for Central Europeans to swallow, given their aspirations for a 'return to Europe.'²⁰ An interpretation of the *longue durée* of Central European history – which is an abbreviated extract of Schöpflin's earlier work²¹ – can also be found in this part. The author argues that the region has a unique set of historical experiences that create specific thought styles and thought words.²² He claims: 'Where Central Europe differs from France, say, is that it never underwent the experience of a strong, centralised political power that could condense cultural meanings sufficiently for it to become national.'²³ Later in the volume,

¹⁶ Report on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded [2017/2131(INL)]. Committee on Civil Liberties, Justice and Home Affairs. Rapporteur: Judith Sargentini. European Parliament. A8-0250/2018.

¹⁷ Schöpflin, *The European Polis*, 93–137.

¹⁸ Information Note to the General Affairs Council of the European Union by the Hungarian Government on the Resolution on Hungary adopted by the European Parliament on 12th of September 2018.

¹⁹ Elemér Hankiss, *Társadalmi csapdák. Diagnózisok* (Budapest: Magvető, 1985).

²⁰ Schöpflin, *The European Polis*, 148.

²¹ George Schöpflin, *The Dilemmas of Identity* (Tallinn: Tallin University Press, 2010).

²² Schöpflin, *The European Polis*, 156.

²³ *Ibid.* 153.

the mutual misunderstandings and misperceptions of the West and Central Europe are assessed, taking into account the role of the post-communist new elites, the questionable universality of liberalism, the absence of colonial guilt in Central Europe, the middle-income trap of the region and other potential pitfalls.

Both essays end with honest and personal, or as he claims ‘incomplete’ thoughts, where the author seeks to provide guidance for understanding contemporary processes rather than to articulate absolute truths. His analysis ends with his mandate in the European Parliament in 2019, but he is aware that new developments such as the launch of the Rule of Law Review Cycle or new occurrences might affect the arguments he made.

Overall, Schöpflin’s latest book is a sophisticatedly written monograph with a strong Central European, and within that Hungarian focus combining theoretical and practical aspects, which will make it a valuable contribution to the literature of multidisciplinary European Studies.

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Saru Arifin

ARTIFICIAL INTELLIGENCE IN THE WORKPLACE – HOW SHOULD MORAL AND LEGAL ISSUES BE ADDRESSED?

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Artificial Intelligence (AI) has emerged as a new method for efficiently and cost-effectively assisting human activities as science and technology have progressed in the fourth industrial revolution. It has been argued that Artificial Intelligence works in two ways. It can both create and eliminate jobs. Based on present technological capabilities, AI has sparked speculative discussions concerning its implications for morality and law. This article argues that AI is a technological advancement that will help businesses grow in the fourth industrial revolution. The controller determines its effects hence it can be put to either good or bad use. As a result, for AI to benefit the prosperity and well-being of humanity to the greatest degree, morals must be embedded in its use, and the law must be enacted to ensure that human commitment to using AI wisely in business processes is consistent.

KEYWORDS:

Artificial Intelligence, economic development, job, law, morality

1. INTRODUCTION

Artificial Intelligence describes a type of machine that was created as a result of recent technological advancements. Humans' desire to make work easier when there is a complex and complicated flow of information necessitates the creation of an instrument to simplify it, thereby simplifying the work of humans in corporations, governments and the military. In today's social life, accuracy and speed in making decisions are important. However, the presence of AI frequently sparks debate in society, focusing on moral and legal issues such as what AI is and how it operates, and the moral¹ and legal boundaries that must be applied in its use². These emerging technologies have a significant impact on the workforce, as evidenced by their rapid growth. Without a large number of employees, many large tech companies have still managed to achieve broad economies of scale.³

The ability of electronic computers to store large amounts of data and process it at high speeds posed a challenge to scientists who wanted to create systems that could mimic human abilities. Human skills and capabilities have been increasingly mastered and carried out by electronic machines since the 1950s. These capabilities have become more affordable for many people because of the development and popularisation of the personal computer. Computers with ever-increasing memory capacities, speed, reliability and robustness are now bringing artificially intelligent tools to desktops all over the world.⁴

Artificial Intelligence already allows machines to perform a variety of human tasks, such as driving cars and reacting to their environment, as well as providing virtual assistance and playing video games.⁵ Robots are already widely used in a variety of industries, and they are expected to spread to the consumer market in the coming years. According to some experts, the benefits of AI can also be employed in legal work. Even in the realm of justice, Crotoof⁶ suggested that judges consider adopting AI in judicial work to benefit from technological advancements. Similarly, lawyers can use AI in their work.⁷ Cueller⁸ has more concrete suggestions in this regard, such as adjusting the common law, which is based on historical judgment, to take advantage of AI's ability to record past cases,

¹ Andrea Gilli, Massimo Pellegrino and Richard Kelly, 'Intelligent Machines and the Growing Importance of Ethics', in *The Brain and the Processor: Unpacking the Challenges of Human-Machine Interaction* (Rome: NATO Defense College, 2019), 44–54.

² Liis Vihul, 'International Legal Regulation of Autonomous Technologies', in *Modern Conflict and Artificial Intelligence*, ed. by Allison Leonard (Waterloo, ON Canada: Centre for International Governance Innovation, 2020).

³ Darrell M West, 'What Happens If Robots Take the Jobs? The Impact of Emerging Technologies on Employment and Public Policy', *Centre for Technology Innovation at Brookings*, 26 October 2015.

⁴ Gabriel Hallevy, *When Robots Kill. Artificial Intelligence under Criminal Law* (Boston: Northeastern University Press, 2013).

⁵ Shanhong Liu, 'Artificial Intelligence (AI) Worldwide – Statistics & Facts', *Statista*, 27 October 2021.

⁶ Rebecca Crotoof, 'Cyborg Justice and the Risk of Technological-Legal Lock-In', *Columbia Law Review Forum* 119 (2019), 233–251.

⁷ Blair Janis, 'How Technology Is Changing the Practice of Law', *GPSolo* 31, no 3 (2014), 10–13.

⁸ Mariano Florentino Cuéllar, 'A Common Law for the Age of Artificial Intelligence', *Columbia Law Review* 119, no 7 (2019), 1773–1792.

making it easier for the current judge to find bases for their argumentation from the past. Accordingly, William Henderson,⁹ a law Professor at Indiana University's Maurer School of Law, has argued that legal processing engineering has changed and will continue to change legal practice, necessitating the teaching of process engineering skills in law schools.

Additionally, AI is increasingly being employed to aid government and private sector employees. In fact, many decisions that were previously made by humans are increasingly being delegated to automated AI systems.¹⁰ In Europe, the use of Artificial Intelligence (AI) technologies by doctors was still uncommon in 2020. According to Statista,¹¹ only 5% of European clinicians who responded used AI. However, the use of AI appeared to be slightly higher in Germany and Denmark, where 7% of clinicians stated that they use the technology. On the other hand, only 2% of doctors surveyed said they use AI. In terms of AI implementation, Portugal lags behind the European average.

Despite its benefits to economic development, the arrival of AI has not only sparked debate in the workplace, but also in the legal field, where debates have erupted over whether AI can be classified as a legal subject, allowing it to be held accountable for crimes, for example. The following is a critical question posed by the European Parliament:¹²

Finally, robot autonomy raises the question of their nature in light of existing legal categories – whether they should be considered natural persons, animals, or objects – or whether a new category should be created, with its own unique features and implications for the attribution of rights and duties, including liability for damage.

When a self-contained system is given legal personhood, it creates a situation which can help answer questions about meaningful control. However, dealing with legal personhood¹³ in the context of autonomous systems is difficult and presents new challenges. Who determines which systems are capable of being treated as legal entities? How should this be done, and under what circumstances? What happens if the system is turned off and no longer functions?¹⁴ As a result, legal experts continue to track the progress of Artificial Intelligence, which is still being developed by experts in its related fields. Meanwhile, legal academics see the AI issue as requiring a code of ethics that should serve as a guide for

⁹ Kevin D Ashley, *Artificial Intelligence and Legal Analytics. New Tools for Law Practice in the Digital Age* (London – New York: Cambridge University Press, 2017).

¹⁰ Yifat Nahmias and Maayan Perel, 'The Oversight of Content Moderation by AI: Impact Assessments and Their Limitations', *Harvard Journal on Legislation* 58, no 1 (2021), 145–194.

¹¹ Liu, 'Artificial Intelligence'.

¹² Liisa Janssens, 'A Prospect of the Future. How Autonomous Systems May Qualify as Legal Persons', in *Being Profiled*, ed. by Emre Bayamlioglu, Irina Baraliuc, Lisa Janssens and Mireille Hildebrandt (Amsterdam: Amsterdam University Press, 2019), 116–121.

¹³ The philosophical discussion of what constitutes a person can be read in Visa A J Kurki and Tomasz Pietrzykowski, *Legal Personhood : Animals, Artificial Intelligence and the Unborn* (Cham: Springer).

¹⁴ Janssens, 'A Prospect of the Future', 117.

AI users.¹⁵ The various parties' ideas about an AI code of ethics are embodied in various models of a code of conduct, including those developed by the OECD, Canada, China and the United Nations for military AI.¹⁶

This article will discuss the use of artificial intelligence in the workplace from a moral and legal perspective. The structure of this article is as follows: the first section discusses the context for this article. The next section will address AI and its applications, and outline the essential principles of AI from experts in respective disciplines. Following that, there will be a discussion regarding the economic benefits of artificial intelligence. The next section will discuss the moral dilemma that occurs when AI is used, as well as how the law may help regulate AI use and keep it on track with the concept and context of AI development. The article concludes with a discussion on how to balance moral and legal concerns around the use of AI in corporate activity.

2. A BRIEF UNDERSTANDING OF AI

Understanding the definition of AI correctly will help in understanding AI in its context and avoid making erroneous conclusions about AI and its implications. There is a plethora of definitions and typologies of what constitutes Artificial Intelligence. In most applications, however, AI is defined as non-human intelligence that can replicate human mental skills such as pattern recognition, understanding natural language, adaptive learning from experience, strategising or reasoning about others.¹⁷ From this definition of intelligence, which involves internal (computation) processes, which serve external results (the ability to achieve goals) in a complex, dynamic environment (in the world), we can proceed to Artificial Intelligence definition.¹⁸

Artificial Intelligence (AI) is a branch of computer science that has captivated people's imaginations and has been the subject of science fiction films for decades. AI refers to the development of intelligent hardware or software that can mimic human behaviours such as learning and problem solving.¹⁹ Although it was coined as a technical term by a Stanford Professor, John McCarthy, in 1956,²⁰ it has since become a commonplace expression, frequently depicted in films by robots who act like humans in a variety of situations and stories – from robots overthrowing their human masters to societies where robots and

¹⁵ Stephan De Spiegeleire, Matthijs Maas and Tim Sweijts, *What Is Artificial Intelligence?* (The Hague Centre for Strategic Studies, 2017).

¹⁶ Maya Medeiros, 'Public and Private Dimensions of AI Technology and Security', in *Modern Conflict and Artificial Intelligence*, ed. by Allison Leonard (Waterloo, ON Canada: Centre for International Governance Innovation, 2020), 20–25.

¹⁷ Spiegeleire et al., *What Is Artificial Intelligence?*, 42.

¹⁸ Ibid.

¹⁹ Liu, 'Artificial Intelligence'.

²⁰ Stuart C Shapiro, 'Artificial Intelligence', in *Encyclopedia of Computer Science*, ed. by Edwin D Reilly, David Hemmendinger and Anthony Ralston (New York: Wiley, 1991), 1–9.

humans coexist. Artificial Intelligence is no longer a science fiction concept, it has become a part of people's daily lives.

Machine learning is a subset of Artificial Intelligence which is widely used in computer science. However, the concept of learning in this context is not the same as high-order thinking in humans, because AI regularly relies on human teaching for specific thinking.²¹ In other words, AI is more knowledgeable in the areas of thought that it receives from humans on a regular basis.²² To summarise, Agrawal²³ claims that machine learning does not imply an increase in artificial general intelligence capable of replacing humans in all aspects of cognition, but rather the development of one specific aspect of intelligence: prediction. In this scenario, AI is unable to accomplish anything other than what its controller desires. As a result, the AI's effort is constrained to a single objective that the controller has determined.

3. AI IMPACT ON FUTURE ECONOMIC DEVELOPMENT AND JOBS

Artificial Intelligence is a burgeoning field of computer science with practically limitless applications. By 2023, the global AI market is expected to be worth 97.9 billion dollars. Artificial Intelligence is attracting interest from businesses, particularly those in the software and IT services industries. Simultaneously, AI-focused startups have grown in popularity and seen great investor interest, nearly tripling in funding between 2015 and 2018. Machine learning is a type of Artificial Intelligence that allows computers to learn without the need for human intervention, and this is the focus of the majority of AI startup companies. At least \$31.7 billion has been invested in this area of Artificial Intelligence. Many startups have also invested in the field of natural language processing, which includes voice and speech recognition as well as text prediction.²⁴

The impact of AI on future economic development and job creation will be discussed in this section. Is AI having a positive impact on both the economy and jobs, or is it only having a positive impact on the economy and not on jobs, or will AI have a negative impact on jobs?

²¹ Maria Stefania Cataleta, 'The Fragility of Human Rights Facing AI', *Humane Artificial Intelligence, Working Paper*, no 2 (2020).

²² Spiegeleire et al., *What Is Artificial Intelligence?*, 42.

²³ Ajay Agrawal, Joshua S Gans and Avi Goldfarb, 'Artificial Intelligence: The Ambiguous Labor Market Impact of Automating Prediction', *Journal of Economic Perspectives* 33, no 2 (2019), 31–50.

²⁴ Liu, 'Artificial Intelligence'.

3.1. AI impact on economic activities

AI will be used as a tool to help firms operate in the future model of business life. According to Bughin,²⁵ around 70% of businesses will be using at least one of these types of AI technologies by 2030, while less than half of large businesses will be utilising the full range of AI technologies across their organisations. In the aggregate, and bearing in mind that netting can help economic entities mitigate competition effects and transition costs, AI could deliver an additional \$13 trillion in economic output by 2030, boosting global GDP by about 1.2% per year.

Businesspeople, particularly in Europe, are hoping that Artificial Intelligence (AI) will improve their bottom line. This is demonstrated by the statistic in Figure 1 regarding the future impact of Artificial Intelligence (AI) on the jobs of European advertising professionals. According to the survey, 62% of industry professionals expected AI to free up more time for strategic decision-making and reduce repetitive processes.²⁶ Moreover, the impact of AI on the labour market is expected to be greatest among workers with advanced skills in the field of information technology. Between 2016 and 2022, the number of high-skilled service workers in the United States is expected to rise from 690,000 to 1 million. Meanwhile, in Asia, India and the Philippines are two of the most important countries in terms of recruiting high-skilled labour, whereas in Europe, the United Kingdom is the leader in this area.²⁷

These figures demonstrate two crucial aspects of future business growth. The first is that, thanks to Artificial Intelligence, the business world will become more productive and dynamic.²⁸ As a result, in the future, a typical business will require a large number of workers with information technology skills. This situation necessitates a significant shift in the focus of tertiary institutions, which must now require graduates to possess technological skills in addition to knowledge. This finding sends a strong signal to universities, suggesting that they should use AI to rethink their programs. Academic competence alone will not prepare future graduates to compete in the work market. Both theoretical grasp and technological ability will be critical. To realise this vision, however, a debate about AI as a technological breakthrough must be initiated, which would ascertain the most appropriate location for

²⁵ Jacques Bughin et al., 'Modeling the Global Economic Impact of AI', *McKinsey Global Institute*, 04 September 2018.

²⁶ IAB Europe, 'Opinion of advertising professionals on how Artificial Intelligence (AI) will impact their jobs in Europe 2018', *Statista*, 11 July 2018.

²⁷ HfS Research, 'Change of IT/business processing outsourcing (BPO) high-skilled service worker numbers due to automation and AI, from 2016 to 2022, by select country (in millions)', *Statista*, 30 August 2017.

²⁸ Jason Furman and Robert Seamans, 'AI and the Economy', *Innovation Policy and the Economy* 19, no 1 (2019), 161–191.

AI as a cultural component²⁹ to be included in the curriculum³⁰ or to establish its lack of relevance.

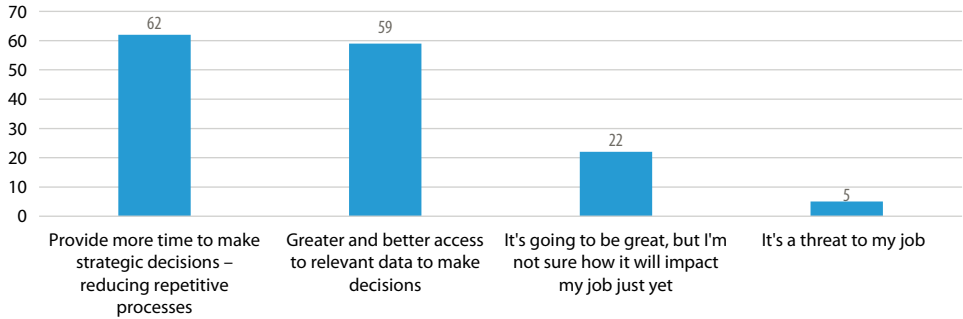


Figure 1 • *Opinions of advertising professionals on how AI will change their jobs*

Source: IAB Europe, ‘Opinion of advertising professionals’.

What fields of work will AI have a direct impact on? The results of a study³¹ conducted in China in 2017 and the conclusions drawn by its authors may shed some light on this. The net impact of Artificial Intelligence (AI) and related technologies on the percentage of jobs created or displaced in China between 2017 and 2037 was calculated, broken down by sector. AI and related technologies are expected to create around 29% of service sector jobs in China by 2037, according to the projections of the study. Meanwhile, Trajtenberg³² believes that the healthcare and education sectors will account for the majority of future job growth. The impact of AI on employment is not certain, but it is likely to be ephemeral. The most important factor will continue to be demand by companies. Although it is true that Artificial Intelligence (AI) will automate many jobs, its overall impact on employment is unclear. In recent decades, technological advancements have resulted in a significant reduction in manufacturing jobs. Prior to that, employment levels grew for over a century, even in industries undergoing rapid technological change. What went wrong? At first, demand was highly elastic, but then it became inelastic. Artificial Intelligence’s impact on jobs will be similarly influenced by the nature of the demand for labour.³³

²⁹ José Felix Angulo Rasco, ‘In Search of the Lost Curriculum’, *Counterpoints* 491 (2016), 137–155.

³⁰ Radhika Santhanam and Marc J Schniederjans, ‘Artificial Intelligence: Implications for Teaching Decision Science’, *Interfaces* 21, no 5 (1991), 63–69. See also Bob L Taylor et al., ‘Computer Use in Curriculum Development and Curriculum Management’, *Educational Technology* 29, no 4 (1989), 49–51.

³¹ PwC, ‘Estimated net impact on share of jobs displaced or created by Artificial Intelligence and related technologies in China between 2017 and 2037, by sector’, *Statista*, 18 September 2018.

³² Manuel Trajtenberg, ‘AI as the Next GPT: A Political–Economy Perspective’, *NBER Working Paper*, no 24245 (2018).

³³ James Bessen, ‘AI and Jobs: The Role of Demand’, *NBER Working Paper*, no 24235 (2018).

3.2. AI impact on jobs

The data illustrated in Figure 2 appears to refute the belief held by many that the presence of AI will have a negative impact on the world of work. Predicting the situation in 2022, this is an estimate of the number of jobs that will have been created and lost due to Artificial Intelligence (AI) by that time. By 2022, it is estimated that 2.3 million jobs will have been created and 1.8 million lost due to AI. This data supports the CEOs' belief in AI's positive impact on job creation. According to Martin Armstrong,³⁴ most of the latter (63%) believe that the AI revolution will have a greater impact on the world than the Internet revolution, with about one out of every five CEOs being extremely convinced of this. Business leaders in general, on the other hand, are split on how this technology will affect the labour market. 41% of them believe that AI will eliminate more jobs than it creates, while only 49% believe the opposite.

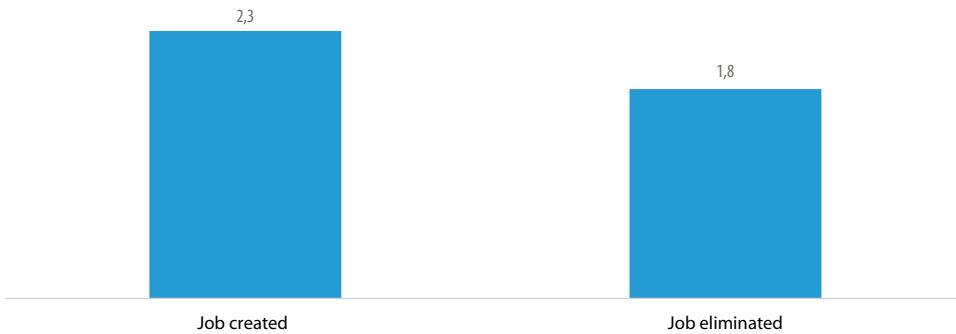


Figure 2 • The number of jobs created and eliminated due to Artificial Intelligence (AI) worldwide in 2022 (in millions)

Source: Gartner, 'The number of jobs created'.

It is significant that most of the new jobs created will be technology-based. As a result, workers with qualifications that are compatible with the requirements of operating AI will be in high demand. Jobs that are replaced by Artificial Intelligence, on the other hand, will be lost. Accordingly, AI will have a negative impact on workers who do not have a background in information technology that is compatible with AI's requirements. Workers who lack technological knowledge and skills will also be excluded from the pool of candidates. This prediction is supported by the preceding data. According to a 2019 survey of Italian employees, the results of which are shown in Figure 3, the majority of workers believed that Artificial Intelligence would soon affect the way they performed their daily tasks. Employees in Italy were generally optimistic when asked about the potential impact of Artificial Intelligence (AI) or automation on their jobs. In fact, nearly seven out of ten

³⁴ Martin Armstrong, 'A.I. Revolution: What Do Business Leaders Think?', *Statista*, 23 January 2019.

respondents thought AI could help them be more efficient at work. Only 8.36% of those polled were concerned that Artificial Intelligence or automation would render their jobs obsolete.³⁵

Employees already know and understand that AI will become an important tool in the business processes in which they work, according to this data. Workers are aware of this, despite not knowing the technical details of how AI is used in the company where they work. They have, however, prepared for the arrival of AI. The company has completed a small part of the process by providing training tailored to the company’s AI operational needs.

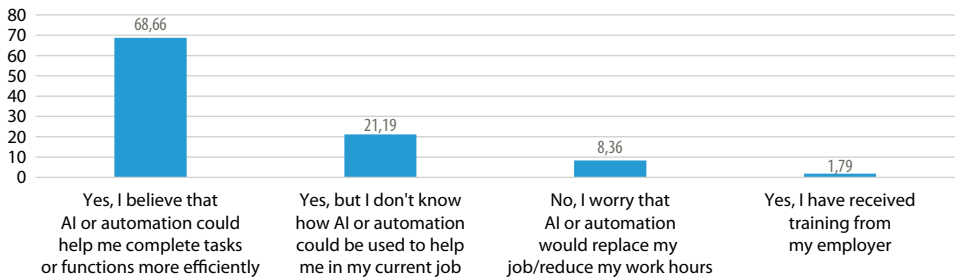


Figure 3 • Employee’s opinion on how AI will affect their jobs in Italy 2019
 Source: Docebo, ‘If Artificial Intelligence or automation’.

The introduction of AI is unavoidable, especially in today’s increasingly competitive business environment. Instead of recruiting new personnel or laying off employees who lack information technology skills, established companies prefer to prepare their employees for this transition by providing them with the skills that AI requires. This is also an area where corporate social responsibility appears to have played a beneficial role.

4. AI AND LEGAL ROLES: AN ETHICAL CONFLICT

Employees and employers sometimes make hasty conclusions about what Artificial Intelligence means, presuming that AI will have a negative effect on the future of the world of work.³⁶ There is a perception that AI replaces human labour with robots, which will lead to unemployment, particularly among recent university graduates in various countries. To avoid misunderstandings about what AI means and the scope of AI’s operation, it is necessary to address this in detail. However, whether AI will be abused to further

³⁵ Docebo, ‘If Artificial Intelligence or automation (i.e. automating functions of certain jobs or daily tasks) is introduced into your workplace, do you think it would have a positive impact on your job?’, *Statista*, 25 June 2019.

³⁶ Spiegleire et al., *What Is Artificial Intelligence?*, 35.

economic interests and increase the efficiency of a corporation or government institution does not need to be explained in terms of AI as such. The answer to this depends instead on the morality of the business owner or government institution concerned. If the context for which AI was created and intended is consistent, then such abuses can be avoided. On the other hand, if business leaders or the heads of state bodies only think in terms of economics and efficiency, AI will likewise become an instrument for achieving these objectives.

To provide legal certainty on moral dilemmas in the workplace the law must define clear boundaries as to the scope and purpose of AI, and establish which limits should not be violated by AI users. Although a Code of Ethics for the application of AI may be sufficient to counteract those who only consider the benefits that they might derive from misusing AI, positive laws also need to be adopted. For example, a company may wish to make a great profit at a low cost in a field which traditionally absorbs a lot of labour, by using robots, which can only be controlled by a few people who are experts on the robot and its work, thus avoiding the need to employ many people. Then the moral question is: what is the moral responsibility of the company for the unemployment this would lead to, and how should it support unemployed families, and contribute to the welfare mean of the community?

Reflecting on the above example of the misuse of AI, a code of ethics does not adequately safeguard the morality of AI use. Instead, a law is needed that provides its users with clear guidelines for fitting into the context for which AI is intended. AI is intended by its creators only to help people make complicated and complex problems simple and easy, so that they can support human productivity better, more efficiently and faster. According to the mission statement of the IEEE Global Initiative on the Ethics of Autonomous and Intelligent Systems,³⁷ the organisation's goal is to "ensure that every stakeholder involved in the design and development of autonomous and intelligent systems is educated, trained, and empowered to prioritize ethical considerations so that these technologies are advanced for the benefit of humanity".

As a result, in the business world particularly, several legal principles can be normalised into legal rules regarding AI. *First*, the intent and purpose of AI must be clearly stated in the rules for its use. The goal of AI is to assist, not to replace.³⁸ This statement must be made from the outset to provide clear directions to future AI users. As a result, there is no risk of AI being misused in business. *Second*, the rules for using AI must be emphasised in terms of the characteristics of AI-enabled jobs. The regulation of the limits of the tasks carried out by AI is necessary to ensure that AI does not replace all human labour and that society does not experience mass unemployment. This limitation can also apply to the proportion of human labour and AI that can be mathematically negotiated between the government as the regulator and businesspeople, or between the government with

³⁷ Medeiros, 'Public and Private Dimensions', 23.

³⁸ Edwina L Rissland, 'Artificial Intelligence and Law: Stepping Stones to a Model of Legal Reasoning', *The Yale Law Journal* 99, no 8 (1990), 1957–1981.

the people's representatives as representatives of society. Agrawal's³⁹ research reveals clear boundaries in the scope of the work of AI, especially regarding predictions that are dependent on decisions taken by workers or company owners who set AI the task of making predictions. Accordingly, he believes that AI will not necessarily replace workers' jobs, but that workers' skills will need to be adjusted to facilitating the predictions required by AI for AI to assist in bettering the work or production of a company. *Third*, in the legal rules governing the use of AI, the way that the rules will be enforced must be made clear. To ensure accountability for the use of AI in business, supervision is required. *Fourth*, strict penalties for the misuse of AI must be defined and imposed, considering the negative consequences of such malpractice.

Given each country's unique work culture, the legal rules that govern AI use must be established in the form of a convention resulting from a global consensus. The Organization for Economic Co-operation and Development (OECD) has developed AI principles to promote trustworthy AI that respects human rights and democratic values, for example. The "OECD AI Principles", formally known as the Council on Artificial Intelligence Recommendation, were adopted by OECD member countries in May 2019 and are the first such principles to be signed by governments.⁴⁰ This convention can be adapted by each country to fit its own national legal system, depending on the context and legal system in place in that country. To this end, several "foreign governments have proposed national AI policies or policies that purport to regulate some aspect of the adjacent technology stack", in addition to international principles. The National Cyber Security Strategy of Canada outlines a vision for safeguarding Canadians' digital privacy, security and economy, as well as a commitment to working with France on ethical AI. Another initiative, GB/T 35273-2020, or the "Information Security Technology—Personal Information Security Specification", is a Chinese national recommended standard for personal data collection.⁴¹ However, the EU stands out in this regard. They argue that because AI is currently viewed as nothing more than a tool in the hands of human agents, civil law, such as product liability rules, already apply to it.⁴²

As has been argued above, AI should be able to improve humanity's welfare and prosperity as a whole, rather than just the subjective economic interests of a few individuals or institutions. As Rubin⁴³ argues, if the machine is programmed to replace human power, we will be doomed to extinction as a species. As a result, as AI becomes more powerful, the number of jobs for which human workers are competitive may decrease, potentially increasing inequality and lowering the quality of our economy and lives. Alternatively, our society could recognise that there are sufficient resources, enough work to be done, and

³⁹ Agrawal et al., 'Artificial Intelligence', 32.

⁴⁰ Medeiros, 'Public and Private Dimensions', 22.

⁴¹ Ibid. 23.

⁴² Dennis J Baker and Paul H Robinson (eds), *Artificial Intelligence and the Law. Cybercrime and Criminal Liability* (London – New York: Routledge, 2021), LIX.

⁴³ Charles T Rubin, 'Artificial Intelligence and Human Nature', *The New Atlantis* 1 (2003), 88.

willing workers. We could adopt a strategy of allocating resources to create jobs that are not currently justified by increased shareholder profits but which will improve the quality of life in our society. In this vein, Smith⁴⁴ warns that increased income inequality and mass unemployment could cause social unrest if we are not careful.

5. CONCLUSION

Scientific advancement requires the adoption of AI as a cutting-edge invention in information technology. Thus far, AI has been successful in speeding up and simplifying the handling of the complex data and information required by a wide variety of tasks, notably in the commercial world. To avoid the myriad services provided by AI being misapplied in profit-driven corporate activities, however, a code of ethics and legality for the use of AI must be created explicitly and forcefully. Professional and comprehensive independent monitoring is essential to ensure that business persons comply with the law while implementing AI in their commercial activity. In today's increasingly competitive business environment, the possibilities for applying AI in the corporate sector are almost limitless. As a result, embedding an ethics code for the use of AI in company operations is insufficient; the law governing the use of AI, specifically regulations addressing the various sorts of labour that may or may not be automated should be clearly regulated. Similarly, punishments against businesspeople that break a law's boundaries on the use of AI must be set firmly. Along with incorporating international standards into the development of legal laws governing the use of AI, it is critical to solicit input from a variety of stakeholders, while also taking into account each country's specific corporate, cultural and legal characteristics. Thus, moral and legal dilemmas associated with the use of AI can be resolved through a legally binding agreement made by all parties interested in AI, including businesses, government officials and community leaders.

⁴⁴ Janna Anderson and Aaron Smith, 'AI, Robotics, and the Future of Jobs Key Findings,' *Technology Review* 16, no 4 (2014), 28–35.

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Anastasiia Yezhova

RELOCATION OF THE CREATIVE CLASS TO THE SMALL CITIES DUE TO COVID-19: DISCUSSION ON A NEW CITY MARKETING NICHE

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Relocation to small cities is becoming more and more widespread. Due to the Covid-19 pandemic, people are trying to escape from perceived danger and as an alternative, they are considering short-term or long-term relocation to smaller cities or towns.

Purpose: in this paper, the author gathers the experiences of people constituting a creative class, who relocated from capitals and metropolises to small cities during the Covid-19 pandemic and before, recording and defining certain motives for their move.

Methodology: both primary and secondary sources were used for content analysis. As a primary source, ten in-depth interviews were conducted, whereas secondary sources include blogs and online published interviews. This article investigates three questions about relocation: 1. Why do people move from bigger cities to small ones? 2. What does the creative class pay attention to before choosing a settlement for permanent or temporary relocation? 3. How can the administration of the small cities reinforce their attractiveness for potential residents and tourists from the creative class?

KEYWORDS:

city marketing, Covid-19, creative class, local government, migration, pandemic

1. INTRODUCTION

Relocation to small cities is becoming more and more widespread. Before the Covid-19 pandemic, life in big cities was expensive, but more importantly, it has now become potentially dangerous with overcrowded public transport, queues in the supermarkets, narrow streets, etc. Inhabitants of cities have begun seeking to escape from perceived danger and as an alternative, they are considering short-term or long-term relocation to smaller cities or towns, which have an adequate infrastructure, fresh air and lower prices. Working from home, (generally known as “home office”) became a catalyst for this trend as lots of office workers switched to remote working.

Meanwhile, several countries are introducing a new type of visa – a visa for remote work. This type of employment has different names depending on the state: freelance employment, self-employed, virtual working, global citizen visa, etc. The variety of titles does not change the concept – countries are striving to attract members of the affluent creative class to live and conduct economic activity in their territories because people mostly spend money where they live.

This article addresses three questions about relocation: 1. Why do people move from bigger cities to small ones? 2. What does the creative class pay attention to before choosing a settlement for permanent or temporary relocation? 3. How can the governments of small cities reinforce their attractiveness for potential residents and tourists from the creative class?

In this paper, the author gathers the experiences of people who relocated from cities with over one million residents to small cities (less than 500 thousand inhabitants) and explores the reasons and motives for their relocation. The research is based on in-depth interviews with migrants, both internal and external, and online published interviews and blogs. From the responses of the informants, it is possible to trace how exactly such people describe their motivation to move. It should be noted, then, that both primary and secondary sources were used for content analysis. In this research, primary sources means in-depth semi-structured interviews, whereas secondary sources include blogs, online published interviews and columns. In total, ten in-depth interviews were conducted by the researcher via Zoom, Skype or with the help of the Instagram and Facebook social networks. The interviewees were personal contacts of the researcher, whose age varied from 23 to 41 years old. As regards secondary sources, fourteen blogs and online magazine interviews were analysed. The occupation of the respondents include photographer, doctor, owners of coworking space, frontend developer, marketing consultant, editor, graphic designer, software development manager and an owner of an internet shop. The places of residence of the respondents were Kyiv, Lviv, Sumy, Mukachevo, Bila Tserkva, Warka, Moscow and Minsk.

Before conducting the personal interviews, the main categories of expected reasons for the changing city were identified by the researcher based on the review of the literature search presented below. These included cost of living, rental prices, entertainment, ecology, safety, public transport and pace of life. In the process of carrying out the interviews, other

topics such as climate, logistics (transport connection with other cities and countries), inner distances, coworking spaces, local intimacy and networking were added as they arose. The “Ecology” block was enriched with the issue of the availability of “farmer’s food” which was often mentioned by the respondents.

2. LITERATURE REVIEW

The United Nations classification of the size of the cities was used in this paper. According to this taxonomy, megacities number more than 10 million residents, large cities have 5 to 10 million inhabitants, medium-sized cities have 1 to 5 million citizens while cities of between 500,000 and 1 million inhabitants were not assigned a specific category in the World Migration Report (2015), and cities with fewer than 500,000 residents were called small. This research will focus on cities in the last category.

In 2017 the German company Zipjet shared the results of a study that ranked cities from those with the lowest to the highest stress levels.¹ To identify which cities’ residents are most or least at risk of being under stress, the researchers outlined several criteria, dividing them into four groups: “City”, “Environment”, “Finance” and “People”. The first group included the following criteria: population density, green areas, passenger traffic (public transport), road traffic (traffic jams, road quality), safety in the streets and number of hours of sunshine. The environmental category involves levels of air and noise pollution and the city’s illumination. The “Finance” group took into account the unemployment level, debt per capita, social security (amount of social payments, insurance), and the average cost of living per family per month. The last group “People” included criteria of mental health (number of suicides; the number of psychologists), physical health (percentage of GDP allocated to health care), gender equality and ethnic equality.

The criteria for relocation defined in the process of this research partially correspond to the ones developed by Zipjet. Some criteria, such as gender and ethnic equality were mentioned only once, however, given that all the respondents and authors of the blogs are representatives of the Caucasian race and Slavic ethnicity (Ukrainians, Russians and Belarusians) and they moved to the cities where this was the prevailing ethnicity. This could be considered to be a limitation of this study.

While developing the interview blocks, the author also referred to some new trends in city development, which were described on the main city portal of the Finnish capital “My Helsinki”.² These were influenced by recent world events, and, logically, they mostly correspond to the concept of a slow life (slow living and the green economy) as a counterbalance to stressful and hurried big city life. These included:

¹ Julia Toman, ‘How does the stress level change in cities?’

² MyHelsinki, ‘Work life worth living’, *MyHelsinki*, 16 December 16.

1. Safety (hygiene, security)
2. Work and leisure balance (the blurring of the boundaries between work and leisure)
3. Space and silence
4. Responsible tourism (includes the impact of our actions on the local population)
5. Digitalisation

A considerable academic literature has developed on the topics of migration and the reasons for it. Many years of empirical research have been devoted to these areas using large amounts of statistical information, surveys, as well as qualitative research, including in-depth interviews (Michaela Benson, William A. V. Clark, William Lisowski, Regan Maas, Karen O'Reilly, Alicja Bobek, Yong Chen, Stuart S Rosenthal, etc.). However, Vinogradskaya has rightly pointed out that nowadays the majority of research on relocation is devoted to the topic of migration from villages and towns to big cities.³ Meanwhile, studies about migration in the opposite direction, the narrow category of migration from big cities to smaller ones, are much less common. Furthermore, research into this type of migration usually concerns the retirement-aged population, which tends to move to or spend long period of time in rural areas and smaller cities while paying almost no attention to the employment opportunities there.⁴ It is also worth mentioning the processes of suburbanisation that are widely covered in the Central European literature. This tendency has been typical for post-socialist countries since the 1960s, triggered by industrial decentralisation and housing problems.⁵ The reasons for suburbanisation in the 20th century included the opportunity to farm the household land, but then it was vital not in the sense of a healthy lifestyle like nowadays, but for survival in times of food scarcity.

3. CREATIVE CLASS THEORY

It is often mistakenly assumed that cities predominately increase their revenue due to outsider investors or tourists, but in reality, the core contributing participants are their residents. Therefore, the city budget is maintained by the taxes and investments (e.g. into

³ O Y Vinogradskaya, 'Why and from what townspeople move to the village: phenomenology and practice', *Russian Peasant Studies* 4, no 3 (2019), 140–155.

⁴ John Cromartie and Peter Nelson, 'Baby Boom Migration and Its Impact on Rural America', *United States Department of Agriculture, Economic Research Report* no 79 (2009); Jiaying Lyu, Huan Huang and Zhenxing Mao, 'Middle-aged and older adults' preferences for long-stay tourism in rural China', *Journal of Destination Marketing & Management* 19 (2021); Allan M Williams et al., 'Tourism and international retirement migration: New forms of an old relationship in southern Europe', *Tourism Geographies* 2, no 1 (2000), 28–49.

⁵ Jaroslav Biolek et al., 'Interrelated aspects of residential suburbanization and collective quality of life: A case study in Czech suburbs', *Acta Geographica Slovenica* 57, no 1 (2017); Judit Timár, 'The main features of suburbanization in the Great Hungarian Plain', *Landscape and Urban Planning* 22, no 2–4 (1992), 177–187; Petr Hlaváček, Miroslav Kopáček and Lucie Horáčková, 'Impact of Suburbanisation on Sustainable Development of Settlements in Suburban Spaces: Smart and New Solutions', *Sustainability* 11, no 24 (2019), 71–82.

real estate) from the local population. Keeping in mind the prevailing population trends,⁶ the municipal budget of small cities will shrink concurrently with the population decrease. Therefore, cities should conduct strategic planning with a major focus on retaining the local population and attracting new inhabitants. This statement can be reinforced by the Creative Class theory developed by Richard Florida.

Not long ago urban research focused on institutions as the key object of their analysis. More recently, however, skills have become the core element in societal urban research.⁷ The nature of the economy is changing – the industrial revolution is being replaced by the skills revolution, where the success and development of places are based upon knowledge, innovation and skills.

In studies where the variable is considered to be the creative class, the correlation between it and economic development is positive in the countries of the Western world.⁸ Although similar research has not been conducted in the countries of the post-Soviet region, the influence of the creative class on technological development is significant and beyond suspicion.

The notion of “class” was introduced by Karl Marx and refers to a set of people who have common interests and who tend to think, feel and behave similarly (the term “lifestyle” can be used in this regard). These similarities are fundamentally determined by the types of work that provide them with a means of sustenance. Marx’s theory also explains the reasons for social disparity by the existence of class stratification. Despite the fact that some contemporary sociologists have announced the death of Marx’s theory and consider its usage in research as “bad manners” (*mauvais ton*), the founder of the creative class theory Richard Florida refers to exactly such a notion of class.⁹

Originally from the United States of America, currently living in Canada, the economist and sociologist Richard Florida, Professor of the Rotman School of Management at the University of Toronto, wrote the book *The Rise of the Creative Class*, which was published in 2002. In this monograph, Florida puts forward a hypothesis about the formation of a new social stratum in modern megacities, which not only positively

⁶ June J H Lee et al., *World Migration Report 2015: Migrants and Cities: New Partnerships to Manage Mobility* (Geneva: International Organization for Migration, 2015).

⁷ Charlotta Mellander and Richard Florida, ‘The Rise of Skills: Human Capital, the Creative Class, and Regional Development’, in *Handbook of Regional Science*, ed. by Manfred M Fischer and Peter Nijkamp (Berlin–Heidelberg: Springer, 2019).

⁸ Ted D Naylor and Richard Florida, ‘The Rise of the Creative Class: And How It’s Transforming Work, Leisure, Community and Everyday Life’, *Canadian Public Policy/Analyse de Politiques* 29, no 3 (2003), 378; Gerard Marlet and Clemens van Woerkens, ‘The Dutch Creative Class and How it Fosters Urban Employment Growth’, *Urban Studies* 44, no 13 (2007), 2605–2626; Charlotta Mellander and Richard Florida, ‘The Creative Class or Human Capital? Explaining Regional Development in Sweden’, *Working Paper Series in Economics and Institutions of Innovation*, 2007; Mellander and Florida, ‘The Rise of Skills: Human Capital, the Creative Class, and Regional Development’; Joachim Möller and Annie Tubadji, ‘The Creative Class, Bohemians and Local Labor Market Performance’, *Jahrbücher für Nationalökonomie und Statistik* 229, no 2–3 (2009).

⁹ Елена Александрова, ‘В гостях у Флориды: размышления над книгой «Креативный класс: люди, которые меняют будущее»’, *Экономическая социология* 9, no 1 (2008), 132–138.

affects the growth of the urban economy and the quality of life, but also represents a prototype of the personality of the future, as well as the main factor of future social progress.

According to Florida, the core of the creative class is primarily composed of people employed in science, technology, architecture, design, education, art, music and entertainment, i.e. people whose work produces new ideas, technology and products. In addition to these professions, the creative class also includes specialists who have sophisticated, independent and non-standard ways of thinking although a high level of education is not an integral part of the creative professional. For example, a musician who only has a school certificate but who is involved in the music industry also constitutes a part of the creative class. Membership in the class is conferred not by qualification but by pursuing a creative profession.

Richard Florida finds the solution to the riddle of the chicken and the egg (economic development and creative people) on the side of people. He assumes that the presence of creative people in a settlement makes it flourish and develop.¹⁰

In other words, companies and productions will be located in places where there is a high concentration of talent. The theory of endogenous growth supports this argument, stating that the presence of large numbers of high-skilled and creative people leads to innovation and knowledge spillovers (exchange of useful information, sometimes involuntary leakage).¹¹ These positive effects, in turn, are caused by inhabitants' close interaction, the high probability of their paths crossing, and low travel costs.¹² However, Paul Krugman harshly criticises this hypothesis due to the lack of firm statistical evidence to support it.¹³

At the same time, cities have to compete to attract the creative class and a high-skilled labour force by providing a satisfying and suitable living environment. By this, Florida means not only high-quality infrastructure (which is of course extremely important) but also the tolerance level of the members of the community. By tolerance, we mean the acceptance of different ideas, backgrounds, behavioural patterns or appearances by society. It means that society does not judge or exclude a person on the basis of their beliefs, nationality or sexual orientation, etc. Richard Florida investigates the effect of tolerance towards gay people in his research, which turns out to have a positive correlation with the level of technological development and economic prosperity of the cities – the more tolerant a society is, the more prosperous an economy it has.

Both human capital and creative class positively influence the economic development of a settlement. Consequently, cities should focus on attracting talented and skilled people,

¹⁰ Mellander and Florida, 'The Rise of Skills: Human Capital, the Creative Class, and Regional Development'.

¹¹ Michel Dumont and Wim Meeusen, 'Knowledge spillovers through R&D cooperation', 2000.

¹² Edward L Glaeser, 'Cities and Ethics: An Essay for Jane Jacobs', *Journal of Urban Affairs* 22, no 4 (2000), 473–493.

¹³ David B Audretsch, Erik E. Lehmann and Joshua Hinger, 'From Knowledge to Innovation: The Role of Knowledge Spillover Entrepreneurship', in *Routledge Handbook of the Economics of Knowledge*, ed. by Cristiano Antonelli and Albert Link (London: Routledge, 2014).

who can be absorbed into the ranks of residents. Cities also have to meet some other criteria to be appealing in the eyes of potential citizens. Tolerance was mentioned, which is one of the main criteria for moving. This is especially true for skilled migrants from other countries. Knowing that the local community is xenophobic not only dissuades individuals from moving to a city but also becomes a barrier for international companies wishing to open offices or factories. Secondly, cities should be rich in the aspect of culture. The creative class is very choosy when it comes to their physical environment, the variety of leisure activities available and mobility. A high number of coffee shops, bars, restaurants, green urban spaces and comfortable public transport are important components of the “ideal” city for the creative class.

4. REASONS FOR RELOCATION

Raphael Bob-Waksberg wrote an engrossing story *Move Across the Country*, where he describes the process of escape from “Sadness” to another city: “Move across the country and watch the short yellow lines shoot past you down the pavement. ... Settle somewhere fertile, plant a new you and watch you blossom.”¹⁴ These lines perfectly describe the anxious state of mind of a person who has moved to a new destination in a search for a better life or to flee from undesirable circumstances.

The Covid-19 pandemic has raised many new questions concerning choice of a place to live. Is it safe enough in a sense of security and hygiene? Do we have the space to find a balance between work and leisure? Are there places to find silence at moments when we need it? Quite apart from their admittedly high housing prices and rising inequality, cities with a million population can offer thousands of square meters of office spaces, a plethora of entertainment opportunities and non-stop public transport. It may be asked, however, whether this still matters as much as before Covid-19? People have arrived at the point where the “15-minutes city concept” of the decentralised city looks much more appealing than a two-hour commute. At the same time, closeness to nature is increasingly appearing in the list of requirements while choosing a place of residence.

This all brings us to the rise of the small cities that can combine both peace and calm with mild hustle and bustle. Metropolises usually attract people because of the career opportunities they offer, bearing in mind that large numbers of international companies locate their headquarters there. The recent switch to remote work, however, allows employees to visit office spaces only a couple of times a week or not to visit them at all. This company strategy is called “Remote-first”, which “makes working remotely the primary option for most or all employees”.¹⁵ Not to mention freelance workers, who help companies to respond quickly to the changes in the volatile business environment, by working

¹⁴ Raphael Bob-Waksberg, *Someone Who Will Love You in All Your Damaged Glory* (New York: Alfred A Knopf, 2019).

¹⁵ VMware, ‘What is Remote-first?’, s. a.

under commercial contracts instead of conventional fixed hours contracts from any part of the world with flexible working hours. This presents a unique opportunity for small cities to attract talent, and therefore they should develop their communication capacities and reconsider the focus of their promotion activities (or create everything from scratch in case they are absent).

This does not mean that the creative class, which mostly dwells in big cities, will immediately move to the provinces. They may also consider the option of “slow tourism” meaning that remote workers and freelancers can spend more than a week in one place, bringing economic benefits to the settlement. Consequently, cities and towns need to make efforts to end up on the itineraries of creative professionals. Moreover, there is always a chance that a person might end up settling in the place without the prior intention of doing so.

What does the creative class consider before choosing the destination for short-term or long-term relocation? Eleven main reasons emerged from the interviews conducted for the research described here. In each respondent’s case, the combination of pull-in motives is unique and prioritised differently. Below each motive, several quotations from the interviews are presented, which can reveal more precisely the vision of what lies behind their choice.

1. Climate. This was a significant factor especially in Northern countries, where winter lasts for more than three months. People are looking for more sunny days due to suffering from seasonal affective disorder or even to save on heating expenditure. Nevertheless, Global Warming has created an opposite trend where in summer people flee from the heat to the North.

Having moved to Kaliningrad, we found a better climate, a better ecological situation, became calmer and spend more time at the sea and in the fresh air (A, Astrakhan-Kaliningrad, editor).¹⁶

2. Lower prices. The internet website Numbeo allows users to compare the cost of living in different countries and cities (Figure 1). Receiving the same wage in different cities may be set against different quality of living conditions. While in one city 250 euros is only enough to rent a room, in another this may be sufficient for a whole three-room apartment.

 Rent Per Month	Kiev (Kyiv)	Sumy	
Apartment (1 bedroom) in City Centre	16,026.80 ₴	4,562.50 ₴	-71.53 %
Apartment (1 bedroom) Outside of Centre	9,335.01 ₴	3,312.50 ₴	-64.52 %
Apartment (3 bedroom) in City Centre	29,421.37 ₴	6,437.50 ₴	-78.12 %
Apartment (3 bedroom) Outside of Centre	16,315.14 ₴	5,142.86 ₴	-68.48 %

Figure 1 • Comparison of the rental process in the Ukrainian cities Kyiv and Sumy, 2021
Source: numbeo.com

¹⁶ Александр Воробьев, ‘Все, что вы хотели знать о релокации по России: направления, стоимость и личные истории’, *Perito Burrrito*, 20 January 2021.

In Warsaw, if you want to find a good studio apartment, you need to spend a minimum of 2000 zloty (430 euros). In Sumy, you can find a one-room flat for 3000 hryvnias (90 euros). (N, Warsaw–Sumy, 23 years old, software development manager).

3. *Quality of environment* (farm produce, air, light and noise pollution). In big cities, it is difficult to organise the procurement of fresh food directly from the farmer. Usually, bigger players organise logistics and distribution. In towns weekend vending can still be found, when farmers pay for a stall in the marketplace only for Saturday and Sunday.

4. *Closeness to nature, landscape, seaside*. Some decide to move precisely because of the lack of greenery in the city, and, in turn, the remoteness of or lack of accessibility to nature (which is over a one-hour trip away). Also, some respondents were haunted by the desire to live by the sea or in the mountains, which is also closely related to the quality of the air and the environment.

At any moment I can reach the forest in 10 minutes (D, 31 years old, doctor).

5. *Logistics*. There was no consensus on this issue among the respondents since for many it is important for a city to have acceptable transport connections with the outside world (including an airport), and to be relatively close to the capital. For others, even five hours by bus to the destination is not an obstacle.

6. *Leisure and sports facilities*. Interestingly, most of the interviewees did not regard the lack of a wide range of entertainment a reason not to move to a city. The main idea of many was that they are quite capable of organising their own leisure time if necessary. They also claimed that to maintain good physical shape, a pair of sneakers is enough. However, the presence of theatres, museums, sports facilities or shopping centres was naturally seen as a plus for the settlement.

This week I have everything planned: on Saturday I go to a master class in calligraphy, on Sunday to a business game. [...] People initiate and organize their own leisure (R, Kyiv–Sumy, 26 years old, graphic designer).

You can establish something new if you cannot find it (type of entertainment) in your city. You just need to make up your mind (N, Warsaw–Sumy, 23 years old, software development manager).

7. *Public transport quality*. Small towns do not need many units of public transport or can even exist without it since it is possible to reach any part of the city within half an hour on foot or by bicycle. In small cities, however, public transport is an important component. Also, the respondents repeatedly raised the possibilities of car and bicycle sharing.

We do not need public transport in Warka, everything can be reached on foot or by bike. Moreover, great cycling infrastructure allows you to do that with pleasure (K, Warsaw–Warka, 41 years old, photographer).

8. *Coworking space.* Coffee shops can also serve as a place of work in the absence of coworking spaces, and for some of the interviewees it turned out to be not at all necessary since they prefer to work from home and leave a visit to a cafe for friendly conversations or other events.

9. *The pace of life.* Absolutely all the respondents agreed on this point, believing that the hectic pace of life in large cities increases stress levels, as well as worsening the quality of interpersonal communication and the ability to maintain relationships. Intimacy is what makes small towns attractive to many.

In a big city, there are a lot of people, and when you move in the stream you do not feel free (D, 31 years old, doctor).

10. *Distances and traffic jams.* Short distances save time, allowing for much more free time, which creates a better balance between work and rest. Respondents appreciated not having to spend money on a taxi at night. If the city is safe enough, then they can get anywhere on foot.

I feel sorry for the time it took me to get somewhere (in Kyiv). And it doesn't matter if you have personal transport or not. All the same, you will be stuck in traffic jams (D, 31 years old, doctor).

In Sumy, I can control my pace of life. In Kyiv, because of the distance and transport, it was impossible (R, Kyiv–Sumy, 26 years old, graphic designer).

11. *Networking and local intimacy.* This point overlaps with the one about the pace of life. People strive for high quality interpersonal communication and long-term relationships, which provide a sense of integration and involvement. In a small town, it is much easier to achieve this because fewer events and fewer participants make them more likely to meet again. In turn, everyone knows each other, albeit indirectly, which ensures the absence of discomfort and creates a kind of “homely atmosphere”. Moreover, the “Six Degrees of Separation” theory is reduced to two or three.

Now I strive for quality communication, not quantitative (R, Kyiv–Sumy, 26 years old, graphic designer).

In small cities, there is sometimes even more quality entertainment than in large ones: intimate celebrations or events. People get closer there and communicate. [...] I have a feeling that the purpose of events in large cities is simply to make money (D, 31 years old, doctor).

5. HOW CAN THE ATTRACTIVENESS OF A SMALL CITY FOR RELOCATION BE REINFORCED?

After analysing the reasons for relocation given by the respondents and what they pay attention to when choosing a settlement, the author outlined the following points when developing a strategy to attract the creative class for relocation and slow tourism.

1. Urban planning in conformity with the international standards of safety.¹⁷ The shining example of the latest proposed practices in transportation and street design in response to the Covid-19 pandemic is a document entitled *Streets for Pandemic Response & Recovery* developed by the National Association of City Transportation Officials in the framework of its programme called *Global Designing Cities Initiative*. Specific designs for various places like markets, school areas or dining streets can be found there governed by principles of safety, public health and support for local business.

2. Google Maps add professional pictures of the city's landmarks to the place. Google Photos check can be found among tips on move and relocation. These common tips also include searching for local Facebook groups and Instagram locations.¹⁸

3. Creation and development of participatory budgeting. This allows citizens to have real power in the allocation of the municipal budget through their projects and voting procedures. Moreover, it allows the public administration to see the current demands of society through the thematic scope of the applied projects.

4. Support local farming by giving them space for trade in the city.

5. Development of infrastructure in the natural surroundings on the territory of the city (usually in the outskirts) to save the environment while allowing people to enjoy time outside. This may include wooden pathways, cycle lanes, specialised places for bonfires or barbecues, pavilions providing shelter from the rain or sun, etc.

6. Investing in the green economy (bicycles sharing system and cycling infrastructure, e-transport, development of the charging station network).

6. CONCLUSIONS

The local councils of small cities should consider short-term and long-term relocation trends as an opportunity for attracting new inhabitants and tourists to their settlement, especially if their budget previously depended on income from tourism. The main task of the local government is to create safe conditions for residents because of the new challenges that the pandemic has brought and to continuously carry out research into the needs of the population.

Respondents to the survey carried out for this study, who moved to small towns before the pandemic, gave as reasons for relocation calmness, a healthy environment, low cost of living, short distances, intimate communication and ease of maintenance. During the pandemic, the list of reasons expanded to include safety, a smaller population, and, consequently, the absence of crowds, a low need for using public transport, the ability to quickly move around the city by bicycle, and the absence of traffic jams. The catalyst for relocation during the pandemic for many was the transition to remote working. Wages

¹⁷ National Association of City Transportation Officials, 'Streets for Pandemic: Response & Recovery', *News Release*, 25 June 2020.

¹⁸ Hannah Wise, 'How to Move During the Coronavirus', *The New York Times*, 24 July 2020.

have remained at the same level but in a small town they can afford more for the same money.

As noted in the study by Richard Florida, the creative class is, for the most part, quite demanding of urban conditions and the opportunities in it. According to our study, some pay attention to the climatic conditions and the number of sunny days in the city, while for others urban landscapes, the sea or mountains are important. Undoubtedly, the creative class considers the ecology of the area, and during the interviews, farm products and the possibility of purchasing them directly from farmers were mentioned more than once. Closeness to nature is just as important for those who move; one of the problems of their life in a big city was that it took at least an hour to travel to the forest or countryside. One controversial issue turned out to be the topic of logistics, or, in other words, the transport connection of the city with big cities, countries or the capital. For some, this is paramount (some even demanding the availability of an airport), while for the rest it does not matter, because even the prospect of spending five hours on the road to their destination does not scare them. The quality of public transport was a fairly common criterion among the respondents, as well as the availability of bicycle or car rental/sharing services in the city. It was a surprise for the researcher that the creative class does not consider small cities boring in terms of activities and the availability of entertainment. Most believe that people can organise their leisure time for themselves if they lack something in the city. Social networking sites make it easy to gather like-minded people in the area. Naturally, not everyone has a high level of initiative, so the latter cannot be generalised for everyone.

Among the main recommendations for the administration of small towns for how to attract a creative class for short or long-term visits, it is worth highlighting urban planning within the framework of new international safety standards; creating or maintaining a participatory budget, thanks to which residents receive financial support for their initiatives and for developing their networking; supporting farming by providing farmers with points of sale and interaction with urban residents; development of hiking and cycling infrastructure on the outskirts of the city, where people can interact with natural features such as forests, rivers, mountains, etc. and investing in the green economy.

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Vivien Kardos

PRIVACY LITERACY AND THE PROTECTION OF PERSONAL DATA IN THE MIND OF LAW STUDENTS

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With the advent of the fourth industrial revolution, the issue of data protection has become more important than ever before. There is no doubt that data, and especially personal data, has significant commercial value. Data protection also raises major issues for the legal profession. With the increasing significance of data protection, the question arises as to whether law students have sufficient knowledge of privacy literacy.

Based on the results of empirical research, this study set out to examine the attitudes of current law students to personal data and to determine how seriously they take data protection, particularly how it works in practice, when, for example, they use various kinds of social network sites, as well as to gauge their knowledge of data protection guarantees. The aim of this study is to provide a brief insight, based on the results of in-depth interviews, into the reasons behind the specific privacy literacy gaps revealed by the findings of the preliminary quantitative research.

It is anticipated, it should be emphasised, that law students will prove not to be fully aware of how much personal data they may provide about themselves on social network sites. Moreover, identifying personal data through practical examples causes difficulties for law students, such as cookie ID or data on their health. Consequently, the privacy literacy of law students needs to be improved.

KEYWORDS:

cookies, data protection, data protection guarantees, empirical research, GDPR, personal data breach

1. INTRODUCTION

According to the latest edition of *Internet World Stats*, there are approximately 4.93 billion Internet users worldwide.¹ The use of social media platforms has long been an ordinary part of the lives of ‘digital natives’.² According to Article 4 (1) of Regulation (EU) 2016/679 of the European Parliament and 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, ‘GDPR’), personal data means any information relating to an identified or identifiable natural person (a ‘data subject’). An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. It can be stated that this definition involves a lot of information about a natural person and has a broad interpretation, which is why it is important to identify personal data in any situation.

In this context, it seemed pertinent to investigate how the perception of personal data develops among a specific subject group, in this case law students, who may thus also increase their knowledge of data protection. The first question is what their viewpoint is about the importance of their personal data and how this is reflected in practice when using, for example, different kinds of social media platforms. Can it be clearly established that they can identify personal data properly, or do difficulties arise due to a lack of knowledge of the broad interpretation of personal data? Before continuing, I will outline why I opted to examine the perspective of law students on personal data and what their attitude is to data protection and privacy in the world of social media sites.

One reason for this focus is that these individuals will go on to be the lawyers of the future even though they are still at university at present. It is difficult to imagine that they will not encounter some aspects of data protection in their work, thus it is particularly important that they focus on improving their privacy literacy beforehand. Furthermore, it is assumed that their knowledge related to data protection has been enhanced during their university years. In support of this assumption, it may be established through the responses of law students that they have dealt with data protection at different depths in various kinds of courses. The aim of this study is to provide a brief insight, based on the results of in-depth interviews, into the reasons behind certain privacy literacy gaps, which can be ascertained from the findings of the preliminary quantitative research (‘preliminary research’ or ‘questionnaire’) performed by the author. It will also highlight some of the significant issues in connection with the privacy literacy of the law students.³

¹ Internet World Stats, *World Internet Usage and Population Statistics* (2020 Q3 Estimates, 30 September 2020). World total Internet users: 4,929,926,187.

² Marc Prensky, ‘Digital Natives, Digital Immigrants’, *On the Horizon* 9, no 5 (2001).

³ Vivien Kardos, ‘Insight into the perception of personal data among law students’, in *Central and Eastern European e|Dem and e|Gov Days 2020 – Conference Proceedings*, ed. by Thomas Hemker, Robert Müller-Török, Alexander Prosser, Dona Scola, Tamás Szádeczky and Nicolae Urs (Facultas, Austrian Computer Society, 2020), 126.

2. LITERATURE REVIEW

Literacy can be defined by the fusion of two types of competence: knowledge and skills.⁴ The concept of digital literacy may seem to be nearly synonymous with privacy literacy these days, although it should be emphasised that there are significant differences between the two terms. The term privacy literacy refers to an understanding of the responsibilities and risks associated with sharing information online, while digital literacy focuses on the task-based use of information in a digital environment.⁵

Privacy literacy is “the understanding that consumers have of the information landscape with which they interact and their responsibilities within that landscape”.⁶ It is commonly argued that people with higher levels of knowledge of data protection, including the theoretical “know it” and the practical “know how” knowledge, tend to protect their privacy better. Privacy literacy is a combination of such knowledge and actual practice, as it includes both elements.⁷ From the point of view of developing the data protection of students, privacy literacy has many useful aspects, for instance it is a good basis for strengthening online privacy.⁸ Research has highlighted the users’ lack of knowledge of privacy and of the skills to protect it.⁹

“Online privacy literacy within the frame of digital literacy is thus crucial for users’ knowledge and awareness increase as well as skills enhancement in order for them to be able to assess risks resulting from information disclosure, adopt technical mechanisms and strategies for combating cyber threats and, consequently, protect themselves efficiently”.¹⁰ According to Givens, the definition of privacy literacy can be established as “one’s level of understanding and awareness of how information is tracked and used in online environments and how that information can retain or lose its private nature”.¹¹ The question could be raised as to precisely which skills are included in terms of privacy literacy. At present there is no widely-accepted list of the privacy literacy skills which constitute privacy literacy.¹²

⁴ Maria Sideri et al., ‘Enhancing university students’ privacy literacy through an educational intervention: a Greek case-study’, *International Journal of Electronic Governance* 11, nos 3–4 (2019), 336.

⁵ Christina L Wissinger, ‘Privacy Literacy: From Theory to Practice’, *Communications in Information Literacy* 11, no 2 (2017), 379.

⁶ Jeff Langenderfer and Anthony D Miyazaki, ‘Privacy in the Information Economy’, *The Journal of Consumer Affairs* 43, no 3 (2009), 380–388.

⁷ Sabine Trepte et al., ‘Do People Know about Privacy and Data Protection Strategies? Towards the ‘Online Privacy Literacy Scale’ (OPLIS), in *Reforming European Data Protection Law*, ed. by Serge Gutwirth, Ronald Leenes and Paul de Hert (Heidelberg: Springer, 2015), 343.

⁸ Miriam Bartsch and Tobias Dienlin, ‘Control your Facebook: An analysis of online privacy literacy’, *Computers in Human Behavior* 56 (2016), 149.

⁹ Yong J Park, ‘Digital Literacy and Privacy Behavior Online’, *Communication Research* 40, no 2 (2011), 215–236.

¹⁰ Sideri et al., ‘Enhancing university students’ privacy literacy’, 336.

¹¹ Cherie L Givens, *Information Privacy Fundamentals for Librarians and Information Professionals* (New York: Rowman and Littlefield, 2015).

¹² Wissinger, ‘Privacy Literacy: From Theory to Practice’, 380.

As Szőke stated in his study, the different generations of the regulation of data protection try to respond to the societal changes driven by the current technological revolutions.¹³ Furthermore, according to Baek, digital literacy appears to have a positive impact on the protection of online privacy,¹⁴ while its level is related to an understanding of technical terms such as “cookies”, behaviourally targeted advertising and data mining.¹⁵ In the context of the usage of social networking sites, studies show that technical knowledge, skills and the knowledge of privacy settings is positively correlated with alteration of privacy settings.¹⁶ The study of Vladlena Benson et al. also confirms the positive relationship between user awareness and lower levels of disclosure of information.¹⁷

Use of social media often does not provide alarms that might remind people to be aware of their privacy; in addition, digital environments that seem to be private can often become completely public without any significant effort and forewarning.¹⁸

As has been noted in the literature “knowledge provides decision making control¹⁹ and affects individuals’ behaviour²⁰ which could be thought to include information sharing in online social networks”.²¹

According to Calin Veghes et al. privacy literacy can be seen as a new concept “proposed in order to assess and explain the consumers’ attitude regarding the collection, processing and employment of their personal data” in the context of direct marketing.²²

¹³ Gergely L Szőke, ‘Az adatvédelem szabályozásának történeti áttekintése’, *Infokommunikáció és Jog* 56, no 3 (2013), 111.

¹⁴ Young M Baek et al., ‘My privacy is okay, but theirs is endangered: Why comparative optimism matters in online privacy concerns’, *Computers in Human Behavior* 31, no 1 (2014), 48–56; Park, ‘Digital Literacy’, 220.

¹⁵ Eszter Hargittai, ‘An update on survey measures of web-oriented digital literacy’, *Social Science Computer Review* 27, no 1 (2009), 133; Park, ‘Digital Literacy’, 227.

¹⁶ Danah Boyd and Eszter Hargittai, ‘Facebook privacy settings: Who cares?’, *First Monday* 15, 8 (2010); Murat Kezer et al., ‘Age differences in privacy attitudes, literacy and privacy management on Facebook’, *Cyberpsychology: Journal of Psychosocial Research on Cyberspace* 10, no 1 (2016).

¹⁷ Vladlena Benson et al., ‘Information disclosure of social media users: Does control over personal information, user awareness and security notices matter?’, *Information Technology & People* 28 no 3 (2015), 429.

¹⁸ Kate Raynes-Goldie and Matthew Allen, ‘Gaming Privacy: A Canadian Case Study of a Co-Created Privacy Literacy Game for Children’, *Surveillance and Society* 12, 3 (2014), 415.

¹⁹ Icek Ajzen and B L Driver, ‘Prediction of Leisure Participation from Behavioral, Normative, and Control Beliefs: An Application of the Theory of Planned Behavior’, *Leisure Sciences* 13, no 3 (1991), 185–204; Christopher J Armitage and Mark Conner, ‘The Theory of Planned Behavior: Assessment of Predictive Validity and Perceived Control’, *British Journal of Social Psychology* 38, no 1 (1999), 35–54; Naveen F Awad and M S Krishnan, ‘The Personalization Privacy Paradox: An Empirical Evaluation of Information Transparency and the Willingness to be Profiled Online for Personalization’, *MIS Quarterly* 30, no 1 (2006), 13–28; Tanya L Chartrand, ‘The Role of Conscious Awareness in Consumer Behavior’, *Journal of Consumer Psychology* 15, no 3 (2005), 203–210.

²⁰ Tom Buchanan et al., ‘Development of Measures of Online Privacy Concern and Protection for Use on the Internet’, *Journal of the American Society for Information Science and Technology* 58, no 2 (2007), 157–165.

²¹ Bobbi Morrison, ‘Do we know what we think we know? An exploration of online social network users’ privacy literacy’. *Proceedings of the 42nd Atlantic Schools of Business Conference*, Dalhousie University, 2012, 420–421.

²² Călin Vegheș et al., ‘Privacy Literacy: What is and how it can be measured’, *Annales Universitatis Apulensis Series Oeconomica* 14, no 2 (2012), 705.

Given the importance of expressing consent, at present “privacy as control” theories prioritise the role of choice and individual self-determination over other values. As such, it should be noted that they can be described as information management theories, where this kind of control is achieved through the subjective management and expression of personal preferences.²³

A case study²⁴ by Maria Sideri et al. investigated the privacy literacy of university students in relation to the usage of social media. To this end, they held a thirteen-week course on social media, attended by 54 students, 23 of whom volunteered to take part in the research. During the course, students learnt how to isolate their profiles from undesirable audiences, and the goal of strengthening privacy literacy was achieved through the educational intervention. Although the students confirmed that they have a responsibility to protect themselves and others on their chosen social media platform (Facebook), the results of the research revealed that, at the outset, they did not have the necessary knowledge in this field. Nevertheless, after completing the course, many of the participants exercised more caution with regard to their profile visibility and also paid more attention to the privacy settings of Facebook, while their uncertainty awareness of the usefulness of anti-spyware software increased.²⁵ This research shows the important role that education can play in developing privacy literacy, which is intimately connected to privacy awareness.

Murat Kezer et al. examined the privacy behaviours of American adults on Facebook in their study. Based on life-cycle theory, it compares social media users from three age groups – young adults (18–40 years), middle-aged adults (40–65 years) and mature adults (over 65 years) – in terms of their knowledge of and attitudes towards data protection and privacy concerns, as well as the impact of these factors on self-disclosure and their privacy behaviour on Facebook.²⁶ No significant difference was found between the age groups’ belief in the right to data protection and their degree of concern about their own data protection. In contrast, they paid attention to the extent of their own data protection more actively than focusing on how the personal data of other people around them were protected. In particular, the group of mature adults mostly believed that the protection of their own personal data depends on whether the people around them protect it. Young adults are less likely to appreciate the protection of personal data of others.²⁷ It should be highlighted that this finding is also consistent with the results of the present research.

²³ Daniel J Solove, ‘Privacy Self-Management and the Consent Paradox’, *Harvard Law Review* 126, no 7 (2013), 1880–1903; Christophe Lazaro and Daniel Le Métayer, ‘Control over Personal Data: True Remedy or Fairy Tale?’, *Scripted* 12, no 1 (2015), 7.

²⁴ Sideri et al., ‘Enhancing university students’ privacy literacy’, 342.

²⁵ *Ibid.* 353.

²⁶ Kezer et al., ‘Age differences’.

²⁷ *Ibid.* 7.

3. BACKGROUND – THE PRELIMINARY RESEARCH

3.1. Method

Before presenting the research on which this study is based, it is important to highlight the factors that have contributed to it and affected the conduct of the research. The research was based on a questionnaire, which was carried out on a voluntary basis, conducted on an online interface, with the participation of a total of 205 law students from all eight faculties of law in Hungary. The distribution of women and men respondents in the research was 63 per cent and 37 per cent respectively. The majority of them were full-time students, in all years from the first to the final year of their course. Moreover, some correspondence students also took part in order to broaden the investigational spectrum. The data collection took place at the beginning of 2020. The questionnaire included questions on several fields of data protection and privacy literacy.

The questionnaire covered the topics of general data protection and the usage of social network sites ('SNSs'), with particular emphasis on the sharing and accessibility of personal data. Topics addressed included daily usage of SNSs, password protection of digital devices and personal data breaches. The key consideration in the creation of the questions was to their utility in measuring knowledge, attitudes and habits. To achieve realistic results, some questions were related to practical issues, such as what types of personal data the participants share on SNSs. The question format varied, with some requiring single responses and others multiple responses in the form of direct and indirect questions. Furthermore, scales of one to ten were also used in some items.

3.2. Main findings

Before going into a detailed analysis of the results, the main findings of the questionnaire can be determined as follows: Although the law students recognised the importance of data protection, their "activity" on SNSs is not fully in accordance with their statements. Approximately 95 per cent of the respondents use some form of SNSs on a daily basis. Not surprisingly, Facebook is the most common, although nearly three quarters of the respondents had not read the privacy policy at all. This was also reflected in their attitudes.

One of the most remarkable results of the preliminary research is that it can be established that the law students surveyed had difficulty identifying personal data through practical examples. For example, only a total of 27 per cent of the law students classified cookie identifiers ('cookie ID') correctly as personal data. A significant difference was found between the responses of male and female respondents, with approximately 39 per cent of the men giving the correct response, while 20 per cent of women chose another option. When asked about the IP address of one's laptop, about 60 per cent of the respondents answered correctly, with almost the same proportion of men and women. Cell phone

location data was classified as personal data by 80 per cent of the law students, with quite similar proportions for both men and women. In contrast, when the question related to the advertising ID of the mobile phone, it was quite difficult to decide whether it is personal data or not, as 38 per cent of the respondents responded correctly, and again the proportion of men and women was almost the same. On data concerning health, the diagnosis on an outpatient information sheet was correctly classified as personal data by approximately 93 per cent of the respondents (almost the same proportion of men and women). Conversely, when asked about an X-ray of a broken tibia a total of about 79 per cent of the respondents gave the correct response, 81 per cent of women and 76 per cent of men.

These results underline the lack of knowledge of the surveyed students in relation to the identification of personal data through practical examples. In this context, there were significant gaps in the respondents' knowledge of the privacy aspects of data concerning health, as well as the status of cookie IDs and the issue of mobile (cell) phones. This led us to ask the law students additional questions in order to shed light on the underlying causes of this lack of awareness.

Knowledge gaps were also revealed in connection with the cookie ID, which will be presented in detail later, given that the highest error rate was related to this kind of personal data, and contradictory results were obtained. Briefly, most of the law students basically do not know what exactly a cookie ID means. Furthermore, approximately three quarters of the law students asserted that they were unaware of data protection guarantees.

4. IN-DEPTH INTERVIEWS – THE QUALITATIVE RESEARCH

4.1. Method

In order to identify the underlying causes of the level of awareness and to achieve a broader scope of research, 16 in-depth interviews were conducted with two law students from each of the faculties of law²⁸ in Hungary. The interviews were conducted with the consent of the interviewees, who participated voluntarily, and the information was used anonymously. The interviews were conducted with the aid of a telecommunication tool, and the interviews lasted an average of 18 minutes.

The age of the interviewees, who were in various years of the university courses, ranged from 21 to 29 years, with an average age of 22.81 years. The gender distribution can more or less be considered as balanced, since nine men and seven women were interviewed. The questions focused on assessing the privacy practices, attitudes and knowledge of law students in the light of the gaps in knowledge identified above.

²⁸ Eötvös Loránd University, Faculty of Law; Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law; Pázmány Péter Catholic University, Faculty of Law and Political Sciences; University of Debrecen, Faculty of Law; University of Győr, Deák Ferenc Faculty of Law; University of Miskolc, Faculty of Law; University of Pécs, Faculty of Law; University of Szeged, Faculty of Law and Political Sciences.

4.2. Results

Before analysing the in-depth interviews, it should be noted that the vast majority of the respondents had already heard about certain aspects of data protection in their university courses. In this regard, the differences in the depth of this type of knowledge varied between the students according to how much they were able to tangentially gain knowledge or experiences of it from various courses taken in semesters over a number of years. The courses dealing with data protection which the respondents mentioned included, but were not limited to, constitutional law, info-communication and media law, legal informatics, civil law and labour law. Moreover, one student reported that she had attended an optional course specifically on data protection.

Additionally, all of the respondents stated that they had already encountered data protection beyond the university walls in several situations. Examples included writing research papers on the subject of data protection, dealing with data protection matter during internships in law firms, participation in a briefing at the National Authority for Data Protection and Freedom of Information ('the NAIH') or even approving the data processing policies, other briefings and regulations on social media platforms. All of the interviewees use Facebook and 13 of them also use Instagram daily. Furthermore, LinkedIn, Snapchat and Reddit were also mentioned on occasion.

4.2.1. *Is it personal data?*

Based on the results of the preliminary research, it became evident that using practical examples to identify personal data had posed difficulties for the students who were surveyed, particularly cookie IDs and data concerning health,²⁹ thus eleven pieces of information were presented during the interview. The examples of information and personal data used were: a cookie ID; a medical prescription that must be purchased at a pharmacy; the advertising ID of one's mobile phone; the IP address of one's laptop; cell phone location data; an X-ray of 'your' broken tibia; a sonogram of your internal organs; the company registration number of the commercial service company in 'your' place of residence; the ID number on the residence card; 'your' own address and a diagnosis on an outpatient information sheet. Most of these had already been mentioned in the preliminary research.

In line with results of the questionnaire, the personal data nature of one's address and the medical diagnosis on the information sheet were obvious for approximately 93 per cent of the respondents. It should also be noted that there were no examples of all of the law students knowing the correct answer. This is also thought-provoking, because these were the easiest questions. However, respondents had less success identifying 'untypical' types

²⁹ Art. 4. (15) GDPR. Data concerning health means personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status.

of personal data, for instance cookie ID or the IP address of the laptop, not to mention the advertising ID of the mobile phone or cell phone location data. As such, the majority of the law students selected and stated the wrong response to questions related to these items.

It became apparent that the identification of personal data is a real challenge for law students, when they had to identify 'atypical' examples of personal data. Interviewees gave different responses to questions about similar data concerning health, thereby confirming the uncertainty of their knowledge in connection with personal data. All of the interviewees knew that the diagnosis on an outpatient information sheet is personal data, but only three of them gave a correct answer in connection with a medical prescription which must be purchased at a pharmacy. In addition, ten interviewees said that X-rays and sonograms were also personal data. The students' responses to these questions revealed that they did not have knowledge of these examples of personal data, particularly when the data concerned health. A significant difference could be established – over 13 per cent – between determining the legal nature of X-rays and the diagnosis on the outpatient information sheet.

Confirming the results of the preliminary research, it can be established that the most difficult type of personal data to identify for the respondents was the cookie ID, with the majority of students' believing that cookies are not personal data. However, this is a mistaken statement. Summarising the identification of personal data by the two types of methodology, almost the same results can be seen.

4.2.2. *'The most personal data' which is shared*

The respondents were asked a separate question: which data they considered to be the most personal type of data. Another question concerned the attitude of the law students to 'the most personal data' that they still share or would share on social media platforms as well as information that is so personal that they do not share it at all. The responses to these questions were quite varied and showed significant differences.

The interviewees closely associated telephone numbers and email addresses with privacy, as the vast majority of them do not share these on social media platforms, although one of the interviewees said that he/she shares both with his/her friends. Most of the interviewees stated that they share their date of birth and the university they attend on these platforms. One of the interviewees stated that she would not share her educational background. The responses indicated that most of the interviewees share their place of residence, but not the exact address. Notably, three students said that they do not share their exact current location, for instance if they are on holiday abroad, because they are afraid of a burglary. It should be emphasised that this practice shows both knowledge and appropriate action, as in this case the action is not sharing personal data. From the point of view of data protection, it is certainly questionable that one of the interviewees would

even share their identity card number on SNSs. In contrast, the other interviewees stated that they had not shared any personal documents or card details on social media at all.

This question highlighted what significant differences can be established between respondents with regard to the sharing of personal data. This suggests that some students may not be aware of the possible risks and consequences of such actions and therefore share a lot of personal data about themselves.

4.2.3. *The issue of ‘cookies’*

The question could be raised as to why this issue is so important. The questionnaire showed that law students have an incomplete knowledge of this area of personal data, and conceptual disorders can also be identified. This topic is also significant from the perspective of knowledge and attitude. The cookie ID has an extremely close relationship with data protection and law students are likely to encounter many examples of it every day, which is why it was given a prominent role in the preliminary research.

One of the main findings was that law students often encounter pop-up ‘cookie-windows’ in everyday life and most of them were able to determine the meaning of them by choosing the right response from the alternatives. Notwithstanding this, there are significant shortcomings in the students’ evaluation of their operation and legal nature. Even so, 87 per cent of the respondents indicated the correct answer from the six alternatives to define its meaning. In this context, it should be emphasised that barely more than a quarter of law students classified a cookie ID as personal data. Nevertheless, two thirds of the law students considered it ‘risky’ from a data protection point of view.

The results prompted me to ask further questions to explore where this uncertainty of knowledge could have originated from. The first question in this respect asked interviewees whether they would accept cookie policies and allow cookies. With the exception of two respondents, all interviewees would accept them, but significant differences can be established between the underlying reasons.

One of the two negative responses were for inherent privacy or data protection reasons and the other one was out of convenience, as the interviewee stated that they did not consider it important, as it was just slowing down the sites. The other answers were basically about streamlining the browsing experience. Furthermore, the respondents mentioned that articles cannot be read, or the person is not able to move on to the websites without accepting cookies. Four of them indicated that they were otherwise aware of the consequences. One interviewee pointed out that he deletes all cookies monthly, while others minimised the placement of cookies in settings. It is also decisive for attitudes that one student admitted that he was not aware of what he was accepting, and two interviewees stated that it was an inappropriate behaviour and habit, moreover, irresponsible to accept cookies without consideration. Against this background, it can be concluded that the majority of the law students have given their consent without being aware of the fact that their browsing habits can be followed in this way.

Subsequently, it was asked what cookies meant. Reflecting on the high rate of correct responses in the preliminary research, it can be seen that inference played a more important role than real knowledge, as, when no response alternatives were available, only three interviewees were able to give a relatively satisfactory response. Eleven interviewees explicitly stated that they had not known what it was, nor had they attempted to circumscribe the definition of it.

Nearly 70 per cent of the law students indicated that they considered cookies to be 'risky' from the point of view of privacy. Therefore, interviewees were asked whether they had concerns about privacy in connection with cookies and asked to outline their way of reasoning. This open-ended question provided an opportunity to visualise, in the light of the reasoning, how broad the spectrum of the interviewees' opinions is. Seven interviewees responded that they had already thought about privacy concerns in the context of cookies, while four of them mentioned personalised marketing as an example. Two interviewees' points of view were explicitly positive about the convenience feature of the cookies. Three law students said that this topic was neutral, because they had no negative experience of the utilisation of their personal data. Two respondents inferred from the question that they probably have, although they also noted that they had never been interested in this topic enough to seek further information. Differences in attitudes were also evident in this case, as, contrary to the previous responses, one interviewee admitted that he had not possessed the knowledge, but he considered that this was a huge mistake on his part and stated that he should have read up on this subject.

Another interviewee stated that he had discussed the topic with his friends because they had talked about it during a course on legal informatics. One of the answers drew attention to a specific potential privacy concern connected to visiting sites via a mobile phone when cookies have been accepted, in particular the way in which it is recorded, which also gives rise to a degree of intrusion into personal messages.

Confirming the results of preliminary research, it can be stated that many law students have a significant lack of knowledge regarding cookies. They give their consent without even knowing what exactly they are consenting to, and this could make efficient data protection difficult. Moreover, this attitude is also likely to manifest itself in other cases. This issue is not a new one, because according to *Conger* the students voluntarily provide this consent without any consideration to its collection, ignoring the fact that such information is currently not under their control, but under the control of the organisations that possess it.³⁰ Furthermore, many of them are not interested in what happens to this information.

³⁰ Sue Conger, Joanne H Pratt and Karen D Loch, 'Personal information privacy and emerging technologies', *Information Systems Journal* 23, no 5 (2013), 401–417.

4.2.4. *Personal data breach*

During the interviews, law students were asked whether they had already experienced a personal data breach and in general what their knowledge is about the meaning of such a breach. According to Article 4 (12) of the GDPR, a personal data breach means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.

Based on the responses, it can be concluded that the vast majority of students were able to describe what the concept of personal data breach means. However, it should be noted that it was interpreted narrowly, which was shown by the examples. Only one student stated that it could happen accidentally, without bad faith. All the other respondents linked personal data breaches with unlawfulness. Four interviewees mentioned hacking of various user accounts as an example, and in seven cases, they identified it in general terms, for instance unauthorised use of personal data by a third party, misuse of personal data, unauthorised data transfer and unauthorised use of a telephone number. One interviewee admitted that he had not heard of this legal term at all, which also draws attention to the need to increase awareness of it, as on the one hand, the personal data breach has to be recognised before taking any further actions.

The main finding on this issue is that the concept of personal data breach needs to be interpreted in a much broader way. It can be established that most of the law students lack knowledge in this field. This issue is important because if a student does not have sufficient knowledge of what constitutes a personal data breach, then he or she will not be able to effectively deal with a potential breach, as it should be remembered that such breaches can happen accidentally.

4.2.5. *Data protection guarantees*

As the preliminary research demonstrated, the majority of the law students cannot give an example of or outline a data protection guarantee at all. This may also call into question the effectiveness of data protection. Hence, this issue can clearly be classified as one of the areas in which law students' knowledge needs to be extended as soon as possible. A separate question aimed to measure the knowledge and awareness of the law students, specifically to find out what kind of data protection guarantees they are aware of. The preliminary assumptions which they referred to were, for example, the principle of purpose limitation or the right to be forgotten. None of these were adequately expressed by the students and only two of the respondents stated the necessity of consent, and the acceptance of privacy policy statements.

Seven interviewees stated that they did not know, could not remember, or had not learnt about data protection guarantees in enough depth to remember it. Six students mentioned examples of European and national legislation in connection with this issue. It should be noted that one student referred only to an international treaty, thus presuming that

he is not familiar with either GDPR or domestic law, especially the Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information, although nowadays both are highlighted in many contexts. Although this may seem to be an isolated case, the respondent is probably not alone in this lack of knowledge, which is a significant finding. In addition, the NAIH was mentioned in two answers, although it should be noted that in both of them its full name was given incorrectly.

4.2.6. *Changes in the content sharing habits*

The interviews were extensively studied to identify potential changes in the content sharing habits of the law students. Basically, as the number of social media sites grows, the amount of personal data shared by users has constantly increased.³¹ This finding can be confirmed in general.

Notwithstanding this trend, eleven interviewees stated that they share considerably fewer photos, posts and comments on social media platforms nowadays than they shared five years ago. Based on the responses, university life and age-related differences played a decisive role in these changes, and the preferences of the interviewees have also changed, as they claim to want to share less personal data. One respondent stated that the reason why she had shared less information and personal data is connected to her future job.

5. CONCLUSION

It can clearly be established that personal data is becoming more and more valuable in today's society. In order for data protection guarantees to prevail, it is essential for individuals also to pay attention to data protection in their daily lives. While all the interviewees in this study acknowledged the importance of data protection, considerable differences were found in their level of knowledge of privacy literacy. The responses to the questionnaire suggest that the identification of personal data through practical examples is difficult for law students.

The results of the research have shown that the level of privacy literacy needs to be improved in order to achieve a higher level of data protection with appropriate efficiency for law students. Extension of their existing knowledge and bridging the gaps in their privacy literacy is essential. Overall, based on the results of the study, it can be stated that law students have only superficial knowledge of many areas of data protection, they have difficulties with the issues related to it and the knowledge they do have has not been properly applied in practice.

³¹ Christina L Wissinger and B Gail Wilson, 'Student Perceptions of Facebook's Privacy Policies and Rights', *Social Media Studies* 2, no 1 (2015), 15–26.

The 16 in-depth interviews, together with the preliminary research with the participation of 205 law students, are sufficient to establish patterns and raise further research questions, such as how well students are aware of the data protection risks and their possible consequences. In addition, less self-evident deficiencies in knowledge may also have emerged. Given that law students pay more attention to data protection than people in other fields, presumably due to the profession, it is likely that average university students reflect on this topic even less. In order to develop privacy literacy, it is necessary to teach practically-oriented knowledge to law students during their studies, so that future law professionals can go on to apply their knowledge properly in practice.

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