

# **SOCIAL AND ENVIRONMENTAL DIMENSION OF SUSTAINABLE DEVELOPMENT:**

## **ALTERNATIVE MODELS IN CENTRAL AND EASTERN EUROPE**

Collection of papers from the 6th Forum  
of PhD Students International Seminar  
European Parliament, Brussels, October 15-17, 2012



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Friedrich Ebert Stiftung e. V., Slovakia and contributors of Social and Environmental Dimension of  
Sustainable Development: Alternative Models in Central and Eastern Europe



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## Contents

YOUNG PEOPLE AND SOCIALLY NETWORKED POLITICS: ANALYZING THE TRANSFORMATIONS OF POLITICAL PARTICIPATION Lina Auškalnienė.....	6
THE STRUCTURE OF PARTICIPATIVE SOCIETY Albín Bella .....	22
EMERGING ADMINISTRATIONS: A DIMENSION OF SUSTAINABLE DEVELOPMENT IN SOUTH-EAST EUROPE Bogdan Berceanu .....	37
LEGISLATION ON PROMOTION OF RENEWABLE ENERGY AND SUSTAINABLE DEVELOPMENT IN CONTEXT Helena Doležalová .....	54
EUROPE 2020 IN VYSEGRAD, RELIVING THE FAILURE OF THE LISBON STRATEGY? Roman Gavuliak .....	68
CONFRONTING GLOBAL GIG ECONOMY IN TRANSITIONAL COUNTRIES Naira Harutyunyan .....	87
THE LIABILITY ISSUE OF ENVIRONMENTAL CASES IN CENTRAL AND EASTERN EUROPE Gábor Kecskés .....	106
IDEOLOGICAL TRANSFORMATIONS. THEORETICAL AND POLITICAL IMPLICATIONS OF POST-SOCIALIST CITY Karol Kurnicki .....	122
SUSTAINABLE DEVELOPMENT IN POLAND AND ANTI-AVOIDANCE PROVISIONS: THE RATIONALE FOR INTRODUCING CFC RULES INTO THE POLISH TAX LAW SYSTEM Błażej Kuźniacki .....	139
THE ORIGINS OF ALTERNATIVE APPROACHES TO CAPITAL MARKET REGULATION IN CEE Olga Markiewicz .....	156
SPE ECONOMY AS AN ALTERNATIVE MODEL FOR ECONOMIC DEVELOPMENT Olateju Olatunji .....	172
USE OF LOCAL POTENTIALS FOR SUSTAINABLE SPATIAL DEVELOPMENT OF VOJVODINA REGION Dejan Popović.....	190

SOCIAL ENTERPRISE MODELS FOR SUSTAINABLE DEVELOPMENT IN CENTRAL EASTERN EUROPE Cristina Sandu.....	209
DEVELOPMENT OR SECURITY? THOUGHTS ON THE FUTURE OF EUROPEAN LABOUR LAW THROUGH THE EXAMPLE OF HUNGARY Peter Sipka.....	232
COMPARISON OF VALUE ATTITUDES SLOVENIAN, HUNGARIAN AND CROATIAN CITIZENS ON SUSTAINABILITY USING VISUAL TRANSFORMATION OF THE RIVER LANDSCAPE Dina Stober .....	246
METHODS OF IMPLEMENTING LOCATION-BASED SERVICES TO STRATEGIC DOCUMENTS IN MICROREGIONAL LEVEL Jakub Trojan.....	263
THE CONTRIBUTIONS OF CSR PRACTICES TO NATIONAL COMPETITIVENESS. A THEORETICAL MODEL FOR CENTRAL AND EASTERN EUROPE Mihaela Tucă .....	280
THE ROLE OF INSTITUTIONS IN LOW CARBON TRANSITION: PUBLIC PERCEPTION IN FIVE EU COUNTRIES Jan Vávra.....	299
DIGITAL BASED SOCIETY THROUGH EDUCATION Catalin Vrabie .....	312
INTERNATIONAL LAW IN DOMESTIC LEGAL ORDER: UKRAINIAN LEGISLATION CONFORMITY WITH INTERNATIONAL STANDARDS Kateryna Yarmolyuk.....	335
IS THERE A PLACE FOR ANTI-DISCRIMINATION IN „MODERN” LABOUR LAW? Márton Leó Zaccaria.....	351

# YOUNG PEOPLE AND SOCIALLY NETWORKED POLITICS: ANALYZING THE TRANSFORMATIONS OF POLITICAL PARTICIPATION

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Lina Auškalnienė

**Abstract:** *This paper examines the transformations brought by social media to the field of the political. Main focus here is the new youth democratic engagement projects online in Lithuania. Based on qualitative interviews and quantitative data I claim that the phenomenon of subactivism (Bakardjieva, 2009) – as small scale, often individual decisions or actions having political or ethical frame in individuals' everyday practices – predominate online, creating parallel communicative spaces (Balčytienė, forthcoming) operated by young movement entrepreneurs (Garrett, 2006). Self-actualization, individualization, personal expression and self-fulfillment become the main drivers for democratic participation.*

**Keywords:** *Political participation, youth, subactivism, Internet, socially networked politics.*

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## Introduction

Without any doubt, nowadays participation is portrayed as key idea to approach the contemporary notion of governance, and civic and political participation are widely agreed to be the essentials for the prosperous liberal citizen-based democracies. Moreover, the “saturated media environment” form the core of political culture, creating mediatized public sphere,

actively shaping the existing political discourse (among all other discourses), and symbolically embodying as well as representing political artefacts, practices, arrangements, actors via “media logic”<sup>1</sup>. With the rise of Internet, the notions of *participation*, *communication*, and *media* began to mix and mingle creating new models of action, reshaped notions of citizenship, political mobilization, and introduced new dimensions for political activity.

Indeed, within this framework young people could be distinguished as a very special group – highly influenced by the Internet, captured by extended alternative information spaces, eager to use less formal, more open channels for interaction, but, on the other hand, tending to stay disengaged with political issues, ignorant to traditional forms of participation. On the whole, the shift away from the established types of political involvement (e.g. voting or party membership) and general citizen apathy received a great public as well as academic interest and have been analyzed from a variety of perspectives now and before<sup>2</sup>. Much of this scholarly attention has been also dedicated to the analysis of the transformations brought by digital technologies<sup>3</sup>. Youth political participation issues were enchanting scholars for a long time, and recently even more research was dedicated to analyzing young individuals’ democratic engagement, especially targeting the online participation patterns<sup>4</sup>. In the advent of Internet era scholars used to make predictions and guesses that new media might provide citizens with powerful tools of communication. The illusion that so called “digital generation” will join politics (or any other activity) as soon as it goes online might be appealing, but “Internet has proved itself not to be an automatic trigger of youth political engagement”<sup>5</sup> – nowadays we still talk about these changes as “yet to be seen”. However, the concern for more in-depth studies is still

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<sup>1</sup> Jones, J. P.: A Cultural Approach to the Study of Mediated Citizenship. *Social Semiotics*. 2006, vol. 16, pp. 365–383.

<sup>2</sup> E.g. Blumler, J. G., Kavanagh, D.: The Third Age of Political Communication: Influences and Features. *Political Communication*, 1999, vol. 16, pp. 209–230; Dahlgren, P.: *Media and Political Engagement. Citizens, Communication, and Democracy*. Cambridge University Press. 2009; etc.

<sup>3</sup> E.g. Anduiza, E., Cantijoch, M., Gallego, M.: Political Participation and the Internet. *Information, Communication & Society*. 2009, vol. 12, pp. 860–878. Coleman, S., Shane, P. M. (eds.): *Connecting Democracy. Online Consultation and the Flow of Political Communication*. The MIT Press. 2012; etc.

<sup>4</sup> Bennett, L., Wells, Ch., Freelon, D.: Communicating Civic Engagement: Contrasting Models of Citizenship in the Youth Web Sphere. *Journal of Communication*. 2011, vol. 61, pp. 835–856.; Gaiser, W., De Rijke, J., Spannring, R.: Youth and Political Participation—Empirical Results for Germany Within a European Context. *Young*. 2010, vol. 18, pp. 427–450.; Vromen, A., Collin, P.: Everyday Youth Participation? Contrasting Views From Australian Policymakers and Young People. *Young*. 2010, vol. 18, pp. 97–112.

<sup>5</sup> Bakardjieva, M.: The Internet and Subactivism. Cultivating Young Citizenship in Everyday Life. pp. 129–146. In: Olsson, T., Dahlgren P.(eds.): *Young People, ICTs, and Democracy*. Nordicom. 2010, p. 130.

expressed, aiming to understand the dynamics of the complex socio-political youth participation issues.

The decline of active citizen support for conventional forms of political participation leads to the erosion of traditional institution-driven citizen participation, on the one hand, and urges to look for the new types of network-based alternative public involvement strategies on the other. Within this context various niched civic engagement projects emerge online as the tools to engage, mobilize and excite the curiosity of youngsters (and other target groups as well). These projects echo the ideals of networked governance, and usually are non-linear, non-hierarchical and fluid in nature, involve varied social actors, operate in non-governmental environments. Public deliberation forums, *Facebook* groups, online-centered information databases for public use – all those projects reveal the changes in online policy networks, where civic actors from non-governmental sector gain more visibility, and these changes definitely need more scholarly attention.

Deriving from several different fields, in media and communication studies the subject of youth political participation encompasses the whole cluster of discourses and is associated with varying contexts; therefore it is impossible to get one and only explanation of the ongoing process. However, in this complex set of perspectives I choose to take the insider study on youth-led political participation projects online. The aim of this paper is to unclothe the curtain and to go deeper analyzing the subjective experiences that young people face proactively going online for political matters. In the first part of this paper, I will present the theoretical framework in which I build my interpretation. Secondly, I will analyze the empirical results of qualitative semi-structured interviews with civically active young individuals, who are creating various e-tools for political engagement online and are organized as informal groups or as alternative social movements. The discussion in this paper targets the following questions: what is the value of socially networked (online) political participation tools used for the purposes of political mobilization? What kind of activist networks do those tools create? What is the role of young *movement entrepreneurs* <sup>6</sup>, creating those online projects? What do those sociotechnical environments say about the political participation habits of the young? May it be called

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<sup>6</sup> Garrett, K., R.: Protest in an Information Society: a Review of Literature on Social Movements and New ICTs. *Information, Communication & Society*. 2006, vol. 9, no. 2, pp. 202–224.



*subactive*<sup>7</sup> experiences? Finally, may these distinctive spaces created by non-governmental sector possibly become salvation for the weakening conventional sphere of political participation and to set up as *parallel communicative spaces*<sup>8</sup>, connecting the online with “real” policy-making? Young people here are approached as subpolitical agents, proactively creating non-mainstream means for political mobilization and alternative deliberative spaces. Those activities, albeit minor in numbers, end up to be a thought provoking phenomenon, creating a mix of engagement alternatives that illustrate the contemporary flux in political communication.

## I. Political Participation Reconsidered

The *late modernity*, *second modernity*, or *liquid modernity*, as sociologists call it<sup>9</sup> are the concepts that characterize the contemporary mediatized and fluid “political” at best. Politics are agreed to be connected to the subjective life experiences – it becomes *life politics*, dedicated to the politics of individual style and transformation of self, concerning “political issues which flow from processes of self-actualisation in post-traditional contexts, where globalising influences intrude deeply into the reflexive project of the self, and conversely where processes of self-realisation influence global strategies”<sup>10</sup>. The attempt to draw the line between civic, private and political is no longer an easy thing to do. What does that give considering political participation issues?

In the broadest sense, the concept of political participation defines the state-citizen relationships. It indicates social practices bridging citizens with the realm of ‘political’ and signify any opportunities private citizens take to “affect the decision-making processes within different spheres of social life”<sup>11</sup>. Low or decreasing levels of the institutionalized conventional forms of

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<sup>7</sup> Bakardjieva, M.: Subactivism: Lifeworld and Politics in the Age of the Internet. *The Information Society*. 2009, vol. 25, no. 2, pp. 91–104.

<sup>8</sup> Balčytienė, A.: Dependencies, Parallelisms and Connections: CEE Societies as Social Systems in flux”. *Media Transformations*. Forthcoming.

<sup>9</sup> Beck, U.: Subpolitics. *Organization and Environment*. 1994, vol. 10, no. 1, pp. 52–65; Bauman, Z.: *In Search of Politics*. Cambridge: Polity. 1999; Giddens, A.: *Modernity and Self-Identity. Self and Society in the Late Modern Age*. Stanford University Press. 1991.

<sup>10</sup> Giddens, A.: *Modernity and Self-Identity. Self and Society in the Late Modern Age*. Stanford University Press. 1991, p. 214.

<sup>11</sup> Oblak, T.: Boundaries of Interactive Public Engagement: Political Institutions and Citizens in New Political Platforms. *Journal of Computer-Mediated Communication*, 2006, vol. 8, no. 3, pp. 1–19 -- p. 1.

political engagement (such as voting, party membership, financial support for the political organizations) raise intense discussions in the scholarly arena. As we talk about the largely individualized and atomized society, which is oriented towards personalized and privatized experiences, the political is not an exception for change. Other ways of interaction and new actors have to be recognized, especially online. This reassessment widens the whole understanding of what constitutes the “political”<sup>12</sup>. The new forms of political organization may be reconsidered taking U. Beck’s notion of *subpolitics*, described as the “new mode of operation of the political, in which agents are coming from outside of the officially recognized political and corporate system appear on the stage of social design, including different professional groups and organizations, citizen’s issue-centered initiatives and social movements, and finally, individuals”<sup>13</sup>. Citizens colonize “new niches of activity and identity”<sup>14</sup> belonging to the domain of subpolitical, not only addressing the government agencies directly, but also altering them via the implementation of the non-institutional, bottom-up projects. It is reflected in the phenomenon of *subactivism* described as a “small scale, often individual decisions and actions that have either political or ethical frame and remain submerged in everyday life”<sup>15</sup>. This concept locates the participation in the private sphere, micro-interactions and conversations, recognizing multiplied and enriched everyday practices of citizenship. As Bakardjieva<sup>16</sup> put it, “subactivism has to be recognized as an important dimension of democracy which calls to be connected with the subpolitical and strictly political strata populated by collectives, organizations and institutions through proper bridges”. However, located solely in the private sphere, any of those actions may be analyzed only as subjective experiences, submerged into the small social world, even though it has a potential to be transformed into the overt public activism when triggered. Thus, *subactivism*, as a concept, describes the internal motivations for young individuals’ public activism, initiating online engagement projects. But where do those

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<sup>12</sup> For discussion look: Beck, U.: *Subpolitics. Organization and Environment*. 1994, vol. 10, no. 1., pp. 52–65; Bakardjieva, M.: *The Internet and Subactivism. Cultivating Young Citizenship in Everyday Life*. pp. 129–146. In: Olsson, T., Dahlgren, P. (eds.): *Young People, ICTs, and Democracy*. Nordicom, 2010; Fenton, N.: *Re-imagining Democracy: New Media, Participation and Politics*, pp. 19–34. In: Olsson, T., Dahlgren, P. (eds.): *Young People, ICTs, and Democracy*. Nordicom; Coleman S.: *Making the E-Citizen: A Sociotechnical Approach to Democracy*. pp. 379–394. In: Coleman, S., Shane, P. M. (eds.): *Connecting Democracy. Online Consultation and the Flow of Political Communication*. The MIT Press, 2012.

<sup>13</sup> Bakardjieva, M.: *The Internet and Subactivism. Cultivating Young Citizenship in Everyday Life*. pp. 129–146. In: Olsson, T., Dahlgren, P. (eds.): *Young People, ICTs, and Democracy*. Nordicom, 2010 – p. 130.

<sup>14</sup> Beck, U.: *Subpolitics. Organization and Environment*. 1994, vol. 10, no. 1., pp. 52–65 – p. 101.

<sup>15</sup> Bakardjieva, M.: *The Internet and Subactivism. Cultivating Young Citizenship in Everyday Life*. pp. 129–146. In: Olsson, T., Dahlgren, P. (eds.): *Young People, ICTs, and Democracy*. Nordicom, 2010 –p. 134.

<sup>16</sup> *Ibid.* – p. 144.

spontaneously emerged, self-actualizing actions transform when they become visible as online projects?

Before going deeper into analysis let me give some hints on the data. When we turn to young media users in Lithuania we see that they prefer online news portals, forums, blogs, and comment online more often – indeed, their online activities are rich and diverse<sup>17</sup>. Internet is their main source for daily news (after TV): 82,1% 12-14 year-olds, 87% 15-24 year-olds and 73,8% 25-34 year-olds are regularly browsing Internet for informational purposes. Social media is also important for them (social media use ranges accordingly – 64,1%, 74% and 41,3%). Internet penetration in some young age groups nearly reaches 100%, and social networking sites become almost as popular as checking e-mail – more than half (62.8 %) of the young social media users connect to their personal profiles at least once a day. Nevertheless, the activities online are more directed to the subjective, self-reflective actions – most active users of Internet associate this medium mostly with leisure, hobbies, and personal interests. And when they look for the news it is mostly specialized (professional) information that attracts their attention.

On the other hand, the political life in the Baltic countries is quite ambiguous. The impression is, the “Baltic societies are “shapeless” or somehow “blurred” – they are distinguished by weak parties and their vague ideological backgrounds, unarticulated values and their continuing leveling”<sup>18</sup>. Youth in Lithuania is documented as highly apolitical<sup>19</sup>. Generally, young people more than ever are uninterested in political issues in all kind of media, ignore traditional forms of political participation (such as voting or party membership). Nevertheless, data still show some signs of involvement. For example, youth tend to participate more in the community or local issues than the rest of population<sup>20</sup>. Analyzing the data available<sup>21</sup> we may notice that youngsters (age group 12-34) agree with the statements “Active citizen should care about the news in the media” (73.8 %), “Internet stimulate the human interactions” (79.8 %). Sufficient part of the youth sample agreed that Internet is an effective space for the civic matters to be discussed

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<sup>17</sup> The data is obtained from the Representative National Public Opinion Survey on Media Use conducted in Lithuania (N=1023) in October 2011. Respondents aged 12-75+ were selected randomly, datasets covering all regions of Lithuania. The survey was conducted as a part of the research project *Journalism in Lithuania: Context and Culture* (MIP012/2011) and funded by the Lithuanian Research Council. More information is available online: <http://www.media-research.lt>.

<sup>18</sup> Balčytienė, A.: Baltic Media Structures and the Influence of Media. pp. 53-65. In: Golubeva, M., Gould, R. *Shrinking Citizenship: Discursive practices that limit democratic participation in Latvian politics*, Rodopi. – p. 58.

<sup>19</sup> *Pilielines galios indeksas*. Vilnius: Pilielinės visuomenės institutas. 2010. At <http://www.civitas.lt/lt/?pid=74&id=78>

<sup>20</sup> Ibid.

<sup>21</sup> The data from a research project “Journalism in Lithuania: Context and Culture” (MIP-012/2011, 2011-2012, funded by Research Council of Lithuania) performed by Media Research Center at Vytautas Magnus University, is analyzed here.

(47.3% agree or strongly agree “Internet helps to solve the problems of the community”) and real decisions to be made (50.3% agree or strongly agree “Internet create the possibility to gather for the collective action for the state”).

This data leads us to the conceptual turn for the analysis of changing political participation. Due to the above mentioned changes in media use and in the political arena, *parallel communicative spaces*<sup>22</sup>, described as alternative, independent, innovative (mostly online) media projects, emerge at the boundaries of the conventional mainstream media. They create the information flow and serves as the platforms to ensure the citizen mobilization around certain issues. Expanding this concept further on we may turn to a whole range of other microactive spaces working as networks, deliberative spaces or citizenship mobilization tools, where youngsters play a significant role. Actually, this is where the dilemma of transformation is revealed – on the one hand, the numbers of those joining and participating in the niched project are not high, attracting only particular audiences, but on the other, changes are most evident not in numbers, but in content.

## II. Activism or Clicktivism?

Scholars agree that participation has numerous dimensions, is a multifaced and intermingled social construct, changing social phenomenon, constantly reinterpreted over time. The argument about the total decline in political participation may be replaced by the idea that there are more diverse ways of how to citizens engage into political affairs. Besides the conventional perspective, numerous unconventional political participation performances win the recognition and gain more importance. Once addressed as mostly anti-institutional and revolutionary forms of political participation (e.g. demonstrations, protests, boycotts, etc.)<sup>23</sup>, unconventional political activities now signify various mediatized activities and symbolic

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<sup>22</sup> Balčytienė, A.: Dependencies, Parallelisms and Connections: CEE Societies as Social Systems in flux. *Media Transformations*. Forthcoming.

<sup>23</sup> Kaase, M., Marsh A.: Political Action. A Theoretical Perspective. pp. 27-56. In: Barnes, S.H., M. Kaase, K. L. Allerbeck, B. G. Farah, F. Heunks, R. Inglehart, M. K. Jennings, H. D. Klingemann, A. Marsh and L. Rosenmayr (eds.). *Political Action. Mass Participation in Five Western Democracies*. London: Sage Publications. 1979.



practices citizens perform offline and online. The whole range of political participation modes converge with specific affordances of the Internet and thereafter increase the relevance of the non-traditional, non-electoral, easily accessible and low-cost participation, merged into the numerous everyday extra-institutional, civic-oriented practices (e.g. signing petitions, buying or boycotting products, joining campaigns against corporations, participating in “Earth Hour” or “Buy Nothing Day”)<sup>24</sup>. These non-mainstream arenas are the appealing alternatives for young and active. The mediatization of the political sphere allow such new forms of individual, many-to-many actions, conceptualized as *microactivism*<sup>25</sup>, to flourish. Having in mind that youth is widely recognized as largest group using Internet and social networks, youngsters are constantly addressed as the audiences in online spaces for political mobilization and are most likely to join these actions in one or another way. Sharing, tweeting, posting and re-posting, pressing “like”, signing petitions or forming online groups – all these actions “reflect micro-level intentions and are not necessarily geared towards mobilization like more traditional forms of engagement”<sup>26</sup>. Nevertheless, the question is – are all those activities beneficial and constructive, by default creating the above mentioned *parallel communicative spaces*?

Information and communication technologies are considered to be the effective way to mobilize citizens for collective political action. There is still an extensive discussion whether Internet may affect engagement in the civic and political arenas. It is believed that provision of facts, sharing and discussion of political information ultimately translates into political participation<sup>27</sup>, and a “good citizen” should use all these opportunities. On the other hand, media’s influence to affect the political process and political culture negatively is typically associated with Putnam’s arguments<sup>28</sup> about “media malaise” and “time displacement”. Some social critics expand this statement claiming that online-based political practices are weakly involving and distracting citizens from more effective forms of involvement, engaging them into *slacktivist* activities<sup>29</sup>, referred to as “little activities that do not express a full-blown political

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<sup>24</sup> Theocharis, Y.: Young People, Political Participation and Online Postmaterialism in Greece. *New Media & Society*. 2011, vol. 13, no. 2, pp. 203–222; Christensen, H.S.: Political Activities on the Internet: Slactivism or Political Participation by Other Means?. *First Monday*, 2011, vol. 16, no. 2. At <http://firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/3336/2767>.

<sup>25</sup> Marichal, J.: Political Facebook Groups: Micro-Activism and the Digital Front Stage, 2010, pp. 1–18. At <http://microsites.oii.ox.ac.uk/ipp2010/programme/115>.

<sup>26</sup> Ibid. – p. 1.

<sup>27</sup> Mossberger, K, Tolbert, C. J., McNeal, R. S.: *Digital Citizenship. The Internet, Society and Participation*. The MIT Press, 2008.

<sup>28</sup> Putnam, R. D.: *Bowling Alone*. Simon & Shuster, 2001.

<sup>29</sup> Morozov, E.: The brave new world of slacktivism. *Foreign Policy* (19 May), 2009. At [http://neteffect.foreignpolicy.com/posts/2009/05/19/the\\_brave\\_new\\_world\\_of\\_slacktivism](http://neteffect.foreignpolicy.com/posts/2009/05/19/the_brave_new_world_of_slacktivism).

commitment”<sup>30</sup>, i.e. the actions are easily performed, but are more effective in making the participants feel good about themselves than in helping to achieve the stated political goals (examples may include wearing political messages in various forms, joining Facebook groups, taking part in short-term boycotts, etc.). Moreover, any online political engagement action is also questioned with the concept of *clicktivism*, when pushing buttons create “the illusion that surfing the web can change the world”<sup>31</sup>. The urge to participate in any, albeit minor, way (e.g. “like” the page or share the position, etc.) convert the whole notion of subactivism upside down – digital activism is marketized and commodified, leaving just a “sense of activism”<sup>32</sup> and creating no actual change.

However, rather than writing off all the microactivist actions as clicktivism we still have to treat these processes online with scrutiny and do not divide the actions into “black” or “white”, good or bad. The analysis of the research already made suggest that a positive relationship between online activity and political/ civic activity offline still exists, albeit this correlation is rather weak<sup>33</sup>. Alternative activist media alter dominant ways of communication from below, create and cultivate interpersonal networks online and “mobilize those networks to engage in live and mediated collective action.”<sup>34</sup>. *Mediated mobilization* claims for autonomous spaces of participation, free from ideology, based on discussion, deliberation and sharing of ideas, leading towards radical participatory democracy defined as “the widespread, direct involvement of citizens in both political processes and governance”<sup>35</sup>. And these processes have their *entrepreneurs*, whose spirit of “public experimentalism”<sup>36</sup> and subsequently created sociotechnical environments set an array of questions concerning the challenges e-democracy face.

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<sup>30</sup> Christensen, H.S.: Political Activities on the Internet: Slactivism or Political Participation by Other Means? *First Monday*, 2011, vol. 16, no. 2. At <http://firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/3336/2767>.

<sup>31</sup> White M.: Clicktivism Is Ruining Leftist Activism. August 12, 2010. At <http://www.guardian.co.uk/commentisfree/2010/Aug/12/clicktivism-ruining-leftist-activism>. – p. 2.

<sup>32</sup> Marichal, J.: Political Facebook Groups: Micro-Activism and the Digital Front Stage, 2010, pp. 1–18. At <http://microsites.oii.ox.ac.uk/ipp2010/programme/115>.

<sup>33</sup> Boulianne, S.: Does Internet Use Affect Engagement? A Meta-Analysis of Research. *Political Communication*. 2009, vol. 26, no. 2, pp. 193–211.

<sup>34</sup> Lievrouw, L. A.: *Alternative and Activist New Media. Digital Media and Society Series*. Wiley-Blackwell. 2011. – p. 25.

<sup>35</sup> Ibid. – p. 145

<sup>36</sup> Chadwick, A.: Web 2.0: New Challenges for the Study of E-Democracy in an Era of International Exuberance. pp. 45–74. In: Coleman, S., Shane, P. M. (eds.). *Connecting Democracy. Online Consultation and the Flow of Political Communication*. The MIT Press. 2012.

### III. Young Activists and Socially Networked Spaces for Political Interaction

*Methods and data:* Youth dissatisfaction with conventional political engagement opportunities is widely documented<sup>37</sup>. Nevertheless, being “next generation users”<sup>38</sup> young people perceive socially networked online media channels as a very important sphere for deliberation and opinion sharing – they are socialized with the Internet from a childhood and it is a central terrain of their lives<sup>39</sup>. With this duality in mind, I took this opportunity to conduct the insider study, seeking to investigate transformations, brought by social networks to the field of political participation. Having in mind the broadness of the issue this paper is focused on one particular aspect of non-governmental socially networked online democratic engagement projects in Lithuania. These social initiative platforms give citizens the opportunity to deliberate, to get more information on government’s actions, to submit initiatives or write petitions, to track their members of Parliament or contact them online. The aim of such tools is to empower and influence via digital means, developing simple and direct ways of democratic engagement. Due to the technological skills and interest in innovations young people here are the main group not only participating, but also creating such platforms.

Six qualitative semi-structured interviews were conducted in April-September 2012 with the developers of socially networked online tools for political engagement (such as ManoSeimas.lt, lietuva2.net, etc.). The scope of interviews encompass nearly all available democratic engagement projects of this kind in Lithuania, and creators of such projects are

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<sup>37</sup> Bennett, L., Wells, Ch., Freelon, D.: Communicating Civic Engagement: Contrasting Models of Citizenship in the Youth Web Sphere. *Journal of Communication*. 2011, vol. 61, pp. 835–856.; Vromen, A., Collin, P.: Everyday Youth Participation? Contrasting Views From Australian Policymakers and Young People. *Young*. 2010, vol. 18, pp. 97–112; Gaiser, W., De Rijke, J., Spanring, R.: Youth and Political Participation—Empirical Results for Germany Within a European Context. *Young*. 2010, vol. 18, pp. 427–450.; Quintelier, E., Vissers, S.: The Effect of Internet Use on Political Participation. An Analysis of Survey Results for 16-Year-Olds in Belgium. *Social Science Computer Review*, 2008, vol. 26, no. 4, pp. 411–427.

<sup>38</sup> Actually, this concept is defined not by age, but by two separate but interrelated trends: portability and access through multiple devices (Dutton, Blank, 2011: 4). However, youngsters are the ones who most frequently correspond those conditions of the definition – they do not stick to one device, are mobile in all senses, and use Internet extensively. Look in: Dutton, W. H., Blank, G.: *Next Generation Users: the Internet in Britain*. Oxford Internet Institute, University of Oxford. 2011. At [http://www.oii.ox.ac.uk/publications/oxis2011\\_report.pdf](http://www.oii.ox.ac.uk/publications/oxis2011_report.pdf).

<sup>39</sup> E.g. Boyd, D.: Why Youth ♥ Social Network Sites: the Role of Networked Publics in Teenage Social Life. pp. 119–142. In: Buckingham, D. (ed.) *The John D. and Catherine T. MacArthur Foundation Series on Digital Media and Learning*. 2008, pp. 119–142.; Dahlgren, P.: Introduction: Youth, Civic Engagement and learning via new media. pp. 1–18. In: Dahlgren, P. (ed.): *Young Citizens and New Media. Learning for Democratic Participation*. Routledge. 2007.

predominantly young adults (all interviewees were in age group 20-35 years old, male). Semi-structured interviews were held with participants with minimal moderator involvement in the interview, the interviews lasted approximately 45 minutes to 2 hours, were recorded and transcribed<sup>40</sup>.

The interesting thing is that here the experiences of proactive, and not reactive, citizens are explored. Of course, the limitations of my qualitative study are obvious – I cannot generalize the interview material to all civically or politically active young people in the population, it is an exceptionally niched sample, the extent of my data is not sufficient to make overarching conclusions. I have to admit that I do not analyze the content of these online channels nor I go deeper into the audience and reception study. Moreover, none of these projects is already enjoying fame or mass-engagement; some of them are not even completed. Perhaps the most significant aspect is the stimulus for a discussion about new actors in the field. As mentioned above, the aim of this paper is to grasp the picture of the subjective experiences of those creating such artifacts. In fact, this time I do not want to go into the normative discussion about how should the participation be enhanced with these online tools this time. In what follows I will give a short illustration of the rationale as well as motivations that young and proactive individuals have while developing newly distinctive online spaces.

*Results:* Relativism, cultural specificity, heterogeneity, polycentrality, uncertainty, disillusionment, images and simulations prevail the contemporary society, transform public as well as private spheres. In this highly mediatized political communication culture activist platforms online emerge as the channels where the communication artifacts, practices, and social arrangements of new ICT are employed to “challenge or alter dominant, expected, or accepted ways of doing society, culture, and politics”<sup>41</sup>. Due to these challenges hierarchical and institutionalized social movements transform into transient, fragmented and pluralistic structures – *new social movements* (NSMs), organized as new forms of collective identity engaged in discursive struggles<sup>42</sup>. Analyzing the interviews the characteristics of NSMs – the sense of personal commitment, identity and creativity<sup>43</sup> – are very common attributes. In the broadest

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<sup>40</sup> The study was done as a part of a research project “Journalism in Lithuania: Context and Culture” (MIP-012/2011, 2011-2012, funded by Research Council of Lithuania) performed by Media Research Center at Vytautas Magnus University.

<sup>41</sup> Lievrouw, L. A.: *Alternative and Activist New Media. Digital Media and Society Series*. Wiley-Blackwell. 2011. – p. 19.

<sup>42</sup> Garrett, K., R.: Protest in an Information Society: a Review of Literature on Social Movements and New ICTs. *Information, Communication & Society*. 2006, vol. 9, no. 2, pp. 202-224.

<sup>43</sup> Lievrouw, L. A.: *Alternative and Activist New Media. Digital Media and Society Series*. Wiley-Blackwell. 2011.



sence the participation activities in the online projects analyzed are more textual and deliberative than conventionally political, ending up to be *subactive*<sup>44</sup> – small scale, civic-oriented, implemented not in relation to state, but to causes or issues. Consequent to this subactive and subpolitical nature of the online political participation a practical field of action is formed as *parallel communicative spaces*<sup>45</sup> – places that are mostly small-scale, networked and collaborative in scope, but subcultural and deliberative in nature.

Widely described individualization processes that contemporary societies experience, result in self-actualization, personal expression and self-fulfilment being the main catalysts for those democratic participation platforms, e.g.:

*Interviewer:* How did you end up with the idea to create such project?

*Interview 4:* Well, it is usually something you have to do for yourself. I needed this information... And when there was a sufficient amount of it, I decided to program the platform and to share it with others in need.

Searching for ways to influence political system young activists go beyond the strategy of re-inforcement and take a role of “democratic intermediaries”, the role once enjoyed solely by traditional NGOs or political parties. The analyzed youth sample expressed overt distrust in conventional politics, on the one hand, together with support for the democracy, on the other. Thus, they might be described as *movement entrepreneurs*, i.e. individuals, “who are motivated by individual grievances to undertake the social movement activity and who rely on their own skills to conduct their actions”<sup>46</sup>. The interviewees admit that they tend to incorporate their personalized expectations of political participation, and “to gain most of the psychological satisfaction from interaction and networking” (*Interview 3*).

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<sup>44</sup> According to Bakardjieva (2010) definition, see Bakardjieva, M.: The Internet and Subactivism. Cultivating Young Citizenship in Everyday Life. pp. 129-146. In: Olsson, T., Dahlgren, P. (eds.): *Young People, ICTs, and Democracy*. Nordicom, 2010

<sup>45</sup> Balčytienė, A.: Dependencies, Parallelisms and Connections: CEE Societies as Social Systems in flux. *Media Transformations*. Forthcoming.

<sup>46</sup> Garrett, K., R.: Protest in an Information Society: a Review of Literature on Social Movements and New ICTs. *Information, Communication & Society*. 2006, vol. 9, no. 2, pp. 202-224. – p. 15.

The importance to draw the public's attention towards the platform result in development of user-friendly structure of the project. Added value is also important – it creates additional traffic to the site, including elements of fun. And the ideas sometimes are not hard to find - as one interviewee put it: “Facebook is an extremely successful project where everyone participates and is used to it. So why should we look for some other logic?” (*Interview 2*). Nevertheless, according to the interviews Facebook is not suitable for political participation purposes because it is “mainstream channel for fun and entertainment, private issues. Who want to talk about politics in such environment?” (*Interview 4*).

Despite the opportunities, we have to acknowledge the existing drawbacks. The fluid and loosely affiliated structure of the organization, non-connectedness of the actors involved results in the problems concerning permanency of communication – all interviewees agree that communication and promotion actions are insufficient. Another point is that this fluidity of structure and participation is also critical for the survival of the project – once started as an initiative of „personal interest“, this „one man show“ may end unexpectedly when other challenges get entrepreneur's attention – “you know, yesterday I have discovered that one of my civic projects is not within reach anymore. (...) But it is natural – I have new ideas to be implemented, no more time for that” (*Interview 4*).

Interviewees agree that widely documented unequal access to technology (due to age, skills, etc.) is the main obstacle for socially networked platforms to flourish – the direct impact of those projects on the wide audiences is still nearly nonexistent. On the other hand, the question is, does pushing buttons bring actual change, or is it just a faulty illusion, feel-good actions and “sense of being active”? As interviewees conclude, it is not an easy question to answer, however, there might be some rationale in pressing “like”:

*Interview 4:* Even one ‘like’ means something... It is like 0 and 1 in programming – the tiniest particle of political participation. But when you collect more in numbers, it gains power...

It is important to stress that interviewees indicate the existing gap between conventional and unconventional activities and proactively try to transmute online participation into some

noteworthy decision-making offline. For these aims to be achieved a lot of off-line negotiations have to be made, bureaucratic obstacles to be faced. Young people creating political participation projects online understand that online-only part is yet not possible (albeit they have some modest hopes for the future), therefore there are a lot of investment (networking, lobbying) to push the legal boundaries of political activities further (e.g. to expand the constitutional right of the petition and to make it available online) and to reach beyond virtuality. Being young idealists these movement entrepreneurs try to reclaim the concept of democracy “in its radical, utopian sense: the absolute democracy of “the rule of everyone by everyone”<sup>47</sup>, understanding the limitations of such view, but broadening the boundaries of the activities available at the same time.

## Discussion and Conclusion: Networked Reality in Action

Transformations run deep, increasing range of political voices, engaging into new modes of participation where small scale subactivist actions are involved. Widening the whole understanding what constitutes political is also the case – it expands the notion of unconventional political participation beyond just demonstrations or protests. We have to admit that alternative forms of political activism are still left out at the margins, but with more mediatized mobilization tools the understanding of “politics” in the narrow sense becomes more and more outdated. On the contrary, reassessment of various topics leaves a feeling of broadened political arena, where politics charge different spheres of life, are more personalized, closer to the public as well as mirror the society they have been developed in.

It is being said: “Internet can contribute to the invigoration of democratic citizenship but only if imaginative minds can generate creative policies to make this happen”<sup>48</sup>. Within this paper a primary study of some aspects of transformation have been touched. Even though the analysis is raw and links between the ideas are still under construction, it is obvious that the

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<sup>47</sup> Fenton, N.: Re-imagining Democracy. New Media, Young People, Participation and Politics. Pp. 19-34. In: Olsson, T., Dahlgren, P. (eds.): *Young People, ICTs, and Democracy*. Nordicom, 2010. – p. 29.

<sup>48</sup> Coleman S.: Making the E-Citizen: A Sociotechnical Approach to Democracy. pp. 379-394. In: Coleman, S., Shane, P. M. (eds.): *Connecting Democracy. Online Consultation and the Flow of Political Communication*. The MIT Press, 2012. – p. 391.

picture of young citizens' involvement in technically-enabled political communication in an interesting, albeit complicated one. We may say that despite the appealing "democracy to everybody" idea the Internet is not the universal cure here – politics become wider and denser for those already engaged or interested, and stays nearly non-existent for the excluded, the questions of control, power, information management, colonization become distinct as never before.

Despite the concerns (or maybe inspite of it), the need for more in-depth studies aiming to understand the dynamics of the complex socio-political youth participation issues still remains. On the whole, I agree that Internet may reinvigorate civic life by increasing access to political information, facilitating political deliberation, offering an alternative venue for political expression and engagement, but these claims are still cautious - social media, socially networked platforms and other online tools may also create a mix of fragmented activities, generating participation without real outcomes. It reveals the real dilemma of transformation in the socially networked politics – on the one hand, the numbers of those joining and participating in the niched projects are not high, these platforms attract only particular audiences, but on the other, changes are most evident not in numbers, but in content. The paper argues that in this highly mediatized political communication culture self-actualization, personal expression and self-fulfilment become the main drivers for democratic participation for the active young, the social initiative platforms they proactively choose to develop online reflect the core characteristics of liquid modern society – they are fluid, networked and fragmented. On the whole, those insights are few of many gates to enter more diverse and complex analysis of the concept of youth participation, bringing attention to the formerly underestimated or even completely new counter-spaces online.

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## THE STRUCTURE OF PARTICIPATIVE SOCIETY

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Albín Bella

**Abstract:** *In the first part of this article the author makes an analysis of contemporary capitalism. In the second part of the article he describes potential fundamental values in a new structure of human society. In the final part of the article author describes permaculture as a system of sustainable development in the field of ecology. Furthermore he describes the experience of participative budgeting in Slovakia as a way of civic participation in the political field. Finally he describes a participative economics and its aspects of participation.*

**Keywords:** *Crisis of global capitalism, Permaculture, Participative budgeting, Parecon*

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### Introduction

The article offers an analysis of the current human society. The analysis is conducted from the perspective of the trichotomy of criticism, description and normativity as a method of critical theory. Article shows how crucial the civic participation is in this period of time.

#### I. Crisis of global capitalism

*„Really harmful "materialism" of our time it doesn't come from the science. It comes from persistently ruling class that everyone creative skills are only possible evoke in a struggle for a material gain." <sup>49</sup>*

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<sup>49</sup> Dewey, J.: Rekonštrukcia liberalizmu. Bratislava : Kalligram, 2001,p. 376, ISBN 80-7149-281-7.

On the top of present basic characteristic system dominate ostensibly harmless idea of a capital accumulation. There is no doubt about that, it is also obvious from the term we gave it to – capitalism<sup>50</sup>. Of course capitalism has many looks, and it shows in every sphere of a social life. People were successful to implant its structure to almost every "corner" of the world through globalization<sup>51</sup>, which also belongs to its basic characteristic. But that is typical for this system on every levels regardless to its locality where it was domesticated, in some places its preferences, obviously almost deifying the idea of the capital accumulation. The problem has started in the minute when the original idea to have enough, gradually outgrow to the idea to have as much as possible (excess).

In capitalism fulfilling of the basic needs change to never ending capital storage. This is not about the family survival anymore. Not even about comfort and convenience. The capital accumulation is becoming an addict or an attack. In many cases people produce much more than is necessary not even to survive, but even to comfortable living. I suppose that this need to accumulate, even though to another natural kind expense, has its explanation in a disruption and instability in the psyche of modern man (authoritarianism, narcissism, schizophrenia, etc.).<sup>52</sup> But that is not the subject of this article. Side effects boundless capital accumulation includes the following aspects:

#### A: economic aspects

*competition and patent fight for know-how*

*centralization and monopolization of production*

*unfair redistribution of capital / resources; overproduction<sup>53</sup>*

#### B: political aspects

*Hierarchy and power centralization;*

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<sup>50</sup> In some contemporary analyses we can find alternative term: laissez-faire liberalism.

<sup>51</sup> Robinson, W.I.: *Teorie globálního kapitalismu. Transnacionální ekonomika a společnost v krizi*. Praha: Filosofia, 2009, ISBN 978-80-7007-305-6.

<sup>52</sup> Fromm, E.: *Man for himself. An inquiry into the psychology of ethics*. New York : Holt Paperbacks, 1990. p.254, ISBN-13: 978-0-8050-1403-7

<sup>53</sup> Mészáros, I.: *Socializmus nebo barbarství : Od „amerického století ke křižovatce dějin*. 1. vydanie. Praha : Socialistický kruh, 2009. ISBN 978-80-86320-62-5.

*representative "democracy"/partocracy/oligarchy/government of corporation*

*Lack of transparency in the institution, nonparticipation<sup>54</sup>*

### **C: environmental aspects**

*Destruction of natural environment/unnecessary transport/environmentally unfriendly energy production;*

*monocultural production /factory farms/ diversity environment lost*

*extinction of plant and animal species<sup>55</sup>*

### **D: social aspects**

*debts of individuals, but also entire nations (credit policy), and an increase in unemployment;*

*conformity of individuals identity; alienation of labour and "slavery";*

*society atomization /rivalry/intolerance/war.*

All four sections, in which undesirable and destructive society consequences manifest in the form of capital accumulation, they overlap each other. So I would like to suggest, that any effort of partial changes will not solve long-term problems as a result of the operation social institution in capitalism. Currently, there is a strong market monopolization, and profit from the production remains in the hands of transnational capitalists. An employee can be glad that he has a job where he can work, that he receive his salary, so he can buy what he need. Of course, again mostly from the capitalist. This creates unfair redistribution of capital, because those who work directly in factory only receive a small percentage of how much it remains in the hands of the owner of resources production<sup>56</sup>.

In addition, large corporations have been building up their production mostly where it is the most convenient for them, in the area where the Government provide them various forms of support, for example in the form of tax holidays, building production halls, or in a place where is a cheap manpower. The result is a strong centralization of production and capital, resulting in

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<sup>54</sup>Dewey, J.: *Rekonštrukcia liberalizmu*. Bratislava : Kalligram, 2001, ISBN 80-7149-281-7.

<sup>55</sup>Holzer, S.: *Zahrada k nakousnutí. Permakultura podle Seppa Holzera*. Brno: Alman, 2010, ISBN 978-80-87426-08-1.

<sup>56</sup>Dewey, J.: *Rekonštrukcia liberalizmu*. Bratislava : Kalligram, 2001, p. 365, ISBN 80-7149-281-7.

massive transporting products across the continent, thus polluting environment and use fossil fuels where it is not necessary. Of course, on the market the corporations they don't follow any rule other than profit the maximum. The capitalist always chooses what it is for him the most financially advantageous. All production processes and devices, of course, they are subject to patent protection, thereby again it reinforces the monopoly of patents owners. Those days the aim is not to share know-how to ationwide to improve production. Patents are even buying up and keep in a secret in order to get the most capital, as much as possible. In addition to those two classes, the class of transnational capitalist and working class, there is a third class called - coordinator class that ensures that capitalism and its mechanisms works the best<sup>57</sup>.

Similar approaches are also visible in the ecological sphere. Due to the accumulation of capital, it leads to the devastation of environment. People are willing to transport food even several thousand kilometers, they are cheaper, because they are grown in large corporations (Spain, the Netherlands). Corporations produce food through monocultural economy. Its shortcomings are obvious. Chemical sprays have resulted a pollution of groundwater and environmental contamination, resulting to a loss of diversity and the extinction of animal and plant species. Many people would like to change the current situation. However the political system won't allow it. A representative form of democracy is very passive, and especially hierarchically structured. Current government mechanisms leave much opportunity for untransparent management and corruption. Politicians are not obliged to listen to the needs of their citizens. So representative democracy transformed into partocracy, respectively oligarchy, or even corporatocracy. These are only just some really eye-catching and key weaknesses, which cause the fact that the current state of society is one big crash, against which we can't be saved by any ad hoc solutions.

The situation requires a comprehensive systemic change. Change in public institutions. Change in the social structure and forms of governance. It requires a shift in our thinking and behavior to the environment in which we live. "The materialist doctrine concerning the changing of circumstances and upbringing forgets that circumstances are changed by men and that it is essential to educate the educator himself. This doctrine must, therefore, divide society into two parts, one of which is superior to society. The coincidence of the changing of

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<sup>57</sup>Albert, M.: 2006. *Realizing Hope. Life Beyond Capitalism*. London : Zed Presss 2006, p.11

circumstances and of human activity or self-changing can be conceived and rationally understood only as revolutionary practice.”<sup>58</sup>

## II. New way of life in society!

“New institutions should be open, democratic, transparent, participative, not forgetting to be responsible for regional and democratic evolvement.”<sup>59</sup>

As I have adumbrated, system crisis will require system change. It should be complex and phased. Any kinds of revolutions and putsches of long-lasting sustainability point of view have no avail. Unless we want next system to fall like a house of cards. The real hope for change lays in phased changeover from hierarchy structure of society into interconnected and classless structure. Transformation from centralized production and government into local production, local autonomy and self-government. From complete ignorance of environment into the direction of conscious symbiosis with nature and its protection. To achieve that, alternation of peoples value system is necessary. Only if we degrade capital from the top of our achieving values and goals we can think of change for better. This course surly will be more “expensive” and difficult, so it will require effort of many people but bounty for this will be social structure, which will be really based on democracy, solidarity and respect to each other. I think the key is the citizen’s participation. The more people will be involved in functioning of society we can avoid corruption, non-transparency and misuse of common finances.

Fundamental aspects of new social structure which I would include are:

1. *Active citizens participation/participatory democracy*
2. *Local production and self-government/decentralization*
3. *Cooperation/formation of communities/multiculturalism*
4. *Web structure of society/interconnectedness/circulation of work positions*

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<sup>58</sup> <http://www.marxists.org/archive/marx/works/1845/theses/theses.htm>; 10.9. 2012.

<sup>59</sup> Albert, M.: *Realizing Hope. Life Beyond Capitalism*. London : Zed Presss 2006, p.59

5. *Equitable redistribution of resources and capital/gains*
6. *Transparency/free sharing know-how*
7. *Conscious symbiosis with nature and its protection*

Beside my study I found plenty of philosophical, economical, ecological, sociological and other concepts which are concerned in aforementioned aspects of their implementing and institutionalizing. I picked three of them, which have already made real steps into alternation of social system, change of thinking and functioning of people in social institutions. In regard of social transformation that should be complex, I picked three of them which by my opinion cover the widest spectrum of social structures. It is conceptions of permaculture, participatory budget and parecon. As I aforementioned, it is necessary that those activities should mutually blend together and complement fittingly each other. Consequently, those three concepts have lot of in common. Every one of them is specific in concrete ambit of human society. Permaculture aims co-existence between man and nature, which would be constantly sustainable. Participatory budget solves questions around participation of citizens in self-government and deciding about public matters. At the end parecon do it in economical part of society in which main topic are citizen participation, fairness and equal redistribution. Of course all three of them influence social aspect of society and trying to set them up to be the most beneficial for all citizens that no one is disadvantaged. In sequence I will try to those three concepts and their mechanisms to make clear which actions we should take and so improve our joyless situation of nowadays.

Participatory economics seems to be best solution for form of governing and deciding about public matters. Participatory economics openly works with ideas of self-government and self-regulation. Any kind of hierarchical form differentiating society is considered to be incorrect. Dualism of rulers and ruled ones this concept eliminates.

Citizens have right and must have real power and possibility in making decisions which are concerning and influencing they lives or life and function of their community. Citizens are free and equal in approach of institutions and determination of all social spheres like politics, economics, culture or social spheres. Democracy shouldn't be reduce only to for "elections" which are not the only one and neither paradigmatic democratic activity. Peoples' participation overcomes disinterest about public matters and develops citizens activity. Furthermore public



participation rather leads to consensus, social responsibility and therefore strong democracy. Participatory democracy is real application and asserts its participatory tools like referendum, callback, publicly initiative legislation, participatory budgeting and so on. Participatory democracy is not bound only on local, small communities because new information technology enables patchwork methods of global participation by internet and open source programs (possibilities of "e-democracy").

### III. Permanent Agriculture – Permaculture!

"The aim is to create systems that are ecologically-sound and economically viable, which provide for their own needs, do not exploit or pollute, and are therefore sustainable in the long term."<sup>60</sup>

A permaculture is a complex system that teaches a man on how to behave towards the nature and on how to coexist reasonably and in a long term for the benefits of all the entities involved. A hierarchy of being that has been built and cemented over last two millennia is, in a system of permaculture, either disintegrated or modified into a network of equally necessary and equally involved natural elements and entities in the universe. A conscious man thus descends a pedestal he has created for himself and returns back to Earth, back to the ground, between all other evolutionary (not only biologically – speaking) directed entities. Any social system that aims at being sustainable in a long term cannot prioritize a financial profit of a man over a survival of another species, whether it to be a livestock or plant species. The time has come that a man refrains from measuring the nature in terms of euros or dollars, as its value is incalculable, be it from the point of view of its length of existence, energy necessary for its development or any other metrics. The undesired externalities are therefore a reason in itself to refuse any activity harmful for the environment. To choose and summarize only the fundamental principles of a truly premacultural design from which one can further draw any subsequent rules for a community system, these would be as follows:

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<sup>60</sup> Mollison, B. – Slay, R.M.: Úvod do permakultury. 1. edition. Revúca : Permakultúra (CS), 1999. p. 1, ISBN 80-968132-0-X.

1. *A conscious and targeted planning of infrastructures and activities, an effort of raising up independent men responsible towards their community, support of the local and regional governments;*
2. *A protection of the natural diversity, an increase in fertility (based on previous observation and experience) and reforestation of the exploited or primeval forests;*
3. *A use of local natural resources and species; decentralization – in terms of the planning in smaller and more intensive systems; a zonation;*
4. *A use of low – energy and biological systems for the production and storage of the energy, energy savings, an optimal use of the resources and their recycling;*<sup>61</sup>

It is vital to further develop at least the basic examples for each and every point, in order to clarify how to link the permacultural design with the parecon and the participative budget that lay basis for a complex and sustainable social system.

The first point ensures a conscious formation of a society via civic institutions. These are the ones that provides the stakeholders – the citizens in this case – with an opportunity to participate in their right and fair functioning. The second point aims at supporting the original environmental diversity so as to avoid the reduction and extinction of species or proliferation of those whose over-presentation might provoke fatal harms to the environment. It is more than clear what kind of consequences a monocultural cultivation of food or agricultural forests does have. It results in an infestation of cankers, chemical pesticides and deterioration of the environment at large. The polycultural and permacultural fields and forests are an answer and a solution to the current miserable state of agriculture. They may modify even a calamity land into an oasis full of vegetables, fruits and otherwise useful plant and livestock species, as Sepp Holzer de facto proved in Austria. The diversity is a key to any sustainable system, in the area of agriculture and beyond – in the area of culture as such.<sup>62</sup>

The third point emphasizes a necessary decentralization and a local independence. The decentralization into a permaculture does not equal to a fragmentation into some basic

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<sup>61</sup> Mollison, B. – Slay, R.M.: *Úvod do permakultury*. 1. edition. Revúca : Permakultúra (CS), 1999. p. 1- 32, ISBN 80-968132-0-X.

<sup>62</sup> Holgrem, D.: *Permakultura. Principy a cesty nad rámec trvalé udržitelnosti*. Svojanov : Permalot. 2006, p. 209-230. ISBN 80-239-8125-0

uncontrolled elements, but rather a solid creation of an infrastructure at the level of a local autonomy, if these are in line with the overall objectives of the society, such as sustainability, democracy, freedom, humanization etc. It is necessarily a complex theme and any model for the infrastructures would be time and energy consuming, but if we are to construct sustainable structures, the genuine planning phase is a must. The main goal of any decentralization is a local autonomy. The permacultural design propose the systems in such a manner that all single regions and departments enjoy the highest degree of autonomy in terms of extracting the energy, food and services production, boosting employment, waste processing, etc. It aims at minimizing the negative effects on the environment and the population concerned. By extracting the local resources and producing local food one can influence a regional employment level, sustainability, stability and the original diversity. It also provides for a protection of the original plant and livestock species which are fundamental for the sustainable functioning of the country.

In the best case scenario the local unit can produce all the necessary basic products while the remaining products, labelled "specific products", may be imported in the most effective manner (taking into account the distance, the way of transport and the conditions for productions). From the point of view of a permaculture it means that a long term and regularly updated observation of the state of the countryside and its population (not humankind only) is required. Based on this information the local unit can subsequently plan and select the appropriate manner of the local cultivation. The last point deals with the energy savings and a conscious production and storage of the necessary energy reserves extracted via low-energetical ecologic and biological systems. It deals also with the optimal use of resources and their recycling. It is instrumental to take a closer look on two basic aspects of this point: the passive and the active use of energy and the waste processing. Permaculture does recognize several possibilities how to actively and passively save the energy, many of them are mainstreamed via "Eco-fashion". A common example is the solar radiation used for heating the water or houses (solar collectors). The compost and its temperature is another way for heating the water. Other examples ensue: different types of green roofs that serve as isolation (the marl stabilizes the temperature) and as a way how to save some surface for further cultivation. The stable temperature of the soil in the depth of 1 meter is an alternative to freon and electric fridges, and

there are myriads of other practical permacultural ideas.<sup>63</sup> An ecological waste processing plays also an important part in any sustainable structure. The problem of waste processing is a very actual one; if there is no education from the early up to the old age, then the society struggles with an overall non-ecological approach to waste. Alongside with a separation of basic types of waste (plastic, paper, glass, metal, tetra - pack) there should be a possibility for a public composting, that accounts for up to 40% of households waste. Furthermore, whilst the separation is important, a conscious and moderate consummation of products and resources is equally important.<sup>64</sup>

Permaculture seeks to return the original independence and sustainability to municipalities and regions. It underlines the relationships between the entirety of elements in all municipal and regional subsystems such as the processing and energy saving, transport and cultivation of food, or a meaningful cultural and social life. It gives advices in optimization of technology use in urban constructions as well as in processing energy resources. According to Mollison there is only our passive reliance on authorities that hinders us from an effective use of the above mentioned techniques. He thus directly encourages our active engagement and participation in the formation of a municipal unity (and the social system as such). Every one is a part of this process, if consciously or not.

#### IV. Participatory Budgeting – Participative democracy!

The idea of participatory budgeting (PB) originated in the Brazilian city of Porto Alegre and since 1989 had spread out throughout the world.<sup>65</sup> Currently the mechanism of participatory democracy is applied in around 2000 cities around the globe. At the first glance, it might seem that this process is only for participation in the money distribution from the city budget. Hence PB mechanism is much more complex. Through this mechanism are regulated the actual lists of items to be funded from taxpayer funds. The process of defining the municipal budget through civic participation is undoubtedly more complex than the one of the representative democracy.

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<sup>63</sup>Nagy, E.: *Manuál ekologickej výstavby. Navrhovanie a výstavba trvale udržateľných ľudských sídiel*. 2. edition, Olomouc :T Permakultura (CS), p. 64-104, ISBN 80-967972-0-4.

<sup>64</sup>Holgrem, D.: *Permakultura. Principy a cesty nad rámec trvalé udržitelnosti*. Svojanov : Permalot. 2006, p. 27-55, 117-132. ISBN 80-239-8125-0.

<sup>65</sup><http://www.unesco.org/most/southa13.htm>; 10.9. 2012.

On the other hand, it is certainly more democratic, more in line with citizens' needs and striving for improvement of situation of the most disadvantaged people and municipal areas. In case of representative democracy, the municipal budget is created in no more than three months. In the case of PR, it takes a whole year.

At the beginning stands mapping of the citizens' needs, as we call it in Slovakia. This is a key activity, but not the only one. Firstly, it is important to form civic communities. In PR we create two basic structures of participation: territorial communities and subject related communities. Territorial communities mostly copy city division into districts, settlements, or streets. It is always dependent on size of the city or town in which PB is applied. This ensures decentralization of the structure and prevention of centralized authority to decide on the budget, or unfair treatment towards any district. Every citizen shall be consulted on issues and problems related to his/her location. Citizens can also express their opinion on matters of other locations, but with greater distance their voice loses momentum as they may not be well informed about all of the facts, nor do they directly feel the impact of the final decision. In any case, the citizens' view is taken into account in percentage rate to the extent to which he/she is affected with the problem.

In addition to the territorial communities are created subject related communities, which are related to the most fundamental issues in the city, such as transportation, education, green keeping, culture, youth seniors, etc., or are created according to the needs of citizens who suffer from lack of activity in the form of services in any issues concerning them. This is the basic difference between the current budget definition and defining the new one according to PB mechanism. Individual items in municipal budget are formed according to the actual citizens' needs. Whole PB process is transparent.

Each budget entry is open to the public and all citizens see how much funding the city needs annually. Mapping the needs of citizens takes place during the whole year. Communities meet in person, depending on the current needs (e.g., every week). Furthermore, the civic interaction is ensured by "E-participation". The result is a comprehensive archive of mapping of the citizens' needs, but also of their activities.<sup>66</sup> Thus the PB mechanism on one hand focuses on services the government already provides to citizens, where citizens can review the budgetary

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<sup>66</sup> <http://utopia.sk/liferay/web/participativny-strom>; 10.9. 2012.

item or add up funds, or move excess funds to another service respectively, always though according to the actual citizens' needs. On the other hand, it can also create new services, which according to citizens are absent in government and are considered to be necessary.

The next step of the PB mechanism becomes the development of specific project plans to either modify/improve existing services or develop new services which were previously absent. The basic requirement for project documentation is that it serves solely for public purposes. Of course, when creating project documentation, all ideas from the involved persons are reflected along with finding solution which is in the best case consensus and at the same time if possible solving greater proportion of the problem. Every community knows how big is the package it manages, adapting the project documentation, its number and scope accordingly. In case of lack of funds, citizens may ask another community with similar intentions for cooperation and support, or their plans are implemented gradually. After project documentation development the mechanism proceeds to the next step.

Participatory communities elect their representatives who will defend their projects at a meeting of representatives of all communities. After the meeting, all representatives are returned to their communities and according to the needs and responses adjust their projects (level of funding, time, cooperation with other communities, etc.). Consequently the final public consideration takes place, which is open and accessible to all citizens. Representatives at the meeting decide on how much funds to allocate to the individual projects. Through the process of deliberation it is being looked after overlapping consensus, which will include as many problems and their solutions as possible.<sup>67</sup>

The resulting form of the budget is then submitted to the municipal executive. Finally, citizens are selected from the participative communities, creating commissions, which will oversee the implementation of community projects. The main condition is that any citizen can become the representative of the community, but only once in a lifetime and at the most for one year. This prevents authoritarian and centralizing power in the hands of individuals. In PB mechanism one should be aware of the fundamental openness. It is a living process, always formed in line with the actual needs. It can be modified according to the height of citizens'

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<sup>67</sup> <http://participedia.net/cases/raymond-new-hampshires-community-conversation-collaboration-positive-raymond-and-new-hampshire>; 10.9. 2012.

representation percentage, from the amount of capital that was allocated to this mechanism, etc. The percentages vary all over the world, e.g. in terms of funds, it ranges from 1% to 100% of the municipal budget.

For the society, implementation of the participative budgeting means to apply more democratic form of municipal governance in cooperation with its citizens. This increases the interest of citizens in public affairs and develops their active citizenship. Public resources are directed there, where perceived as the most important by citizens. By means of active participation, social ties between citizens are mutually being renewed. The whole mechanism gradually increases transparency of urban governance, removes corruption and undesirable influences that are contrary to the interests of the population and the development of towns and villages.

## V. Participatory economic - Parecon!

Long-term sustainable economic system is unsustainable unless political, ecological and social spheres remain unchanged. Self-government and citizen participation is not only question of political structures but also question of enterprise and production spheres and so local and even international economy. Besides participatory ownership is in parecon evenly important division of labour which can in many cases interrupt justice or social inclusion in social system. To describe parecon more accurately I apply to co-author of parecon Michael Albert: "The core institutions, the part of economic vision it makes sense to conceive and advocate now, are:

- productive property that is overseen and directed by those it affects, as indicated below, but that is owned by no one - called participatory property.
- workers and consumers councils in which members, individually and collectively, have a say in decisions proportionate to the effect of the decisions on them, whether as individuals or in groups - called self management.
- remuneration for socially valued labour in proportion to duration, intensity, and onerousness of one's effort - called equitable remuneration



- a division of labour in which each worker does a mix of tasks conceived so that on average every worker's overall work situation is comparably empowering as every other's - called balanced job complexes
- allocation by cooperative negotiation among affected workers and consumers, acting through their councils - called participatory planning.“<sup>68</sup>

The essential idea of parecon becomes elimination of class antagonisms and introduction of citizen participation into economical spheres and its function. It predicts creation of communities. Parecon has four characteristic basic social values which not only in future but in present should carry on every institution. Solidarity, equality, diversity and self-government. In participatory economic none conscious man will want to harm and see other as a rival which has to be defeated the because man will recognize the other as a prospective co-worker with which he or she can cooperate. Parecon prefers miscellaneous approaches depending up on peoples heterogeneousness and their specific character and situation. Equality parecon promotes by in sphere of reward of performed labour. No one will be advanced by capital and private property. Every occupation will be fairly appraised by effort and self-sacrifice which man undergo at work. Furthermore with equal comprehensive occupations ,which secures broad employability for every individual, labour will be easier and above all fairly appraised. Equal comprehensive occupations besides eliminates difference between people by their circulation on occupations or by creation of similar positions at sphere of self-government and central participate planning.<sup>69</sup>

Into foreground goes participatory property, which miscellaneous models we know already from present in companies functioning on principle of co-operatives. No employee will have bigger part from profit only because someone is owner like it works in capitalism. Eventually central planning assures that production will accord to actual necessities, observations of employees and of course by actual demand for products. Employees will have right to influence actualizations, adjustments and development of output. So companies can derive know-how from its employees and from their experiences. The production will severalfold more effective. Parecon of course cares about local economy and its output ability

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<sup>68</sup><http://www.zcommunications.org/parecon-and-participatory-society-by-michael-albert>; 10.9.2012.

<sup>69</sup>Albert, M.: *Realizing Hope. Life Beyond Capitalism*. London : Zed Presss 2006, p.1-20

and always will support as a form of independence and local development.<sup>70</sup> Institutions would gradually enhance care about employees, health care, social security and also supervise on impact of environment and in case of need would change process or amount on undesirable externability.

Government would support activity of local producers' not multinational corporations. So parecon is a system which recognize economy in its comprehensive position toward other spheres of social life and system.

## Conclusion

"The philosophers have only interpreted the world, in various ways; the point, is to change it."<sup>71</sup> It is time to change the structure of society.

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<sup>70</sup>Dewey, J.: 2001. *Rekonštrukcia liberalizmu*. Bratislava : Kalligram, 2001, p. 348-349; ISBN 80-7149-281-7.

<sup>71</sup><http://www.marxists.org/archive/marx/works/1845/theses/theses.htm>; 10.9. 2012.

## EMERGING ADMINISTRATIONS: A DIMENSION OF SUSTAINABLE DEVELOPMENT IN SOUTH-EAST EUROPE

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Bogdan Berceanu<sup>72</sup>

**Abstract:** *In a changing and moving world with interconnected actions that create interdependence, institutions and administrative systems must respond to external environmental stimuli and to resonate, to adapt them and create the best conditions for the development in all aspects of social life. Sustainable development, although a widely used phrase and idea, has many different meanings and therefore provokes many different responses. The aim of the article is to explore the role of the emerging South-Eastern administrations in the sustainable development under the changes and rules imposed by the European Union pressure.*

**Keywords:** *sustainable development, emerging administrations, South-East Europe.*

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### Introduction

Sustainable development has been defined in many ways. All definitions of sustainable development require that we see the world as a system.

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The public administration system, as a part of the social-global system, had to adapt permanently to this in order to respond to the new necessities of individuals and societies. These characteristics were concretized in the role that public administration system has under the pressure of the external environment in the sustainable development in the Southeastern European area.

The meanings of public administration, inclusive governance and sustainable development in a globalized context, are reviewed in order to explore how public administration can ensure sustainable development in the contexts of limited resources.

Regarding this issue, the concept of *emergence* is used to research and to analyze the nature of these changes from the approach of the systemic theory and the dimension of sustainable development in South Eastern Europe.

Taking into consideration the above exposed relation between the concept of “emergence” of public administration and the sustainable development, in this paper, we attempt to provide some answers to the following related issues:

A. Is the European Union, through the processes of accession and integration and through its policies a catalyst of sustainable development for the states from South Eastern Europe?

B. Which is the role of the emerging administrations in the creation and consolidation of sustainable development and which are the characteristics of this kind of development South-Eastern Europe? We will analyze in the case study of the paper the following countries from this geographic area: Bulgaria and Romania as recent European Union member states.

## I. Theoretical background: the systemic approach of public administration and sustainable development

Systems theory provides an internally consistent framework for classifying and evaluating the world. In many situations it provides a scholarly method of evaluating a situation. An even more important characteristic, however, is that it provides a universal approach to all

sciences. As von Bertalanffy points out, "there are many instances where identical principles were discovered several times because the workers in one field were unaware that the theoretical structure required was already well developed in some other field. General systems theory will go a long way towards avoiding such unnecessary duplication of labor"<sup>73</sup>.

In the vision of David Easton<sup>74</sup>, the systemic approach distinguished the systems environment into two parts: inside and outside society, environment intra societal including economic systems, cultural, social, of the same companies as the political system and extra societal environment, including all systems located in considered outside of society. Today, the research on the administration essentially refers to medium and analyzes their intra social part, especially the interventions of the administrative system and political system, economic system, social system.

With regard to clarifying the concept, Lugan gives a definition: "A system is a set of some elements existing in different states. If status changes are measurable we consider these elements as variables, and system status at some point will be variable list these basic values".<sup>75</sup>

The definition is similar to that offered by Ludwig von Bertalanffy, who is considered to be the system theory founder. He defined in his *General system theory* very simple the system as "a complex of interacting elements".<sup>76</sup>

The systemic approach of public administration provides a consistent and rigorous basis for an ideal model of public administration to sum up all the benefits - goals for any administration, like: nationality, efficacy, optimal serving people etc<sup>77</sup>. As was stated by scholars<sup>78</sup>, to clarify the role of government under the rule of law is necessary a more comprehensive systemic analyze, which - beyond the structural and functional analysis - aims to investigate the relationships between system elements, and of these and other elements of the whole social system.

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<sup>73</sup> von Bertalanffy, L.: *General System Theory: Foundations, Developments, Applications*. New York: Braziller, 1968, p. 33.

<sup>74</sup> Easton, D.: *Analyse du systeme politique*, Armand Colin Press, 1974, p.19.

<sup>75</sup> Lugan, J.C.: *La systématique sociale*. Paris: PUF Press, 1993, p. 34.

<sup>76</sup> Matei, A.: *Introducere în analiza sistemelor administrației publice*. Bucharest: Economica Publishing House, 2000, p. 8.

<sup>77</sup> Alexandru, I.: *Structuri, mecanisme și instituții administrative*, vol. II. Bucharest: Sylvi Publishing House, 2001, p. 140.

<sup>78</sup> Alexandru, I.: *Curențe de gândire privind administrația publică*. Bucharest: Economica Publishing House, 2000, p. 21.

Sustainable development is an important new perspective on public policy and administration that has appeared and it is largely used in the components of the world system. This concept attempts to more explicitly consider the future consequences of current behavior.

Regarded from the system theory, Vionov and Smith<sup>79</sup> define sustainable development as an “environment wherein the system does not cause harm to other systems, both in space and time; the system maintains living standards at a level that does not cause physical discomfort or social discontent to the human component; within the system life-support ecological components are maintained at levels of current conditions or better”.

The relevance of system models to the goals of sustainable development can be identified as goals of the biological, economic, and social systems (see Figure 1)<sup>80</sup>.

**Figure 1: Goals of sustainable development form the system theory perspective**



**Source: Bartle, J.R., Deniz L.: op. cit., p. 193**

Biological system goals include genetic diversity, resilience, and biological productivity. Economic system goals include efficiency, equity in distribution, and social welfare improvements. Social system goals include citizen participation and social justice<sup>81</sup>.

<sup>79</sup> Apud Leuenberger, D.: Sustainable Development in Public Administration : A Match With Practice?. *Public Works Management Policy*, Sage Publications, 2006, vol. 10, no.3, pp. 195-201.

<sup>80</sup> Rao, P. K.: *Sustainable development: Economics and policy*. Oxford, UK: Blackwell, 2000, apud Bartle, J.R., Leuenberger D.: The Idea of Sustainable Development in Public Administration. *Public Works Management Policy*, Sage Publications, 2006, vol. 10, no.3, pp. 191-194.

<sup>81</sup> Bartle, J.R., Leuenberger D.: The Idea of Sustainable Development in Public Administration. *Public Works Management Policy*, Sage Publications, 2006, vol. 10, no.3, pp. 191-194.

The systems approach in sustainable development is a close match to the ecology of public administration, the idea of interdependence of human life, equilibrium, organic systems, and stabilization<sup>82</sup>.

The basic idea is that complex interactions between different elements can be understood in a systemic sense: through their interaction, elements within a system co-evolve with each other and with their environment, new structures and novelties emerge and new configurations appear through self-organization. The basic mechanisms that underlie change in complex adaptive systems are co-evolution, emergence and self-organization<sup>83</sup>. Societal systems can be considered as complex adaptive systems.

As part of the category of social systems, the administrative system changes or transformations of a process or phenomenon has the interaction between external factors and internal ones. Correlation between causality and interaction should refer to the causality process<sup>84</sup>.

Regarding this issue, the concept of *emergence* is used to research and to analyze the nature of these changes in the public administration starting from the approach of the systemic theory.

## II. Sustainability and emergence of public administration in South eastern Europe

The concept of sustainable development should be distinguished from that of sustainability. *Sustainability* is a property of a system, whereby it is maintained in a particular state through time. The concept of sustainable development refers to a process involving *change* or *development*<sup>85</sup>.

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<sup>82</sup> Stillman, R., II.: *Public administration: Concepts and cases* (7th ed.). Boston: Houghton Mifflin, 2000, p. 80.

<sup>83</sup> Holland, J. H.: *Hidden order: How adaptation builds complexity*. Cambridge: Helix books, 2005, p. 53.

<sup>84</sup> Matei, A.: *Introducere în analiza sistemelor administrației publice*. Bucharest: Economica Publishing House, 2000, p. 77.

<sup>85</sup> *Sustainable development in the European Union*, 2011 Monitoring report of the EU sustainable development strategy.



Emergence is one of the concepts from the general study of complex systems (in which category we can include also the public administration system) that promises to reshape the way analysts think about change and development. It is the way in which new, unexpected, and qualitatively distinct configurations appear in complex systems<sup>86</sup>.

Emergence signifies *a kind of change*<sup>87</sup>. We can underline that the states from South-Eastern Europe had in the last 20 years a revolution which changed the political system and the form of governance. So, we can say that the states from this European area are emerging states and by consequences we can identify that their structures or sub-systems (such as the economic system or the public administration system) that compose the state are characterized by these aspects of emergence<sup>88</sup>.

The context for the states from South Eastern Europe was represented by the interactions which these states had with the international bodies after their dictatorial regimes ended (see Figure 2). These interactions were concretized by the aim to establish relations with the international community and the aim to build a stable democracy at the end of the transition period. When we write "international community" we have in mind: United Nations, NATO, International Monetary Fund, World Bank which we will name generally international organizations and the European Union. The international organizations have been instrumental in enforcing the dominant role of globalizing states and transnational corporations around the world.

The concept of sustainable development itself is the result of a balancing of differing, potentially conflicting interests – environment and economic development – which takes place directly on the international scene<sup>89</sup>.

In this context we can include also the sustainable development as a process of interactions between the Southeast European States and the international bodies, especially the

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<sup>86</sup> Galatzer-Lev, R. M.: Emergence. *Psychoanalytic Inquiry. A Topical Journal for Mental Health Professionals*. 2002, vol. 22, No. 5, pp. 708-727.

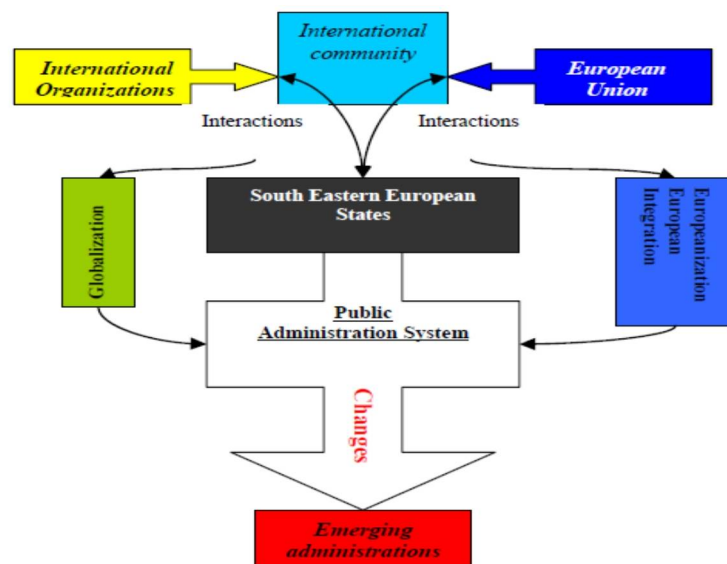
<sup>87</sup> Pepper, S.C.: Emergence. *The Journal of Philosophy*. 1929, vol. 23, No. 3, pp. 241-245.

<sup>88</sup> Berceanu, B: Reforming governments in emerging administrations. Case study: South-eastern Europe, *Public Administration East and West: Twenty Years of Development*: Bratislava, NISPAcee Press, 2012, pp. 1-15.

<sup>89</sup> Battini, S.: Policies for sustainable development economic globalisation and administrative globalization, *Public Administration, Competitiveness and Sustainable Development*, Firenze University Press, 2002, pp. 89-106.

European Union. Sustainability is a key principle of all EU policies and actions. One of the underlying tenets of European Union policy, governing both its domestic and international affairs, is that of sustainable development.

**Figure 2: The context of emergence in public administration**



Source: Berceanu, B.: op. cit., p. 5

Sustainability can be achieved at different levels. Sustainable development is therefore a normative orientation that provides a frame of reference to discuss and direct differences in perception, ambition and understanding between actors in light of desired changes in society<sup>90</sup>. The result is the emergence of hybrid institutions featuring collaborative arrangements between a host of government, business and community entities creating a “complex web of institutional reconfigurations” in which the state continues to play an important role in the provision of resources<sup>91</sup>. As institutions, “public administration is part of the social order, it

<sup>90</sup> Loorbach D., Frantzeskaki N., Thissen W.: A Transition Research Perspective on Governance for Sustainability in Jaeger C.C., Tabara D., Jaeger J (editors); *European Research on sustainable development*, Berlin: Springer Verlag, 2011, p. 76.

<sup>91</sup> Lawrence G.: Promoting Sustainable Development: The Question of Governance, in Buttel F.H., McMichael P. (ed.), *New Directions in the Sociology of Global Development (Research in Rural Sociology and Development, Volume 11)*, Emerald Group Publishing Limited, 2006, pp. 145 – 174.

transcribing not only essential characteristics, but also contributing to the creation of these characteristics"<sup>92</sup>.

The social values and institution are highly influenced by external stimuli which resonate with the public administration system. In our case, the external stimuli is represented by the European Union, which by its values and rules is causing some transformations in the structures of the member states<sup>93</sup>.

In this case, the European Union has a significant role in influencing the transformations which are happening in the government and public administration. This is because both emergence and sustainability is product of interactions among diverse entities.

Documents such as the *White Paper on Governance*, the *Environmental Action Program* and the *EU Sustainable Development Strategy* embrace the need for various tiers of government to interface in a manner that promotes opportunities for integrated approaches to decision-making at the regional level and for citizen empowerment via capacity building<sup>94</sup>.

For Southeastern Europe, the sustainability of public administration is related with a complex cycle of change in which the governments system had to adapt and modernize themselves permanently under the norms and interactions of the international community.

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<sup>92</sup> Berceanu B.: Emerging administrations under European Union Rules. *The European Integration – Realities and Perspectives Proceedings*, Galati: Danubius University Press, 2012, pp. 954-959.

<sup>93</sup> March J.G., Simon H.A.: *Organizations*, New York: John Wiley & Sons Inc, 1958, p. 43.

<sup>94</sup> Lawrence G.: Promoting Sustainable Development: The Question of Governance, in Buttel F.H., McMichael P. (ed.), *New Directions in the Sociology of Global Development (Research in Rural Sociology and Development, Volume 11)*, Emerald Group Publishing Limited, 2006, pp. 145 – 174.

### III. Case study: sustainable development in South Eastern Europe

#### 1. The dimension of sustainable development in the light of the regional context

For the countries from South Eastern European region the context of change was created by the retreat from one party rule, bureaucratic centralism and central planning towards a new system characterized by market economy, democratic institutions and developed civil society.

The countries in transition faced the task of establishing the basics of a democratic society: in particular adopting new constitutions, transferring power to elected representatives, creating a multi-party system, establishing a favorable and competitive environment for free market operators, encouraging development of civil society organizations and promoting independence of mass media<sup>95</sup>.

The task of such enormity necessitated a profound transformation of the state administration and the overall system of governance. This transformation was and it still being influenced by the EU and the preparation for accession. It has been a separate and quite significant factor that affected the political, economic and institutional development of many Southeastern European countries. This factor has served as a stimulus in the process of emerging public administration, process that cannot be conceived beyond the process of Europeanization and European integration.

These two processes are those who are creating the premises for sustainable development in the Southeastern Europe.

The *Europeanization* process includes the infusion of norms and practices into the national arena at the level of domestic policymaking and political discourse, while the *European integration* process is focused more narrowly on institution-building and assuring compatibility

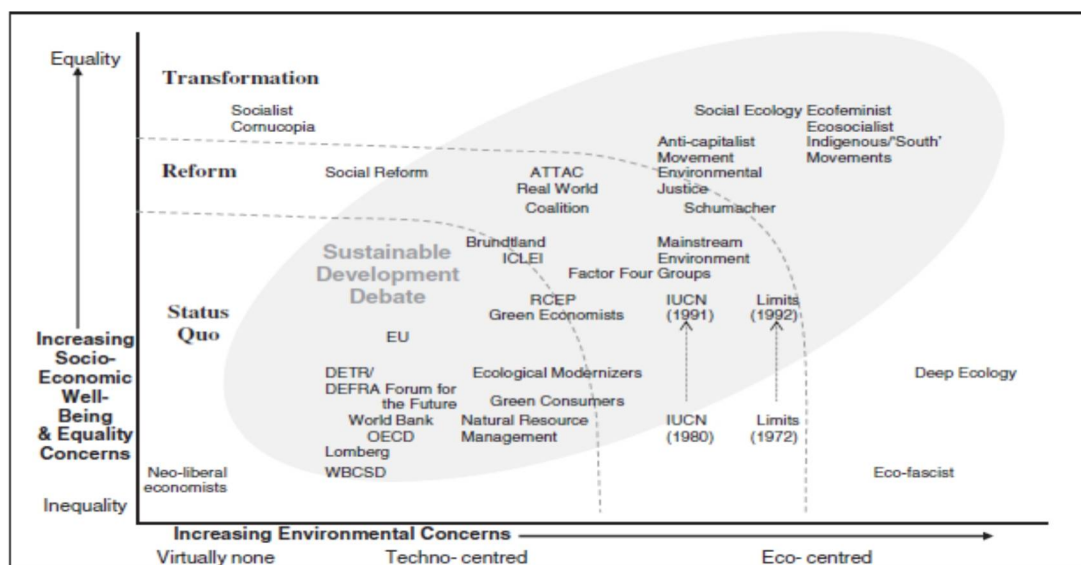
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<sup>95</sup> Kotchegura, A.: *Civil Service Reform in Post-Communist Countries*, Utrecht, Leiden University Press, 2008, p. 11.

with similar institutions and policy coherence in the European arena, at both member-state and supranational level<sup>96</sup>.

The nature of changes necessary in society's political and economic structures and human -environment relation to achieve sustainable development are overlaid in the Figure 3.

**Figure 3: The dimension of sustainable development**



Source: Hopwood B., Mellor M., O'Brien G.: op. cit., p. 41

Thus, sustainable development:<sup>97</sup>

- can be achieved within the present structures – *status quo*. It recognizes the need for change but see neither the environment nor society as facing insuperable problems. Adjustments can be made without any fundamental changes to society, means of decision making or power relations;

<sup>96</sup> Ioniță, A., Freyberg Inan A.: Public administration reform in the context of European integration: continuing problems of the civil service in Romania. *Southeast European and Black Sea Studies*, vol. 8, no. 3, 2008, pp. 205-226.

<sup>97</sup> Rees W.: Achieving sustainability: reform or transformation? *Journal of Planning Literature*, 1995 vol. 9, pp. 343-361, apud Hopwood B., Mellor M., O'Brien G.: *Sustainable Development: Mapping Different Approaches*, Wiley InterScience, 2005, pp. 38-52.

- can be achieved through a fundamental *reform* necessary but without a full rupture with the existing arrangements. The reform approach argues that there are mounting problems, being critical of current policies of most businesses and governments and trends within society;
- and can be achieved through *transformation* when the roots of the problems are the economic and power structures of society .

For the states from South-East Europe we will refer in the analyses at reform seen as a dimension of sustainable development and as a pattern of emergent change.

Generally, we can say that *reform* means significant process changes by which implementation as well as policy development contribute to efficient and effective national development<sup>98</sup>.

The agenda of the public administration reform in post-communist Southeastern European countries incorporate measures aimed at streamlining their institutional role; enhancing accountability and efficiency, transparency and responsiveness; enforcing political neutrality and strict adherence to the rule of law; introducing modern management techniques and effective anti corruption strategy; and strengthening performance and client orientation.

## 2. Building an administrative infrastructure for sustainable development in Romania and Bulgaria

The public administrations in the South-Eastern Europe area is subjected to a reform process according to the requirements of the integration process in the EU structures<sup>99</sup>. The process is defined as an ensemble of reform measures at the level of civil service, local government and achievement of decentralization.

Building an administrative infrastructure capable of managing the task of sustainable development for Bulgaria and Romania was represented by the reform of the administration

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<sup>98</sup> Farazmand, A. (ed.): *Administrative reform in developing nations*, Westport: Praeger Publisher, 2002, p. 6.

<sup>99</sup> Andrei, T., Matei, A., Rosca, G.I.: *Corruption*. Bucharest: Economica Publishing House, 2008, p. 21.

and its optimization at central and local level through modernization and organizational development. But, the exact coordinates of this process are hard to establish, especially since in the area of public administration, there is no *acquis communautaire*, so there is no law to transpose in the legal systems of the EU member states (there are few exceptions in the field of the management of European funds and of public procurement).

In *Romania*, in order to support the fundamental change of the administrative system, in agreement with the requirements of the reform process, in 2004 was adopted the Updated Strategy for Accelerating Public Administration Reform by the Government Decision no. 699/2004. One of the most important components of this strategy was the continuation of the decentralization and deconcentration processes. These principles were also stipulated in article 130, paragraph 1 of the revised Constitution from 2003.

The newly adopted strategies stated that the Ministry of Administration and Interior had to monitor the application of the provisions comprised in the reform and to restructure strategies and programs of the central and local public administration according to the European Union. A more formal institutional driven approach to the reform process was also implemented. Specialized governmental structures such as the Central Unit for the Reform of Public Administration (within the Ministry of Administration and Interior), the Superior Council for the Reform of Public Administration, Coordination of Public Policies, and Structural Adjustment), and a Unit for Public Policy were created.

Another aspect of the reform for building an administrative infrastructure for sustainable development was that of civil service. According to the Strategy for administration reform, the institutions responsible for civil service reform were: the National Agency of Civil Servants for the management of the civil service and the National Institute of Administration for continual training of civil servants.

*Bulgaria*, like Romania and any other candidate country, had to meet the three criteria established in Copenhagen in 1993<sup>100</sup>, and the fourth one, the administrative capacity, established by Council in Madrid in 1995.

The reform of the public administration in Bulgaria started de facto in 1998 and the EU played an important role in establishing the direction of the reform. In 1998 the Strategy for Building a Modern Administrative System was adopted. At that time the reform was targeted especially the institutional and legislative arrangements for the modernization of the administration. The most important laws were the Law regarding civil servants which represents the basic standard of the civil service, and the Law of the Administration which delimits the structure of the political and administrative bodies of the state and the local administration and its authorities<sup>101</sup>.

In 2006 important amendments were made to the two basic acts in this sphere. The Law on Administration amendments was related to the implementation of the administrative reform: distinguishing the political from the administrative level in the state administration, regulating the policymaking process and creating effective internal control. The Law on Civil Servants amendments continues the process of modernization of the Bulgarian state administration in the area of human resources.

After the Romania and Bulgaria accession to the EU, their administrations faced other challenges such as development and successful implementation of projects within the operational programs.

A key role in strengthening administrative capacity had even from the outset, the Ministry of State Administration and Administrative Reform – for Bulgaria and The Ministry of Administration and Interior – for Romania. Both were focused through the Operational program “Administrative capacity” for Bulgaria, respectively the Operational program “Developing administrative capacity” for Romania to establish a more modern, efficient and transparent

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<sup>100</sup> permanent institutions which should guarantee the democracy, the rule of law, the human rights, the respect to minorities and their protection; a functional market economy; the ability to face the obligations that come from the quality of member in the European Union, as well as the joining to the Euro area.

<sup>101</sup> Katsamunska, P.: Reform process in Bulgaria: Challenges and perspectives after joining EU. *Journal of US-China Public Administration*., vol. 7, no. 1, 2010, pp. 70-77.



administration. Particular attention was given to the principles of integrity and transparency appliance.

In this regard Bulgaria took part at the European Initiative for Transparency and approved the *Green Paper on Transparency* which aims to increase civil participation in decision making. Therefore, it was adopted a strategy for transparent governance, for preventing and combating corruption and a program for transparency in central government and high ranked officials activity<sup>102</sup>.

Regarding the efficiency of public services and the transparency of public sector, Romania adopted the Law 544/2004 2001 on free access to public interest information and the Law no. 52/2003 on decisional transparency in public administration.

They represent important steps in the establishment of a responsible and solid administration in the patterns of sustainable development. Another important measure taken by the analyzed states in their way to create a solid administration for sustainable development was the creation of regions as subsystems of government.

The regions are an experiment in the promotion, and governing, of sustainability. Regional development refers also to sustainable development and all plans for development must treat the economy, society and environment on an equal footing<sup>103</sup>.

Government agencies must come behind community initiatives to provide technical support for sustainable development: this will mean a re-organisation of government activities so that holistic approaches are adopted over single departmental priorities<sup>104</sup>.

For the Romanian case, there were created eight development regions<sup>105</sup> without administrative power by adding up existing sub-national governments (counties in Romania) into regions. The development regions fall under the NUTS II (Nomenclature of Territorial Units

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<sup>102</sup> Matei, L., Matei, A., Zanoschi, D.C., Stoian, O., Comparative Studies on the Administrative Convergence Revealed by National Strategies of Administrative Reform in Some South-Eastern European States, *Administrative Convergence and Reforms in South-Eastern European states. Analyses, Models and Comparative Studies*, Bucharest: Economica Publishing House, 2011, p. 80.

<sup>103</sup> Lawrence G.: Promoting Sustainable Development: The Question of Governance, in Buttel F.H., McMichael P. (ed.), *New Directions in the Sociology of Global Development (Research in Rural Sociology and Development, Volume 11)*, Emerald Group Publishing Limited, 2006, pp. 145 – 174.

<sup>104</sup> Idem

<sup>105</sup> Regional decentralization was carried out according to the existence existing structure of local administrative authorities by amending the Law 151/1998 with the Law 315/2004

for Statistics) system and do not have executive or legislative powers or separate budgets (see Table 1). They, rather provide units of observation for collecting statistical data according to EU regional rules and policies. The actors involved in the regional programming are the regional development agencies and councils, local and national government, NGOs and businesses.

**Table 1: Administrative territorial division in Romania**

No.	Developing regions	Territory	Counties	Population
1	North – West	34,159 km <sup>2</sup>	6	2,737,400
2	Center	34,100 km <sup>2</sup>	6	2,638,809
3	North – East	30,949 km <sup>2</sup>	6	3,836,875
4	South – East	35,770 km <sup>2</sup>	6	2,932,124
5	South	34,450 km <sup>2</sup>	7	3,458,759
6	Bucharest - Ilfov	1,821 km <sup>2</sup>	1 county and Bucharest	2,198,285
7	South - West	31,211 km <sup>2</sup>	5	2,394,895
8	West	32,028 km <sup>2</sup>	4	1,958,648

**Source:** The author, upon the data provided by the Ministry of Regional Development and Tourism

In the case of Romania, the choice to establish regions with no administrative or fiscal responsibilities, while it accommodated requests from Brussels, was a top-down compromise solution that contained potential secessionist impulses in the country, while complying with EU requests<sup>106</sup>.

Regarding Bulgaria, in accordance with the aspiration of the State to join the European Union, the central authorities adjusted the administrative territorial structure to the requirements of the Union. A Regulation adopted by the Government in 2002 settled six planning regions (Table 2).

<sup>106</sup> Bischoff, C., Giosan, V.: Regional Development and Decentralization in Romania: *Connecting the Dots, The Fiscal Decentralization Initiative for Central and Eastern Europe*, pp. 1-18.

**Table 2 Administrative territorial division in Bulgaria**

No.	Planning regions	Territory	Districts	Population
1	North Western	10288.2 km <sup>2</sup>	3	512593
2	North Central	18344.0 km <sup>2</sup>	5	1165806
3	North Eastern	19899.4 km <sup>2</sup>	6	1285803
4	South Eastern	14647.6 km <sup>2</sup>	3	782653
5	South Central	27516.2 km <sup>2</sup>	6	1944382
6	South Weastern	20306.5 km <sup>2</sup>	5	2110036

Source: Adaptation after National Development Regional Strategy, 2005, [www.espon-interstrat.eu](http://www.espon-interstrat.eu)

Similar with the case of Romania, the creation of the six planning regions are not administrative-territorial units in the sense of the Law on Administrative-territorial Division of the Republic of Bulgaria. The creation of the regions was predetermined by the requirements of regional planning and more specifically of the requirements related to Bulgaria's accession to the European Union, where the regions of the second level of the (NUTS) are the main subject of planning, programming, implementation and monitoring under of the Structural Funds.

## Conclusions

From the systemic approach on public administration and on sustainable development that we used in the paper, we had the possibility to better understand the process of change that is happening at the level of the states from South Eastern Europe and in their component systems.

Sustainable development works for public administration practice because it offers an opportunity to consider systems that respect tenets already considered valuable in its normative orientation, simultaneously.

We also understood from the research on sustainable development that society needs to change, though there are major debates as to the nature of sustainable development, the changes necessary and the tools and actors for these changes. One of the most important actors in generating these changes in South East Europe is the European Union through its process of accession and integration.

The analyses made in the case study demonstrated that the accession to the EU and the European integration process have determined profound reforms in the European countries. These reforms gravitate around the objective nucleus represented by observing the fundamental principles of democracy, separation of powers and respect for the rule of law, which in turn represents the characteristics of sustainable development in the analyzed area. Thus, the emerging administration is a dimension of sustainable development through the way in which is adapting its own system and is promoting the values of citizen participation, efficiency, equity, and sustainability

After the end of the communist regimes, when the revolution of change started for South-Eastern European states, the implementation of sustainable development principles in the emerging administrations lead not only to a modernization of the governmental system, but also to the homogenization of structures, institutions and procedure.

But, as Franz Kafka said: "Every revolution evaporates and leaves behind only the slime of a new bureaucracy".

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## LEGISLATION ON PROMOTION OF RENEWABLE ENERGY AND SUSTAINABLE DEVELOPMENT IN CONTEXT

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Helena Doležalová

**Abstract:** *The intention of this paper is to stimulate a debate on the importance of expression the term of sustainable development as aim of laws in the context of recent decisions of the Czech Constitutional Court and European courts on the restriction of renewable energy promotion for the sake of balancing interests, which is associated with the issues of sustainable development of society and options of legal argumentation in addition to the change of perception of the term “public interest” in the post-communist countries.*

**Keywords:** *legislation, renewable energy, sustainable development, legal argumentation*

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### Introduction

The issue of renewable energy is a complex and multidisciplinary one; law is only one of the disciplines dealing with this matter. Therefore, law must be based on the results of other disciplines in order to fulfil its main task (conflict resolution<sup>107</sup>). However, there is a lack of desirable synergy, cooperation, and appropriate communication among experts from different fields, which causes problems in practice. The objectives of the European Union energy policy include balancing energy and environmental policy. Law is among the tools to pursue political

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<sup>107</sup> HOLLÄNDER, P.: *Filozofie práva*. Plzeň: Aleš Čeněk, 2006, p. 81.

goals through directly or indirectly affecting behaviour of regulated entities and their relations. The use of renewable energy should be encouraged in order to fulfil international obligations and to protect the environment. Nevertheless, the use of renewable energy cannot be considered a clearly positive trend; each way of using energy resources entails its pros and cons. Obstacles to the use can be seen in many areas (environmental, financial, technical, social). Although the use of renewable energy sources is regarded as a contribution to sustainable development, it can be in the conflict with this concept.

## I. Sources of law on the promotion of the use of renewable energy

Legal theory distinguishes between sources of law in their material and formal senses, i.e. whether they are the cause of law or the so-called objective law (a set of generally binding legal norms).<sup>108</sup> In accordance with this concept, the **material sources of law** relating to the use of renewable energy are in particular public interests, such as increasing the share of renewables in the primary energy consumption of resources, protecting natural resources and the sustainable development of society, protecting the climate and the environment, and the **formal sources** are mainly generally binding normative acts on the promotion of the use of renewable energy in addition to the relevant state administration, rights and duties of natural and artificial legal persons, etc. The problem of global warming, which should be solved *inter alia* through the use renewable energy, has led to the adoption of legal documents at the international, the European Union and national levels.

## II. International law

The international level is represented by ***Kyoto Protocol to the United Nations Framework Convention on Climate Change*** (1992, New York). The preamble of the Convention expresses the

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<sup>108</sup> WEYR, F.: Prameny právní. In HÁCHA, E. et al.: *Slovník veřejného práva československého. Svazek III*. Brno: Polygrafia, 1938, pp. 466-468.

interest in ensuring the responses to climate change in an integrated manner coordinated with social and economic development. One of the principles of this Convention is the right of their Parties to promote sustainable development, which would be supported with policies and measures to protect the climate system against human-induced change. It should correspond to specific conditions of each Party and should be integrated with national development programs. It is essential to realize that economic development is essential for adopting measures to address climate change. The Parties have committed, *inter alia*, to promote and cooperate in the development, application and diffusion of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of specified greenhouse gases in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors. Under Article 2 of Kyoto Protocol, adopted in 1997, each Party shall implement and/or further elaborates policies and measures such as research on, promotion of, and the development and the increased use of, new and renewable forms of energy, etc., in achieving its quantified limitation and reduction in accordance with national conditions in order to promote sustainable development.

### III. European Union law

Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 ***on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC*** is the most important source of the European Union law on the issue in question. This Directive sets, *inter alia*, mandatory national targets for the overall share of energy from renewable sources in the gross final consumption of energy and for the share of energy from renewable sources in transport (without binding mechanisms). When providing a binding national target, the need for consistency in energy and environmental policy should be taken into account, which particularly covers a certain extension of energy sources, diversification and decentralization of energy production, etc. This Directive was adopted in order to implement the aforementioned international commitments in addition to reduce the dependence on energy imports, to unify definitions for different types of energy from renewable resources in the interests of legal certainty, to create new jobs through decentralized energy production, to support rural development, long-term stability of the

business environment, research and development (especially in relation to the technology of biofuels and bioliquids production from waste), and guarantees of origin from renewable energy sources, to ensure priority and guaranteed access for electricity from renewable energy sources and their use in buildings. A particular attention is paid to the use of biomass, especially the production and consumption of biofuels, which can have negative environmental and social impacts. The use of agricultural material has significant environmental advantages in terms of its use as biofuel. The interest in exploiting the full potential of biomass is also expressed. The sustainability criteria for biofuels and bioliquids that should be met in order to achieve the consistent policy approach to energy and the environment are regulated separately. The need to internalize externalities is emphasized; energy prices should reflect costs of energy production and consumption including environmental, social and other costs. Public access to information on benefits of energy from renewable sources is very important as well. Thus, the Directive establishes a common framework for the promotion of energy from renewable sources including sustainability criteria for biofuels and bioliquids. The aim of these criteria is to ensure the decreasing of greenhouse gas emissions from the use of biofuels and bioliquids and to ensure that they are not made from raw material obtained from the land with high biodiversity value and/or high carbon stock. The impact of biomass cultivation, such as through land-use changes, including displacement, the introduction of invasive alien species and other effects on biodiversity, and effects on food production and local prosperity, should be monitored.

## IV. Czech law

Article 7 of the **Constitution** of the Czech Republic (the Constitutional Act No. 1/1993 Coll.) obliges the State to ensure a prudent use of natural resources and a protection of natural wealth. This provision gives a basis for interpretation of the relevant regulations on the promotion of energy from renewable sources; the duty of the state to protect the environment and to respect this priority in its own affairs as well as a legitimate reason for the governmental regulation of certain activities carried out by private entities can be deduced.<sup>109</sup> This article is associated with the **Environmental Act** No. 17/1992 Coll., as amended, which states, *inter alia*, positive incentives

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<sup>109</sup> BAHÝŮVÁ, L., FILIP, J., MOLEK, P. et al.: *Ústava České republiky: komentář*. Praha: Linde, 2010, pp.132-133.



aimed at the environmental protection in addition to their non-exhaustive<sup>110</sup> list (Section 32); the use of natural resources in accordance with the principle of sustainable development is the prerequisite of these incentives. This provision should not be ignored when interpreting relevant legislation including laws specifically aimed at promoting use of renewable energy sources such as the **Renewable Energy Act** No. 180/2005 Coll., as amended. Its purpose is to support the use of renewable energy sources, to ensure the permanent increase in the share of renewables in primary energy consumption of resources, to contribute to the economical use of natural resources and sustainable development of society, to create conditions for meeting the indicative target for the share of renewable electricity in gross electricity consumption, and all this in the interests of climate and environmental protection. On 30 May 2012 the **Promoted Energy Sources Act** No. 165/2012 Coll., replacing Act No. 180/2005 Coll., was promulgated. Its purpose is formulated more broadly; customers' concerns should be taken into consideration in order to minimize the negative impact of the promotion on energy prices for customers in the Czech Republic (in essence, it explicitly states what is implicitly contained in the concept of sustainable development).

## V. Purpose in law and of law

It is worth mentioning that the **German Renewable Energy Act** (the so-called EEG)<sup>111</sup> contains the similar aim as the Czech acts (i.e. to achieve sustainable development in relation to energy supply in the interests of climate and the environment). However, the **Slovak Renewable Energy Act** (No. 309/2009 Coll., as amended)<sup>112</sup> does not contain any statement concerning the aim of the act. The comparison of purposes of the Czech acts on the promotion of the use of energy from renewable sources with the relevant German and Slovak acts raises a question whether the expression of these objectives entails any practical consequences or if it is only a proclamative statement without any deeper sense due to the vagueness of the term "sustainable development". Therefore, it is essential to deal with the concept of sustainable

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<sup>110</sup> PEKÁREK, M.: Ekonomické nástroje v právu životního prostředí. In TKÁČIKOVÁ, J. (ed.): *Ekonomické nástroje v právu životního prostředí. Sborník příspěvků z konference Brno, červen 2010*. Brno: Masarykova univerzita, 2010, p. 9.

<sup>111</sup> Erneuerbare-Energien-Gesetz (Gesetz für den Vorrang Erneuerbarer Energien). Available at: <http://dejure.org/gesetze/EEG> [cit. 19.08.2012].

<sup>112</sup> Jednotný automatizovaný systém právních informací JASPI-WEB. Available at: <http://jaspi.justice.gov.sk> [cit. 19.08.2012].

development in addition to **legal argumentation**. There have been ongoing debates over the issue of the purpose in law and of law in legal theory; Gustav Radbruch and Rudolf von Jhering associated the purpose of law with peace, struggle, solution of conflicts, welfare, justice, and legal certainty. Cognition of the purpose in application of law is linked to the methodology of teleological interpretation of the law. According to Holländer, collision and hierarchy of purposes of law and in law (during the processes of legislation and application of law) can be rationally and transparently solved through the principle of proportionality.<sup>113</sup>

## VI. The concept of sustainable development

Sustainable development is defined in the Czech Environmental Act No. 17/1992 Coll., as amended, as "that development that preserves the possibility of meeting the basic needs of present and future generations without reducing biodiversity in addition to preserving natural functions of ecosystems." However, a comprehensive approach to this concept needs considering other related aspects. The definition of sustainable development is essentially divided into **three pillars** of development which should be balanced: environmental, economic and social. The concept of sustainable development is often related to the environmental pillar and the consumption of natural resources. Protecting the environment is often seen as an obstacle to the economic and social development.<sup>114</sup> The aforementioned pillars may be accompanied with matters such as research, development, education, the European and the international contexts, and governance. All those areas are interrelated; they cannot be assessed individually regardless of the impact of other areas. The aim of the concept of sustainable development is to achieve a **balanced relationship** among them.<sup>115</sup> The issue of energy from renewable sources is linked with all the aforementioned pillars in addition to other areas (governance, for example). Many principles of sustainable development can be found in the relevant literature: some of them stem from the UN documents (prevention, precaution, the polluter's responsibility, subsidiarity, substitution...),<sup>116</sup> the international law sources (intergenerational equity, sustainable use of

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<sup>113</sup> HOLLÄNDER 2006 op. cit., pp. 74-93.

<sup>114</sup> MAIER, K. et al.: *Územní plánování a udržitelný rozvoj*. Praha: ABF – nakladatelství ARCH, 2008, p. 7-11.

<sup>115</sup> KOVANDA, J., HÁK, T. (eds): *Situační zpráva ke Strategii udržitelného rozvoje ČR*. Praha: Ministerstvo životního prostředí, 2009, pp. 9-10.

<sup>116</sup> PETRŽÍLEK P.: *Legislativa udržitelného rozvoje a nové podnikatelské příležitosti*. Praha: LexisNexis, 2007, pp. 116-117.

natural resources, intra-generational equity, integration),<sup>117</sup> and others are based on ecology (diversity, self-sufficiency, self-regulation <sup>118</sup>). Sustainability principles include integrity, sufficiency and opportunity, fairness, efficiency, and discretion.<sup>119</sup>

## VII. The development of the concept

The concept of sustainable development has gradually developed (and will continue to evolve) especially through the United Nations (hereinafter UN) documents issued at UN conferences. The **Stockholm Declaration of the UN Conference on Environment** (1972) emphasizes a harmony of economic development and environmental protection; the approach to the development planning should be integrated and coordinated. The **World Commission on Environment and Development** in 1988 (Our Common Future) attempted reconcile requirements for effective environmental protection, nature conservation and natural resources protection with economic development. Agenda 21, adopted by the **United Nations Conference on Environment and Development** in Rio de Janeiro in 1992, is considered to be a “broad definition” of the concept.<sup>120</sup> At the **World Summit on Sustainable Development** (WSSD) in Johannesburg in 2002, the concept of sustainable development was redefined; its content was newly formulated in order to lead to a reassessment of the practical economic policy in addition to being **politically and legally enforceable**.<sup>121</sup> Currently, the term sustainable development is often used as the purpose of specific laws.

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<sup>117</sup> SANDS, P.: *Principles of International Environmental Law*. 2nd ed. Cambridge: Cambridge University Press, 2003, p. 253.

<sup>118</sup> MAIER 2008 op. cit., p. 12.

<sup>119</sup> DUŠEK, J., GREGOR, J. et al.: *Udržitelný rozvoj v podmínkách ekonomické krize*. České Budějovice: Vysoká škola evropských a regionálních studií, 2011, p. 12.

<sup>120</sup> MOLDAN, B.: *Indikátory trvale udržitelného rozvoje*. Ostrava: Vysoká škola báňská – Technická univerzita Ostrava, 1996, pp. 9-11.

<sup>121</sup> PETRŽÍLEK 2007 op. cit., p. 13.

## VIII. Sustainable energy

There has been an increasing emphasis put on access to affordable, safe, and reliable energy services, which is considered a critical factor of the social development.<sup>122</sup> According to Omorogbe, “A new right, i.e. a right to access to energy services, has been articulated as an essential prerequisite to the right to the development and, indeed, to the realization of several internationally recognized economic and social rights”.<sup>123</sup> The issue of sustainability in connection with the production and use of energy has increasingly been discussed in technical and social sciences. There are many definitions of sustainable energy (for example “energy produced and used in ways that support human development ... in all its social, economic and environmental dimensions”).<sup>124</sup> The **adequacy of electricity prices** is regarded as the basic condition; this price should be available both to consumers and at the same time should produce a reasonable profit for investors. Regarding the relationship of energy and the environment, planning processes and an assessment of environmental impact are important. Moreover, it is necessary to take into consideration “the life cycle emissions... and traffic movements...”.<sup>125</sup> In relation to energy consumption, an emphasis is put on the relationship of energy and social matters, protection of energy consumers, cleaner fossil fuels, changing the ratio of human society development and energy consumption, and increasing the share of energy from renewable sources.<sup>126</sup> The so-called energy-sustainable communities consume more than 50% renewable and efficient energy; moreover, they are actively involved in the process of energy sustainability. However, an involvement of the public is essential for the change of energy culture that “requires modification of values and socially shared beliefs” at all levels of the society, which “can be shaped by mass media and the education of the younger generation”, with cooperation of social scientists and the technical staff in order to develop sustainability strategies, and to use synergetic effects.<sup>127</sup>

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<sup>122</sup> JOHANSSON, T. B.: The Imperatives of Energy for Sustainable Development. In BRADBROOK, A. J. et al. (eds): *The Law of Energy for Sustainable Development*. Cambridge: Cambridge University Press, 2005, p. 48.

<sup>123</sup> OMOROGBE, Y. O.: Promoting Sustainable Development through the Use of Renewable Energy: The Role of the Law. In ZILLMAN, D. (ed.): *Beyond the Carbon Economy: Energy Law in Transition*. Oxford: Oxford University Press, 2008, p. 47.

<sup>124</sup> World Energy Assessment. In OTTINGER, R. L., ROBINSON, N., TAFUR, V. (eds): *Compendium of Sustainable Energy Laws*. Cambridge: Cambridge University Press, 2005, p. 1.

<sup>125</sup> McLACHLAN, C. Symbolic Interpretations of Wave Energy in the UK: Suffers’ Perspectives. In DEVINE-WRIGHT, P. (ed.): *Renewable Energy and The Public: From NIMBY to Participation*. London: Earthscan, 2011, p. 280.

<sup>126</sup> GOLDEMBERG, J.: Development and Energy. In BRADBROOK 2005 op. cit., pp. 37-48.

<sup>127</sup> SCHWEIZER-RIES, P.: Socio-environmental Research of Energy Sustainable Communities: Participation Experiences of Two Decades. In DEVINE-WRIGHT 2011 op. cit., pp. 188-198.

## IX. Sustainable development in legal argumentation

As aforementioned, the problem with sustainable development is its enforceability. In general, an argumentation using legal principles is ranked among the methods of legal interpretation, in particular the method of **systematic arguments**, which takes into account other pieces of law than the interpreted law provisions (either legal principles that are the basis of other provisions or inclusion of links to other parts of law).<sup>128</sup> Currently, legal theorists consider justification of decisions with the help of new features such as reasoning through law principles to be a necessary part of the result of law application. Increasingly, this way of reasoning can be found in court decisions and parties' pleadings (seldom in activities of public administration). Legal principles are often used in case law (especially the principles of proportionality, equality, and non-discrimination). However, the issue is associated with the danger of reducing legitimacy of a decision (the victory of one party to the dispute should not depend on a rule whose existence and relevance is questionable). Therefore, all arguments under consideration must be used and the reason for their (non)application must be justified.<sup>129</sup> Hence, the possibility of reasoning through the principle of sustainable development can be regarded as highly uncertain, which may be the reason why it is not used in the Czech court practice.

## X. A relevant judgment of the Czech Constitutional Court

When considering the issue of purpose in law on renewable energy promotion, the judgment of the Czech Constitutional Court No. Pl. ÚS 17/11 of 15 May 2012 can be mentioned. The Court dealt with the **restriction of photovoltaic power plants promotion**; the Plenum of the Constitutional Court ruled on a petition from a group of senators of the Senate of the Parliament of the Czech Republic seeking the annulment of a part of the Renewable Energy Act No.180/2005 Coll., as amended, and other related Acts. The petition was denied (the decision of the Constitutional Court cannot be appealed). The Court received the petition on 11 March 2011; the petitioners claimed inconsistency of the statutory provisions in question with the

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<sup>128</sup> MELZER, F.: *Metodologie nalézání práva. Úvod do právní argumentace*. Praha: C. H. Beck, 2010, pp. 91-197.

<sup>129</sup> TRYZNA, J.: *Právní principy a právní argumentace. K vlivu právních principů na právní argumentaci při aplikaci práva*. Praha: Auditorium, 2010, pp. 267-320.

constitutionally guaranteed right to own property, the right to protection from interference in peaceful enjoyment of property, the right to conduct business, etc. In their opinion, some amendments are directed against the intent of the European Union and the Czech legislature because they limit and then eliminate an aid to producers of energy from renewable sources in addition to a new obligation to pay a levy on solar electricity in a certain period, which is not supported by a public interest (the public interest consists in prudent use of natural resources and protection of natural wealth). The petitioners summarized that the contested provisions interfere in the international obligations included in the EU accession treaties by which the Czech Republic is bound; no economic or fiscal goal justifies such interference. According to the Czech government statement on the petition, the rapid development of energy from renewable sources caused an increase in the expenses for financing it, which had subsequent negative social and economic effects. Therefore, it became necessary (in the public interest) to re-evaluate the position of the state on the aid for electricity production from renewable sources, the main change being a marked reduction in the cost of photovoltaic panel technology. There was a real danger that the costs of financing the aid within the existing scope would be very disproportionate in relation to the goals declared by Act No. 180/2005 Coll. According to the Ministry of Trade and Industry, the instruments to protect the national economy and citizens were always carefully weighed, while meeting the principles of rationality and proportionality, on the basis of the public interest (to limit negative effects on industry, economy and households) and all rights and guarantee for investors in facilities for the production of energy from renewable sources were preserved. Annulment of the old legislation and adoption of a new legislation is necessarily linked with interference in the principles of equality and protection of citizens' confidence in the law, which is a consequence of protecting another public interest or fundamental right/freedom. However, the legislature's decision on how to solve the chronological conflict between the old and the new legislation is a matter of weighing values in that conflict. It is essential to see the conflict from the viewpoint of **proportionality**, which means that a higher degree of intensity of a public interest or protection of fundamental human rights and freedoms justifies a higher degree of interference by a new legislation in the principles of equality and citizens' confidence in the law. Hence, the Constitutional Court reached the conclusion that there is not such a constitutionally relevant interest in preserving the existing statutorily provided prices for electricity from renewable sources and green bonuses without a possibility of reducing them in the future which would prevail against the public interest in

lowering the prices. The Constitutional Court ***compared international judicial decisions*** associated with the issue of the use of photovoltaic energy. Many countries reworked their photovoltaic tariff policies. The German Constitutional Court, in the matter of the constitutionality of the Renewable Energy Act, in the resolution No.1BvQ 28/10 of 23 September 2010 stated that the limits of constitutional permissibility of false retroactivity are exceeded only if the false retroactivity chosen by the legislature is unsuitable or unnecessary for achieving the aim of the statute or if the permanent interests of the affected persons outweighed the legislature's reasons for a legislative change (a general expectation of citizens that the law will remain unchanged is not constitutionally protected). The Polish Constitutional Court, in the judgment No. P 24/05 of 25 July 2006 concerning the Energy Act, stated that access to sources of energy is fundamental for the existence of the society and individuals, just as it is for the sovereignty and independence of the state, i.e. for ensuring the freedoms and rights of persons and citizens. The field of energy management thus connects various constitutional values and principles which include freedom to conduct economic activity, safety of citizens and the principle of sustainable national development and protection of the environment. The Supreme Court of Spain also addressed the issue of retroactivity in connection with the legislation governing electricity from renewable sources (for example, 152/2007 - Tarragona Power); the Supreme Court generally stated that the principle of legal certainty cannot be identified with a complete lack of change in the legal framework; it accepts the argument of protecting the public economic interest. This question cannot be dealt without taking into account the economic situation in the country during which the legislature adopted the restrictive measures; such actions can be considered compatible with the Constitution. The Czech Constitutional Court stressed that the support for the use of renewable sources of energy remains the same in the scope that ensures for the producers of electricity from renewable sources the statutory a guaranteed level of revenue per unit of electricity even after the adoption of the provisions contested by the petitioners. Considering the fact that the legislative framework for public support of energy production from renewable sources in the Czech Republic is based on the principle of transferring a great part of the financing of the support to the end consumer and the state budget, there was a real danger that the costs of financing the support at existing levels would be obviously disproportionate in relation to the aims declared in Act No.180/2005 Coll. From this viewpoint, the Constitutional Court considered the aims pursued by the contested provision completely legitimate, i.e., on the one hand, averting negative social-economic effects consisting primarily in a considerable

increase in electricity prices for end consumers, and, on the other hand, regulating the state support responding to the extreme decline in investment costs. The means that were selected to achieve this aim appear to be **reasonable and appropriate**. The Constitutional Court summarized that this was not such interference that would violate the constitutionally guaranteed rights of the affected persons, property rights or the freedom to conduct business.<sup>130</sup>

## XI. The role of law in renewable energy promotion

The role of law in renewable energy promotion concerns a large number of associated factors such as research results of various institutions, the level of public administration activities, efficiency of energy technologies, perception of alternative energy technologies by the public, the level of education and awareness of issues of sustainable development. The legal certainty of investors in technology (regardless of the extent of investment and equipment) is very important. The regulation is interlinked with stimulation and sufficient information. It is important to ensure that relevant rights and duties are balanced. In particular, law should not create more problems than it solves.<sup>131</sup> On the contrary, it should try to prevent or modify the methods of **resolving any conflict of interests**. Therefore, many countries had to restrict the promotion of the use of energy from renewable sources in order to protect public interests. The objective of legislation is to set such conditions to support the production of energy from renewable sources for investors in addition to protecting end consumers of energy.

## XII. Public interest

This term has been mentioned several times in connection with the promotion of the use of energy from renewable sources as well as the protection of fundamental human rights. Public interest is “the expression of needs and interests of the society that is enforced by a legitimate public power; its main feature is a guaranteed power superiority over private interests.”<sup>132</sup> Public

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<sup>130</sup> Judgment of the Czech Constitutional Court No. Pl. ÚS 17/11 of 15 May 2012. Available at: <http://nallus.usoud.cz> [cit. 02.08.2012]

<sup>131</sup> LYSTER, R., BRADBROOK, A.: *Energy Law and the Environment*. Cambridge: Cambridge University Press, 2006, pp. 28-32.

<sup>132</sup> FIALA, J., MATES, P. PRŮCHA, P. et al.: *Malá právnícká encyklopedie*. Praha: Linde, 2008, pp. 267-268.



interest may be either explicitly defined for the purposes of a certain regulation or it may be inferred from the context. It is the so-called *indeterminate term* primarily perceived as the opposite of private interest.<sup>133</sup> The term was interpreted very broadly before 1989 (during the communist era), i.e. without distinction between an indisputably existing public interest (e.g. to operate public infrastructure) and an interest in locating a certain structure whose existence must be considered individually.<sup>134</sup> Currently, the facilities for the production of energy from renewable sources (wind plants, small hydropower plants, photovoltaic and solar thermal systems, biomass incinerations, etc.) are not generally considered by law a public technical infrastructure but only production facilities. Hence, they cannot be defined in planning documents as community structures, which entails impossibility of expropriation and (mostly) placing them in undeveloped areas.<sup>135</sup>

## Conclusions

The use of energy from renewable sources should not be promoted when the promotion causes problems in the economic and/or social areas, i.e. in the case of inconsistency with the concept of sustainable development. Although the protection of air and climate as parts of the environment is considered to be a public interest, some way of supporting the use can be ranked among private interests. Legislation should take into consideration all relevant public interests as material sources of law when a new law is created. It applies to administrative bodies as well as courts. It is hard to positively answer the question whether using the term of sustainable development as the objective of a certain act entails any practical consequences. Nevertheless, it would be desirable. Courts are reluctant to deal with this purpose in their argumentation; they prefer the principle of proportionality. However, the basis of these principles (sustainable development and proportionality) can be seen similar because it is a matter of balancing public and/or private interests. In the light of the aforementioned case law on the restriction of the promotion of the use of energy from renewable sources, the perception of public interest still

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<sup>133</sup> PRŮCHA, P.: *Místní správa*. Brno: Masarykova univerzita, 2011, pp. 49-50.

<sup>134</sup> TRUNEČEK, J.: *Věcná břemena s veřejnoprávním prvkem*. Praha: Leges, 2010, p. 50.

<sup>135</sup> *Povolovací proces obnovitelných zdrojů energie* [online] Ministerstvo životního prostředí, 2010. Available at: [http://www.sysnet.cz/C125774C00336141/cz/povolovani\\_a\\_predpisy/\\$FILE/Povolovací\\_proces\\_OZE\\_2010\\_01\\_13.pdf](http://www.sysnet.cz/C125774C00336141/cz/povolovani_a_predpisy/$FILE/Povolovací_proces_OZE_2010_01_13.pdf) [cit. 02.08.2012].

remains a problematic issue. Hence, it is crucial to realize that every state must protect both the environment and citizens through imposing duties or granting rights in spite of restricting certain benefits (however, the restriction should only be done to an unavoidable extent).

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## EUROPE 2020 IN VYSEGRAD, RELIVING THE FAILURE OF THE LISBON STRATEGY?

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Roman Gavuliak

**Abstract:** *The Lisbon strategy, launched in year 2000 EU-wide was an ambitious project. Vysegrad countries joined the EU in 2004, roughly five years before the officially admitted failure of the Lisbon strategy acknowledged by the EU in 2009. This paper focuses on goals of Europe 2020 (a successor to the Lisbon strategy, launched in 2010) through the optic of social inclusion. In this paper we evaluate its goals and propose changes and additions to some.*

**Keywords:** *Europe 2020, Social inclusion, measures of development variability towards a target value*

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### Introduction

In this paper we are going to analyse the validity of the goals set by the Europe 2020 strategy for the area of social inclusion.

#### I. Lisbon Strategy and social inclusion

Social policy was, as a particular area of interest outlined at the Lisbon European Council in March 2000. One of the conclusions of this summit talks about the necessity of undertaking

steps towards the eradication of poverty and social exclusion through setting adequate goals. The goals themselves were set at the Nice Summit in December 2000, along with a plan for developing indicators to monitor the progress of member states without the existence of common comparable indicators<sup>136</sup>. At the meeting of the European Commission in 2005, the commission concluded<sup>137</sup>, that despite some progress, the fulfillment of the goals has several delays and shortcomings and decided, to place an emphasis on reviving the Sustainable Development Strategy, that would give areas such as social cohesion a wider context. Eventually, in 2009, the EU admitted the failure of the Lisbon Strategy.

## II. Europe 2020

Europe 2020 is a strategy created by the EU in 2009. It aims to be a strategy for jobs and smart, sustainable and inclusive growth. It defines five headline goals measured by eight indicators. These goals span across the following areas - employment, research and development, usage of green energies, education and social exclusion. Each of the EU 27 member states, also created its own implementation of Europe 2020 strategy on a national level in the form of National Reform Programmes. In this paper we will concern ourselves only with indicators and goals connected with social inclusion, namely: *Early leavers from education and training by gender*, *People at risk of poverty or social exclusion* and its sub-indicators. We also decided to include the measure and goal of *Tertiary educational attainment by gender, age group 30-34* into our analysis, as educational attainment is closely connected with the inclusion into the society. In Table 2 we summarize the goals for the selected indicator for Vysegrad countries.

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<sup>136</sup> Atkinson T. et al, 2002: *SOCIAL INDICATORS: THE EU AND SOCIAL INCLUSION*, Oxford: Oxford University Press, 2002, s. 328 ISBN 0-19-925349-8

<sup>137</sup> European Commission, 2005: *Presidency Conclusions* – Brussels Brussels: EU

**Table 2: Europe 2020 goal values for Vysegrad countries**

Country / indicator	Early leavers from education and training by gender ( % of population aged 18-24)	Tertiary educational attainment by gender, age group 30-34 (% of population aged 30-34 %)	People at risk of poverty or social exclusion (thousands of inhabitants)
Czech Republic	5,5 %	32 %	15,3 %*
Hungary	10 %	30,3 %	2498
Poland	4,5 %	45 %	8909
Slovakia	6 %	40 %	948

\* The goal for Czech Republic is set in % instead of thousands of inhabitants

**Source:**[http://epp.eurostat.ec.europa.eu/portal/page/portal/europe\\_2020\\_indicators/headline\\_indicators](http://epp.eurostat.ec.europa.eu/portal/page/portal/europe_2020_indicators/headline_indicators)

Except for Hungary, all Vysegrad countries have a lower goal set for *the Early leavers from education and training by gender*. As for the *Tertiary educational attainment by gender, age group 30-34*, Czech Republic and Hungary are below the aggregated EU 27 goal, while the goal for Slovakia is on par and above for Poland. The last goal (represented also by the three remaining indicators, that don't have their own goals) for *People at risk of poverty or social exclusion* is quantified in two ways – as a reduction of share, for Czech Republic, and as a reduction in absolute numbers for the remaining three countries. In our analysis we will go through the individual goals and explain the reasoning behind our critique of the goals we just described, based on both quantitative and qualitative criteria.

### III. Methods

From the methodological point of view, we will use two statistical tools for evaluation. First one are the basics of time series analysis, especially the linear trend, which will be using for

the projections of average development needed to attain the original goals and its changes over time. The lack of longer time series data availability for the indicators in our analysis prevents us from using more sophisticated forecasting methods that might be more suitable for predicting the future development in the analysed area. We however believe that the simplified usage of a linear trend may suffice to illustrate our point. Besides the linear trend, we will be using the derived measures of development variability to a set target value. We specifically developed this method, in order to enrich the options of evaluation for international strategies, where the availability of time series data is usually limited, and the usability of more sophisticated statistical methods is low. This method, can only be applied in cases where a particular indicator has a set target value (notation:  $a^i$ ) as well as the time window (T), during which the target value should be reached. First of such measures is the mean of deviations to  $a^i$ , that evaluates, the development of a single indicator in its own context. This measure has two variants based on whether the desired development is maximalisation of the values of the indicators (such as for *Tertiary educational attainment by gender, age group 30-34*), or minimalisation (*Early leavers from education and training by gender*).

Maximalisation:

$$md_{a^i} = \frac{1}{T} \cdot \sum_{t=1}^T (a_i - x_t) \quad (2)$$

$a^i$  – desired target value

t- notation of a time period,  $t = 1, \dots, T$

We list the interpretation of the possible values attained by this measure is listed in Table 3:

**Table 3: Interpretation fo the mean of deviations to  $a^i$ , for maximalisation (formula 2)**

Target process	Positive development	Stagnation	Negative development
Maximalisation	$(-\infty, a^i - x_1)$	$a^i - x_1$	$(a^i - x_1, \infty)$
Reaching the exact value of the goal through maximalisation	$((a^i - x_1)/T), a^i - x_1)$	$a^i - x_1$	$(a^i - x_1, \infty)$

Source: Author

Minimalisation:

$$md_{a^i} = \frac{1}{T} \cdot \sum_{t=1}^T (x_t - a_i) \quad (3)$$

$a^i$  – desired target value

t- notation of a time period,  $t = 1, \dots T$

We list the interpretation of the possible values attained by this measure is listed in Table 4:

**Table 4: Interpretation fo the mean of deviations to  $a^i$ , for minimalisation (formula 2)**

Target process	Positive development	Stagnation	Negative development
Minimalisation	$(-\infty, x_1 - a^i)$	$x_1 - a^i$	$(x_1 - a^i, \infty)$
Reaching the exact value of the goal through minimalisation	$((x_1 - a^i)/T), x_1 - a^i)$	$x_1 - a^i$	$(x_1 - a^i, \infty)$

Source: Author

Both forms are designed in a way that allows for same interpretation of the resulting values. Mean of deviations to  $a^i$  is however not fit for cases where we want to compare the

development variability towards goal values of two or more different indicators. In order to accommodate for this fact, we will be using Coefficient of deviations to a target value ( $a^i$ ). Coefficient of deviations to a target value ( $a^i$ ) is an analogy with the original variation coefficients used in measures of common variability. Because of this fact, the Coefficient of deviations to a target value will be based on the Mean sum of squares of deviation to  $a^i$  which is an equivalent of original standard deviation used in statistics:

$$v_{a^i}^2 = \frac{1}{T} \cdot \sum_{t=1}^T (x_t - a_i)^2 \Rightarrow v_{a^i} = \sqrt{v_{a^i}^2} \quad (4)$$

Finally, the Coefficient of deviations to a target value, will use the following formula:

$$CV_{a^i} = \frac{v_{a^i}}{a^i} \quad (5)$$

As we already mentioned, this measure allows for comparison of deviations of development to target values of different indicators. Its shortcoming is the fact, that it doesn't reflect the direction (positive or negative) of the development and as such should always be used in connection with the mean of deviations to  $a^i$ .

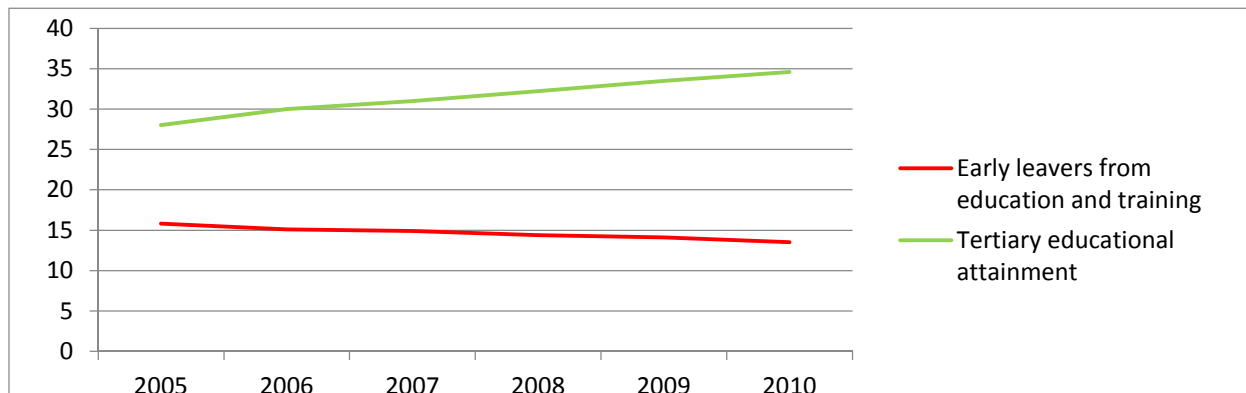
## IV. Critique of the Europe 2020 for the area of social inclusion

The reason for our analysis and critique, is the attempt to point out the flaws of Europe 2020, so that it can be adjusted early in order to avoid Europe 2020 becoming a failure in a similar way as the Lisbon Strategy did. The possibility of such a failure exists because of several reasons. First one is the data availability at the time of the design of the goals. Europe 2020 was created in 2009. Indicators in the area of social inclusion are usually published with a delay of 2 years. The year 2009 in terms of social inclusion and its indicators features an overall slowing down, or even reversal of the positive development of the previous years. This doesn't apply for the education indicators, where our critique is directed at the qualitative impact of achieving the quantitative goals. In Figure 2, we illustrate the development of social inclusion indicators



connected to education.

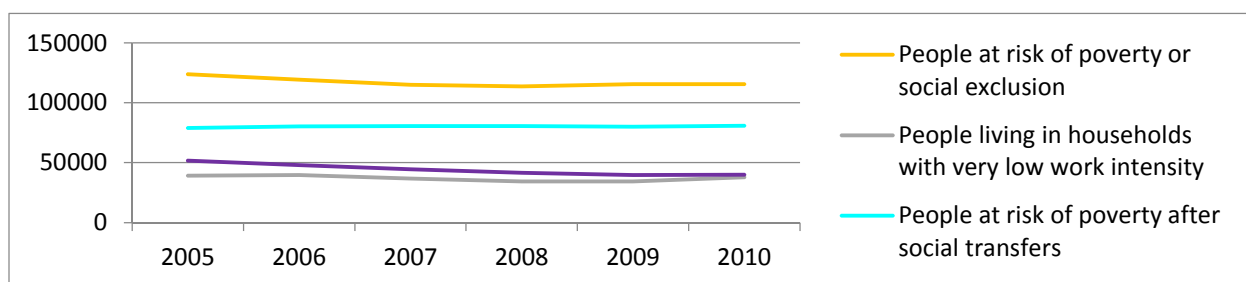
**Figure 2: Development of education related indicators of social inclusion for the EU 27, - 2010**



Source:[http://epp.eurostat.ec.europa.eu/portal/page/portal/europe\\_2020\\_indicators/headline\\_indicators](http://epp.eurostat.ec.europa.eu/portal/page/portal/europe_2020_indicators/headline_indicators)

On an European level, we could say, that both goals seem attainable (based on the average change over the observed time period), however the Tertiary educational attainment has in the past years experienced a slowdown of its development from 7,1 % between 2006 and 2005 to 3,3 % between 2010 and 2009, and if this decrease would remain constant at most, EU 27 would be unable to reach the set goal. In Figure 3 we illustrate the development of four remaining indicators; their relation will be explained in the section dedicated to them individually.

**Figure 3: Development of indicators related to poverty and social exclusion for the EU 27, - 2010**

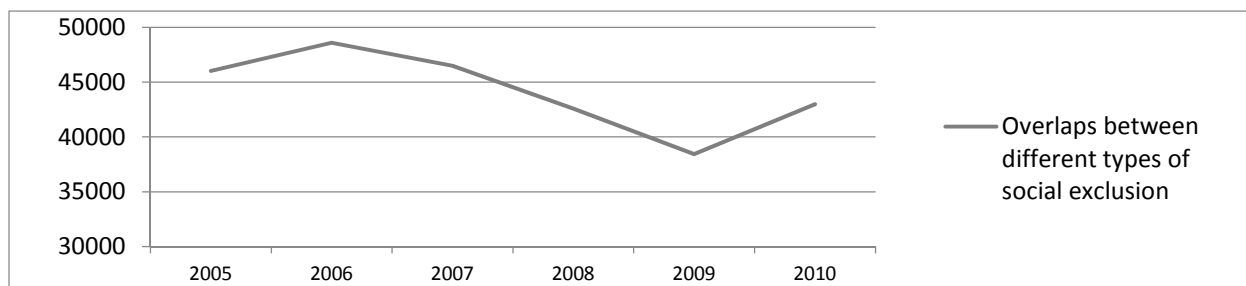


Source:[http://epp.eurostat.ec.europa.eu/portal/page/portal/europe\\_2020\\_indicators/headline\\_indicators](http://epp.eurostat.ec.europa.eu/portal/page/portal/europe_2020_indicators/headline_indicators)

If we take a look at the absolute volumes of people suffering from poverty, deprivation,

restricted access to work opportunities and their combination – social exclusion, we see, that the changes even before the economic and budget deficit crises were negligent and in 2010 even experienced a slight increase. What is however noticeable, is the increase of overlaps between the three indicators forming the People at risk of poverty or social exclusion between 2010 and 2009. The inclusion for the population group of people suffering from more than one type of social will need a higher level of attention and engagement at policy level. The changes in overlaps for EU 27 are shown in Figure 4.

**Figure 4: Overlaps between the different types of social exclusion, EU 27, 2005-2010**



Source: [http://epp.eurostat.ec.europa.eu/portal/page/portal/europe\\_2020\\_indicators/headline\\_indicators](http://epp.eurostat.ec.europa.eu/portal/page/portal/europe_2020_indicators/headline_indicators)

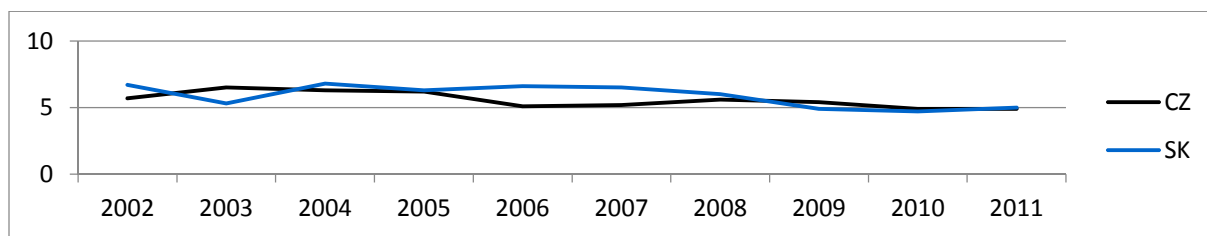
The increase in population groups for different types of social exclusion in 2010 was not accounted for in the original design of quantitative goals. Furthermore, with the current measures aimed to reduce the budget deficits of EU countries, it will be even more difficult, to reach the goals set for this area. In the following chapters we will look at the goals individually for all Vysegrad countries and explain what we are the most important issues that need to be addressed in relation to the Europe 2020.

## V. Early leavers from education and training by gender

*Early leavers from education and training by gender* is an indicator defined as the percentage of the population aged 18-24 with at most lower secondary education (ISCED levels 0, 1, 2 or 3c) and who were not in further education or training during the last four weeks

preceding the Labour Force Survey<sup>138</sup>. The main issue with this goal is the setting of the goals at too easily attainable levels. As we illustrate in Figure 5, both Slovakia and Czech Republic have already been able to reach and surpass their goal their goal (SK: 6%, CZ 5,5 %) in 2010. Generally Slovakia and Czech Republic have experienced a relatively steady development of Early school leavers with very little volatility.

**Figure 5: The development of Early leavers from education and training, SK and CZ, 2002-2011**

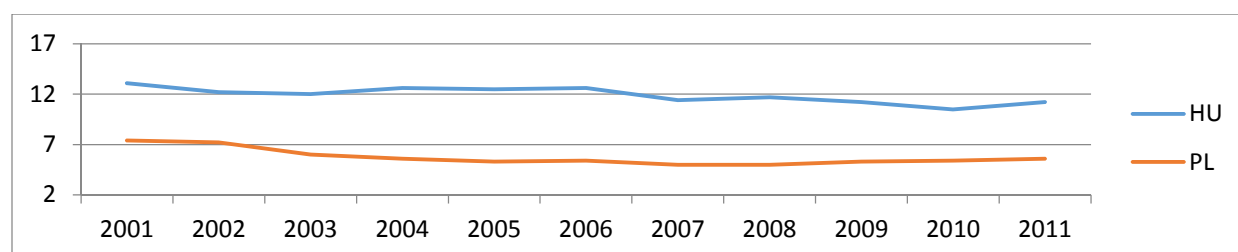


Source:[http://epp.eurostat.ec.europa.eu/portal/page/portal/europe\\_2020\\_indicators/headline\\_indicators](http://epp.eurostat.ec.europa.eu/portal/page/portal/europe_2020_indicators/headline_indicators)

The two remaining countries – Poland and Hungary (Figure 6), have on the contrary experienced noticeable setbacks. Hungary has jumped back to 11,2 % (value from 2009), while the share of Early school leavers in Poland has increased to 5,6 % (with an increase starting in 2009), a level it hasn't reached since 2004. This implies, that the share of *Early school leavers* for these two countries is highly susceptible to changes in the economy, and forecasting or even attempting to set a fixed goal as far as 10 years away is very daring.

<sup>138</sup> EUROSTAT, 2009: Sustainable development in the European Union: 2009 monitoring report of the EU sustainable development strategy, Luxembourg: Office for Official Publications of the European Communities, 2009, p.311, ISBN 978-92-79-12695-6

**Figure 6: The development of Early leavers from education and training, HU and PL, 2002-2011**



Source: [http://epp.eurostat.ec.europa.eu/portal/page/portal/europe\\_2020\\_indicators/headline\\_indicators](http://epp.eurostat.ec.europa.eu/portal/page/portal/europe_2020_indicators/headline_indicators)

## Recommendations:

- Set a new goal for Slovakia and Czech Republic at the level of 3,5 %, based on an estimation by linear trend, the average annual decrease would have to be 0,18 % for Slovakia and 0,14 % for Czech Republic.
- Implement policies aimed at reducing the amplitudes of the shares of Early leavers from education and training for Poland and Hungary.

## VI. Tertiary educational attainment, age group 30-34

According to Europe 2020<sup>139</sup>, education and training are essential to the development of today's knowledge society and economy. We shouldn't however define quantitative goals for education, without looking at how these changes impact the quality of education. The first issue with the goal for tertiary educational attainment, is the disproportion of goals for different

<sup>139</sup> Council of the European Union, 2009: Europe 2020 targets [online], Luxembourg: Eurostat, 2009, [quoted 25. 6. 2011], available online, <[http://ec.europa.eu/europe2020/pdf/targets\\_en.pdf](http://ec.europa.eu/europe2020/pdf/targets_en.pdf)>

countries, compared to the values of 2010 (start of Europe 2020). The differences between the 2010 and 2011 values are illustrated in Table 5.

**Table 5: Differences between the targets of Tertiary educational attainment, age group 30-34 and its values in 2010 and 2011, SK, CZ, PL, HU**

Country	SK		CZ		PL		HU	
Year	2010	2011	2010	2011	2010	2011	2010	2011
Difference	17,9	16,6	11,6	8,2	9,7	8,1	4,6	2,2

Source: Author

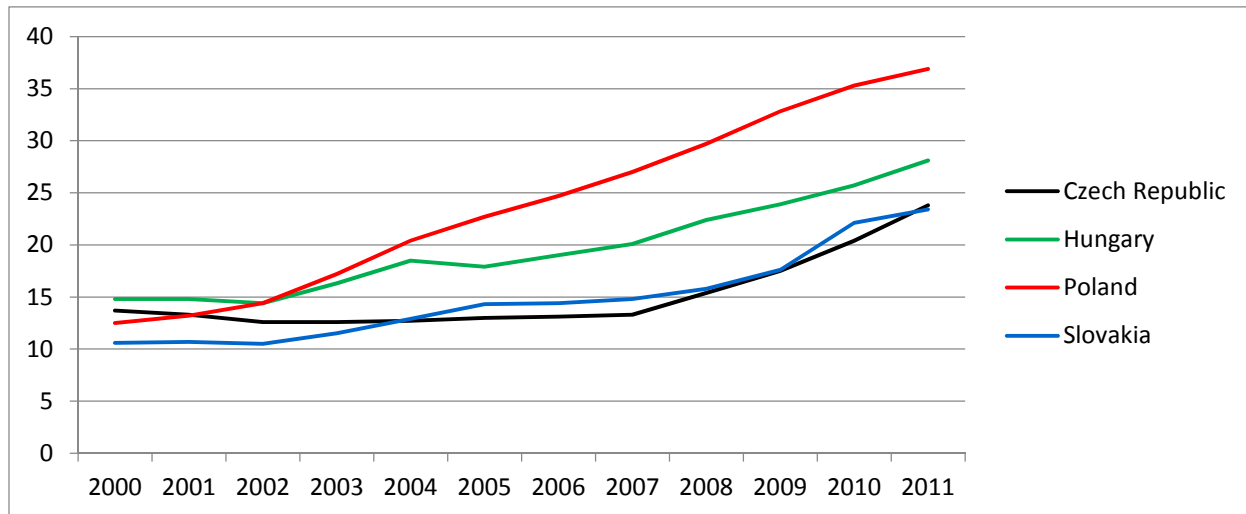
The goal for Hungary is defined as too easy to reach, and with if the growth stays at least on the level of 1,21 % per year, Hungary could very well reach its goal in the years 2013-2014. For Slovakia, taking into account the current growth rates and considering a constant growth of 1,16 % from the 2011 value (23,4 %), the goal seems unattainable. Furthermore, we should question the impact of the goal itself. Based on the university rankings by both the ARWU and THES organizations, Slovakia remains the only Vysegrad country not having at least a single university ranking in the top 500 universities worldwide. This is reinforced, by the citations ranking aggregated from both the Scimagojr and Scopus databases<sup>140</sup>, where Slovakia ranks last of the Vysegrad countries (out of 236 countries: PL: 19th, CZ: 30th, HU: 37, SK: 45). The public expenditure on tertiary education for Slovakia accounts for 0,83 % GDP in 2012 (based on an estimate of GDP and public budget for 2012), which is a decrease of 0,17 % difference from the value of 2004<sup>141</sup>. In absolute numbers, paired with the GDP growth between 2004-2012, this means a 33 % increase in absolute volume of finances (EUR), however, the share of Tertiary educational attainment by gender, age group 30-34 during this years increased by 81,4 % which is a huge disproportion, which we can expect to only further increase during the times of austerity measures for public budgets. A good solution would be a decrease of the goal for Slovakia paired with a criterion for public finances spending on tertiary education. We already partially described the situation in tertiary education in Poland and Czech Republic. The goals set for these two countries are attainable within the next five years, which means, these two

<sup>140</sup> SCImago. (2007). SJR – SCImago Journal & Country Rank. Retrieved September 09, 2012, from <http://www.scimagojr.com>

<sup>141</sup> Eurostat (2004): Developing higher education , Luxembourg: Office for Official Publications of the European Communities, 2004, p.87,

countries have enough space to accommodate for possible threats in the quality of tertiary education. The development of Tertiary educational attainment, age group 30-34 is illustrated in Figure 7

**Figure 7: Tertiary educational attainment, age group 30-34, Vysegrad countries, 2000-2011**



Source:[http://epp.eurostat.ec.europa.eu/portal/page/portal/europe\\_2020\\_indicators/headline\\_indicators](http://epp.eurostat.ec.europa.eu/portal/page/portal/europe_2020_indicators/headline_indicators)

We can also notice, that the development of Slovakia and Czech Republic is almost identical, despite the differences in quality of tertiary education.

## Recommendations:

- Set the goal for Slovakia at 30 %, while also setting the condition of increasing the public spending (or a combination of public and private) in tertiary education at roughly 2 % of GDP
- Increase the goal for Hungary to 35 %

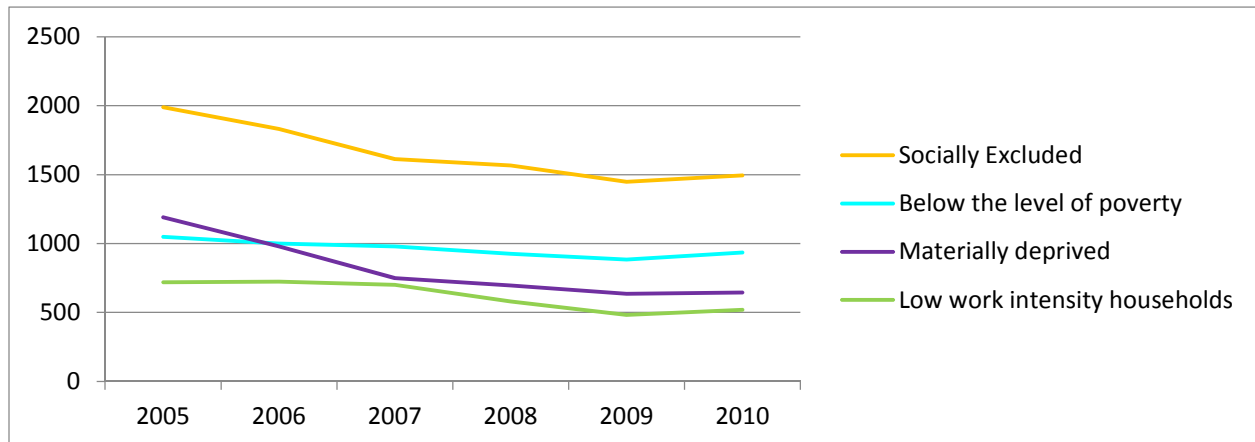
## VII. People at-risk-of-poverty after social transfers

According to Eurostat<sup>4</sup>, the indicator sums up the number of persons who are at risk of poverty, severely materially deprived or living in households with very low work intensity. Persons present in several sub-indicators are counted only once. Persons at risk of poverty have an equivalised disposable income below 60 % of the national median equivalised disposable income after social transfers. Material deprivation covers indicators relating to economic strain and durables. Persons are considered living in households with very low work intensity if they are aged 0-59 and the working age members in the household worked less than 20 % of their potential during the past year. Financial and material poverty, as well as access to labour market are all crucial dimensions of social inclusion. The approaches in mitigating their impact on population differ. There are multiple groups of socially excluded people hidden inside these indicators. As the People at-risk-of-poverty after social transfers indicators acts as the union of the three aforementioned indicators, it includes persons falling into one category, two categories or even all three categories at once (this group of people forms the core of socially excluded people). In general, people falling into just one category will be the first to be lifted out of social exclusion, while the progress of the people falling into two categories or even forming the core of socially excluded people can be expected to be much slower. If we however aim to effectively combat social exclusion, we need to address also the groups more difficult to influence.

Czech Republic has already reached its goal of share of People at-risk-of-poverty after social transfers in both years 2009 and 2010 (14 % and 14,4 %). It has however recently experienced an increase. Also it should be noted, that over one third of socially excluded people fall in more than one category of social exclusion. Figure 8 displays the absolute volumes of different categories of social exclusion as well as absolute volumes of the headline indicator. We see, that the latest increase was caused by people falling below the poverty line, as well as an increase in persons living in low intensity households. Changes in volumes of materially deprived persons were negligent. This was mainly caused by the increase in unemployment rate for Czech Republic by 0,7 %, that occurred in 2010. Unemployment level in CZ has however again decreased in 2011 by the same amount and we can expect this to be reflected in the volumes of socially excluded persons. The goal for Czech Republic is set at a level which can be maintained even throughout current economic situation. Our suggestion would be to add a goal

to decrease in the volume of people being affected by at least two types of social exclusion by 50 000 persons by 2020.

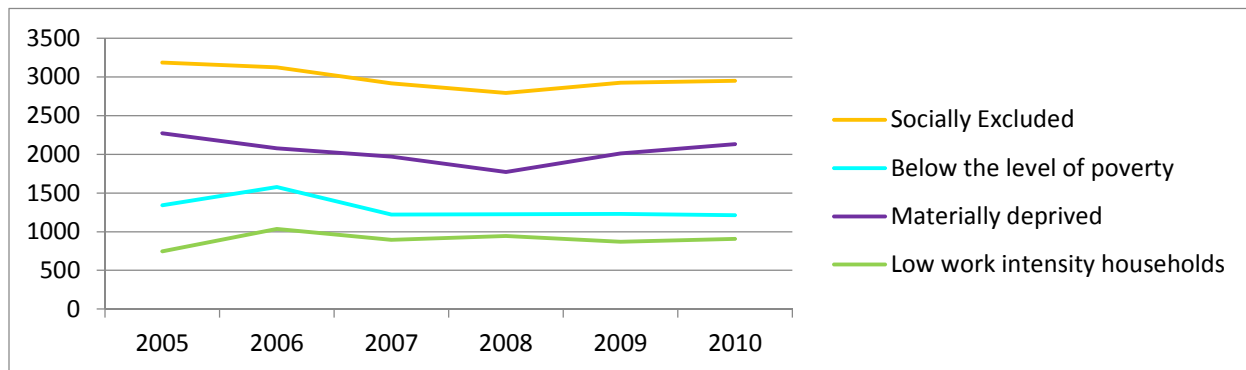
**Figure 8: Volumes of socially excluded people, CZ, 2005-2010**



When it comes to absolute volumes, Hungary has set a very ambitious goal of reducing the volume of socially excluded people by almost 500 000 persons, which means the policies must over the 10 years affect over 5 % of the whole population. The population affected by more than one condition of social exclusion accounts for almost 50 % of socially excluded people. In Figure 9, we see that the increase that started in 2008 was caused mainly by the increase of materially deprived population, and continued throughout the rest of the observed time period. Material deprivation translates into poverty accumulated over a longer time period, this it is more difficult to combat, and in regards to employment rates requires a long term stable increase, which may currently be difficult to secure. In case the numbers of socially excluded begin to drop starting 2011, Hungary would need an average decrease of 45 000 persons per year. This is a realistic goal, assuming a short term recovery of the development, within the next 3 years.

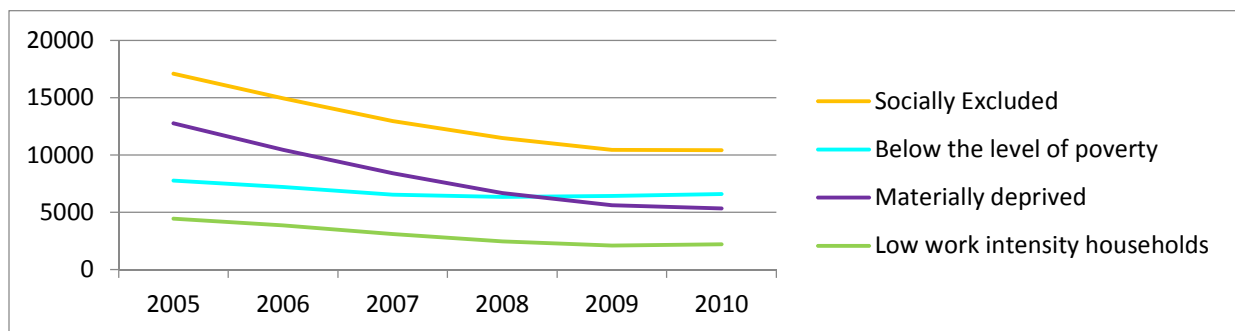


**Figure 9: Volumes of socially excluded people, HU, 2005-2010**



Poland's position is slightly different. While 2010 for the rest of the countries meant an increase of the socially excluded population, Poland merely came to a halt. Poland has been able to prevent their past progress from being reversed and also avoided an increase in the population falling into more than one category of social exclusion. We however need to understand these numbers in their context. The development of the relevant indicators in years 2005 to 2010 is displayed in Figure 10.

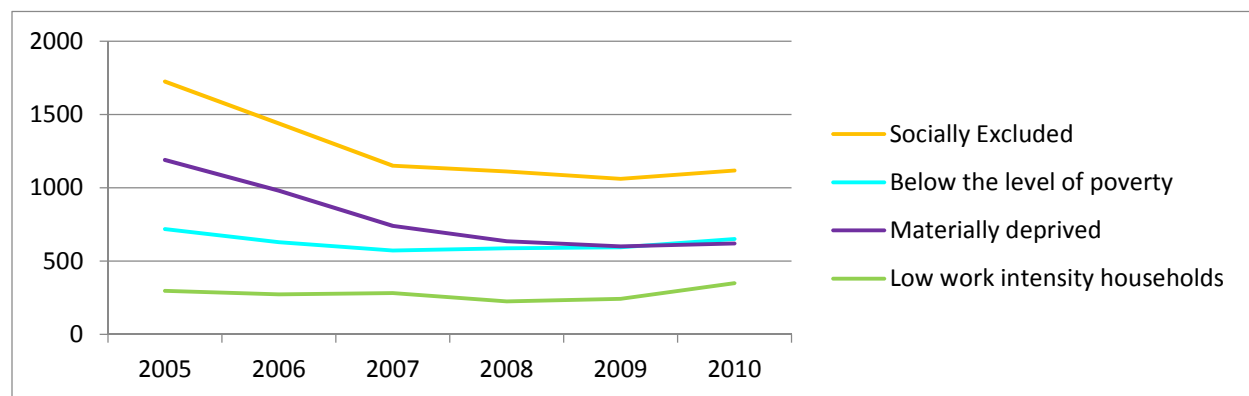
**Figure 10: Volumes of socially excluded people, PL, 2005-2010**



The current amount of socially excluded persons in Poland accounts for 27,8 % of population, and reaching the goal means lifting roughly 1,5 million people out of poverty, with such a scale, the effects of different policies might vary greatly across regions. Considering the progress Poland made before the development came to a halt implies, that the goal is achievable within the originally defined scope. Currently, people affected by more than one type of social exclusion account for 41,7 % of socially excluded population in Poland. We suggest adding a secondary goal, where at least 20 % of the people lifted from social exclusion people have to be people affected by more than one type of social exclusion. In Slovakia, the amount of socially

excluded persons jumped back to the value of 2008. The amount of materially deprived persons experienced almost no change over 2009-2010. The main negative development was caused by an increase in persons living in low work intensity households and an increased volume of people living below the poverty level. There was an increase of 126 000 persons in population groups suffering from more than one type of social exclusion between 2009 and 2010 (compared to the increase of socially excluded people by 57 000). Slovakia has a fair chance of reaching its goal, but needs to ensure, that there is also progress for the population group suffering from more than one type of social exclusion. For this we would set an additional goal - at least 25 % of people lifted out of poverty and social exclusion have to be people affected by more than one type of social exclusion

**Figure 11: Volumes of socially excluded people, SK, 2005-2010**



## Recommendations:

- Add an additional goal for Czech Republic, where at least 50 000 people lifted out of social exclusion until 2020 have to be people affected by at least two types of social exclusion
- Add an additional goal for Poland and Slovakia, where the at least 20 % (PL) and 25 % (SK) of people lifted out of social exclusion and poverty have to be people affected by at least two types of social exclusion

## Conclusions

In the summary we are going to look at how are the aforementioned developments and facts reflected in the measures of development variability towards a target value. We will divide the indicators into two groups based on what is their desired development. First group will be indicators related to education. The values of measures of development variability to a target value for these two indicators are included in Table 6. We calculated the mean of deviations to  $a^i$  for the past period (2002-2009), as well as the projection of the current development (2010-2019) projected up until 2020 and an average of desired development. For the coefficient of deviations to a target value, we calculated only the value for the past development as well as the projection of the current development on the time window up to 2020.

**Table 6: Measures of development variability to a target value for indicators of education within Europe 2020, Vysehrad countries, based on 2002-2011 values**

Measure	Country	md <sub>ai</sub>			CV <sub>ai</sub>	
Indicator		past	current	desired	past	current
Early leavers from education and training	CZ	0,0375	-0,109	0	10,98%	4,7%
	HU	0,125	0,155	0,045	9,71%	2%
	PL	0,2375	0,182	0,082	16,44%	8,5%
	SK	0,23	-0,209	0	23,30%	9%
Tertiary educational attainment, age group 30-34	CZ	0,38	1,8	1,05	23,20%	13%
	HU	0,91	0,618	0,42	27,10%	5,1%
	PL	2,03	1,618	0,88	40,25%	8%
	SK	0,7	3,136	1,63	27,75%	18%

Source: Author

Slovakia and Czech Republic as we already pointed out have no trouble reaching the originally set goals (as a matter of the fact, they have already reached it). We have proposed alternative goals for these two countries at the level of 3,5 %. Hungary and Poland on the other hand will be unable to reach their goals if the development rate doesn't change. The projected current means of deviations to  $a^i$  for this two countries were greatly influenced by the setbacks

in 2011, and while it is possible, that the values might bounce back to their original (or at least similar, but positive) trajectories, measures need to be taken in order to secure the stability and sustainability of the attained development. The current projected values of desired coefficients of deviations of target values are lower compared to the past values, if the countries would be able to secure a positive development and development variability comparable to the past, they would all be able to surpass their goals. As for Tertiary educational attainment, age group 30-34, the measures of variability towards a target value confirm our findings for Slovakia. The difference for the current and desired mean of deviations to  $a^i$  is significant while the difference in the past and current projected development variability measured by the coefficient of deviations of a target value isn't. Hungary – a country, we originally proposed an increase of the goal for Tertiary educational attainment, age group 30-34 up to 35 %, has a very low difference between the projected current and past development (calculated for the original goal), we should however note the noticeable difference in coefficient of deviations of a target value which indicates, that Hungary has a potential to accommodate a faster than projected development. Cases of Czech Republic and Poland are similar, with bigger differences in their means of deviations to  $a^i$ , meaning that it supports our original recommendation.

The goal aimed at People at risk of poverty after social transfers cannot be evaluated in a similar way, as the data for the year 2011 aren't available yet. In Table 7 we list the measures that can be calculated at this point based on data availability.

**Table 7: Measures of development variability to a target value for People at risk of poverty after social transfers within Europe 2020, Vysegrad countries, based on 2005-2010 values**

Measure	Country	md <sub>ai</sub>		CV <sub>ai</sub>
Indicator		past	desired	past
People at risk of poverty after social transfers	CZ	1,12	0,000	10,98%
	HU	52,2	40,909	5,34%
	PL	1325,2	136,364	36,29%
	SK	132,60	15,455	30,80%

Source: Author

The measures for Czech Republic have been calculated based on a perceptual goal, while the rest of the countries have a goal set in absolute numbers. While the Czech Republic has already reached its goal (a reason for our proposal of setting the alternative goal at a reduction by 50 000 people at risk of poverty and social exclusion), the rest of the countries need less effort to reach their set goals compared to the development they were able to attain in the past. The biggest challenge will be returning to positive developments towards the goal as well as influencing people affected by more than one type of social exclusion. For Poland and Slovakia we proposed adding secondary goals of reducing the shares of people affected by more than one type of social exclusion at 20 % for Poland and 25 % for Slovakia respectively. Achieving the full potential of Europe 2020 might be more difficult than expected, given the current state of the world economy as well as the European public budget deficit crisis. This, however doesn't mean we should abandon all efforts towards its realisation.

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**Confronting global gene giants in transitional countries**

## CONFRONTING GLOBAL GENE GIANTS IN TRANSITIONAL COUNTRIES

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Naira Harutyunyan

**Abstract:** *While the debates on the benefits and risks continue, genetically modified organisms (GMOs) are already widely spread and sold in many parts of the world, aggressively pushed by multinational corporations. The paper investigates the range of activities the corporations undertake, and the role they play in shaping the global GMO governance, focusing on GM-crops and food products. Failing to conquer European markets due to strong public resistance and restricting policies, corporations redirect their attention to countries with “less resistance”. The study proceeds with the analysis of the situation in Armenia concerning GMOs and the examination of related issues. It explores whether GMOs are produced, imported, and used, and focuses on scrutinizing the national instruments for GMO governance and assessing their effectiveness in regulating the field and preventing from possible threats. The drawbacks identified in the set of policies are also presented.*

**Keywords:** *genetic engineering, international corporations, GMO governance, Armenia*

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### Introduction

Genetic engineering is among the rare technologies that have attracted public and scientific attention from the early stage of their development. This is partly explained by the

nature of this technology since “scientists are now manipulating something as fundamental as life itself.”<sup>142</sup> In view of many uncertainties and lack of scientific knowledge, opinions about GMO benefits and risks are often controversial. Supporters claim that GMOs are safe and vital for technological progress. Opponents argue there is no need for them because too many environmental and health risks are associated with GMO application.<sup>143</sup>

While there are a number of studies on particular benefits and risks of GMOs with the majority of the available literature focusing on environmental and economic effects<sup>144</sup>, the studies aiming at scrutinizing GMO issues within the broader context of corporate power with its multiple implications are scarce, yet gaining particular attention recently in the context of the global food system.<sup>145</sup> There is also a lack of case studies from countries in transition, with some exceptions of studies in Russia and Ukraine. The aim of this study is to fill this gap. The paper starts with the analysis of the GMO debate. It reviews a range of potential benefits and risks posed by the application of GM products. Though genetic medicine and emerging gene therapies constitute an important part in the development of genetic engineering, they are outside the scope of research. The main emphasis is on GM crops and food products, and some health related issues are discussed in the context of usage of GM food products. The paper proceeds with the study of the global GMO regulatory regime formation focusing on the influence of multinational corporations within global agrifood governance and market systems. The case study of Armenia, as a country in transition, is then presented with the analysis of the situation concerning GMOs. The paper shows that the GMO governance structure is basically set up though with a number of deficiencies that prevent effective control of any GMOs imported or locally produced. The paper brings out emerging evidence to doubt official position that GMOs are neither imported nor produced in Armenia and to testify the corporations' interest in the region.

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<sup>142</sup> Royal Commission on Environmental Pollution: *The release of genetically engineered organisms to the environment*. Thirteenth Report. London: Her Majesty's Stationary Office, 1989, p. 1.

<sup>143</sup> Pretty, J. The rapid emergence of genetic modification in world agriculture: contested risks and benefits. *Environmental Conservation*. 2001, 28 (3): 248-262.

<sup>144</sup> Spok, A. Assessing socio-economic impacts of GMOs. Final report, *Inter-University Research Centre for Technology*, Austria, 2010.

<sup>145</sup> Clappe, J. and Fuchs, D. Agrifood corporations, global governance, and sustainability. In *Corporate power in global agrifood governance*, Clappe, J. and Fuchs, D eds. Massachusetts Institute of Technology, USA. 2009.

## I. The GMO Debate

The rapid expansion of GMO technology and spread of GM food over recent decades have mounted to a worldwide debate. The key arguments that emerged are categorized as follows.

### 1. Benefits of GMO usage

*On farm benefits:* For commercial purposes, plants are modified for herbicide tolerance (HT) for using broad-spectrum herbicides and killing weeds without crop damage and insect resistance through *Bacillus thuringiensis* (Bt) toxin expression by plant cells for killing pests (for example, HT soya or Bt cotton).<sup>146</sup> It is claimed farmers may exercise more effective weed/pest control and be time-efficient by seeding and harvesting earlier.<sup>147</sup>

*Profitability:* Lower costs to farmers are derived by using less herbicides/insecticides and better options to prevent harvest losses. Profits are claimed to be higher even after the fees levied by GMO developers.<sup>148</sup>

*Environmental benefits:* GM crops are argued to have the following environmental benefits:

- *reduced usage of herbicides and pesticides* may significantly weaken the impact on non-target species. Chemical sprays for killing target pests practiced in conventional agriculture also kill other non-target insects, whereas Bt crops are claimed to kill only the pests that feed on the crop, being harmless to other living organisms, including humans.
- *higher yields* implies production of GM crops using less land and leaving more territories

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<sup>146</sup> Skeritt, J. Genetically modified plants: developing countries and the public acceptance debate. *Biosafety Reviews*. Australian Centre for International Agricultural Research, 2000.

<sup>147</sup> Australian Government. Department of Agriculture, Fishery and Forestry. *Benefits of GM products*. 2003.

<sup>148</sup> *Supra* note 2.



for other uses, such as forests, for reverting persistent deprivation of biodiversity.<sup>149</sup>

*Consumer benefits:* Nowadays the priorities of GM plants have shifted from those that are easier to grow to those that have improved qualities required by customers, including:

- *cheaper products* can be produced as a direct result of reduced costs of GMO production.
- *enhanced nutritional or pharmaceutical content* of crops can help addressing food and health issues. For example, vitamin A enriched GM rice is supposed to mitigate the health effects of vitamin A deficiency in developing countries. Research is underway to produce GM crops that when eaten will function as vaccines.<sup>150</sup>
- *better features for products* can be attained by inserting new genes or switching off undesired ones. Examples are frost resistant strawberry, 40% firmer GM tomatoes, GM potato that, when fried, absorb less fat and, thus, healthier chips are made.<sup>151</sup>

## 2. Potential risks of GMOs

*Genetic pollution* or gene flow occurs in nature when species are crossing with related species. The transgenes can transfer to conventional counterparts, soil bacteria, and the human gut threatening the transfer of unexpected features and transformed populations. Toxins of Bt plants can penetrate into the soil and endanger the functions of plant growth bacteria. If transgenic DNA is captured by soil bacteria, there is a risk of horizontal gene flow.<sup>152</sup>

*Secondary pests and weeds.* Introduction of HT and Bt crops can lead to insect and weed resistance and occurrence of secondary or super pests and weeds.<sup>153</sup> Weeds resistant to

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<sup>149</sup> *Supra* note 6.

<sup>150</sup> *Supra* note 2.

<sup>151</sup> *Supra* note 6.

<sup>152</sup> *Supra* note 2.

<sup>153</sup> *Supra* note 5.

herbicides, including Monsanto's Roundup herbicide, were registered in the US and Canada.<sup>154</sup>

*Effects of toxins on non-target specie:* Toxins expressed through all the cells of GMOs can affect not only targeted pests but also other beneficial organisms contacting with the GM plant. Experiments with ladybugs, which eat Colorado beetles, showed that ladybugs eat fewer eggs of Colorado beetles if they are living on Bt potatoes.<sup>155</sup>

*Other impacts on biodiversity:* for covering the costs, GMO developers impose an economy of scales approach implying planting fewer crop varieties on large territories.<sup>156</sup> Moreover, there are several studies showing an *overuse of herbicides* per hectare of GM crops as compared with non-GM crops.<sup>157</sup> Partly, this is because farmers do not wait till weeds grow to kill them and use pre-emergence herbicide together with broad spectrum herbicides more often. Massive planting of GM crops and overuse of herbicides may end in a complete extinction of target weeds and negatively affect other plants and animals the life of which is connected with the weeds, threatening the continuity of ecosystems and dramatic biodiversity loss.<sup>158</sup>

*Health risks:* Scientists have concerns about unknown GMO threats to human health, such as:

- *allergenicity* is a human immunodeficiency reaction leading to anaphylactic shock or death. Some plants contain allergy-inducing proteins. Their usage as gene source provokes intolerance among allergic people.<sup>159</sup> GM soya containing a high-methionine Brazil nut gene was recalled because of a detected strong allergic reaction among people using it.<sup>160</sup>
- *antibiotic marker genes* are used for detecting the gene transfer process. This holds a risk of antibiotic resistance genes being passed on bacteria in the human (animal) gut and provoking the development of resistance to vital antibiotics through the food chain,

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<sup>154</sup> US Public Interest Research Group Education Fund. Duty to disclose: the failure of food companies to disclose risks of genetically engineered crops to shareholders. 2004, online: <http://uspirg.org/>

<sup>155</sup> *Ibis*.

<sup>156</sup> Lappe, M. and Bailey, B. *Against the grain. The genetic transformation of global agriculture*. London: Earthscan Publications Ltd. 1999.

<sup>157</sup> *Supra* note 13.

<sup>158</sup> *Supra* note 2.

<sup>159</sup> *Supra* note 5.

<sup>160</sup> *Supra* note 2.

jeopardizing the vital remedy of humankind against infections by canceling many drugs.<sup>161</sup>

*Imprecise science:* relatively predictable in laboratory ecosystems, in the real world the precision and predictability of the biotechnology processes drastically falls. Scientists cannot predict the behavior of an inserted gene in a host system or control gene expression.<sup>162</sup> The process of gene transfer is not precise either. It is accompanied by the use of bacteria, in which the desired gene is inserted and moved into the host cell, or by direct shooting of foreign genes into the cell. For tracing gene transfer, antibiotic marker genes are used with all effects described above. For accelerating the expression of the target gene, promoter genes are also imported. Moreover, during this process unwittingly other gene fragments may be transferred and activated.<sup>163</sup> All this may provoke genome rearrangement, effect the expression of inserted, neighboring and even dormant genes, generate new viruses and injure vital functions of cells. For example, the side effect of transferring the growth gene into the salmon tissue was the change of its color.<sup>164</sup>

*GMOs supporting corporations or farmers?* GMO benefits to farmers of lower costs can backfire by the fees levied by GMO producers that may cost even more than conventional practices (see Table 1). Promised high yields seem controversial too. A comparative study of GM soybean with identical conventional varieties showed that in 30 out of 38 comparisons conventional crops had higher yield.<sup>165</sup> In 1998, Mississippi farmers sued the State Department of Agriculture and were compensated US \$ 1.9 million for the failed GM cotton yields. Similar case of failure of GM cotton crops was with Monsanto, sued by 200 cotton farmers from several US states.<sup>166</sup>

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<sup>161</sup> *Supra* note 13.

<sup>162</sup> Hindmarsh, R. The problems of genetic engineering. *Peace Review*, 2000, 12 (4): 541-547.

<sup>163</sup> Meikle, J. Soya Gene Find Fuels Doubt on GM Crops. *The Guardian*, London. 2000.

<sup>164</sup> Manukyan, K. and Zakaryan, L. GMO: navstrelu k apokalipsisou ili era mutantov (GMO: towards apocalypse or era of mutants). *Ecologicheskii Byulleten* (Ecological Bulletin), 2004 6: 28 - 32.

<sup>165</sup> *Supra* note 15.

<sup>166</sup> *Supra* note 2.

**Table 1: Comparison of GM and conventional cotton costs in North Carolina, 1999**

	GM Cotton	Conventional Cotton
Bollworm damage (%)	1.61	3.93
Stink bug damage (%)	2.58	0.61
<i>Total doll damage (%)</i>	<i>4.47</i>	<i>5.25</i>
<i>Insecticide use</i>	<i>0.75 applications</i>	<i>2.53 applications</i>
Technology fee to company (US\$/ha)	47.30	0.00
For insecticides (US\$/ha)	13.90	46.90
Lost cotton and scouting fees (US\$/ha)	6.00	15.00
<i>Total cost to farmer (US\$/ha)</i>	<i>67.40</i>	<i>61.90</i>

Source: Pretty 2001

## II. International policy-making on genetically modified organisms

Contested research results on the effects of GMO application necessitate the analysis of the process of development of GMO regulatory mechanism on international and national levels with due consideration of the role of GMO producing corporations in GMO governance.

### 1. Convention on Biological Diversity

The most significant international regulatory mechanisms dealing with GMOs are the Convention on Biological Diversity (CBD) and the Cartagena Protocol on BioSafety. The multilateral negotiations on CBD started in 1990 aiming at “conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources”.<sup>167</sup> The process of an international biosafety regime

<sup>167</sup> Convention on Biological Diversity. Article 1. Montreal. 2000, on-line: [www.biodiv.org/doc/legal/cbd-en.pdf](http://www.biodiv.org/doc/legal/cbd-en.pdf)

formation was controversial from the beginning. Some countries, such as Sweden, Malaysia, and Costa Rica, were insisting on legally binding obligations, emphasizing the precautionary and the financial liability principles for any dangers arising from biotechnology innovations. The European countries stressed the “unique character” of GMOs and insisted on a special regulation, different from non-GM products. On the other side, the USA and other GMO exporting countries (Argentina, Chile, Canada, etc.) pushed for similarity in regulating GM and non-GM products and demanded a voluntary code of conduct.<sup>168</sup> The US President stated “US economic interests must take priority over “extreme” environmental concerns. ... The competitiveness of the US biotechnology industry would be impaired, and American jobs would be threatened by the intellectual property and financial considerations in the Convention”.<sup>169</sup> As a result, the USA did not sign the CBD.

## 2. Cartagena Protocol on BioSafety

The increased complication of GMO related issues conditioned the need for extending the regulatory base with the Cartagena Protocol of BioSafety, which is based on the precautionary principle and aims “to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling, and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, and specifically focusing on transboundary movements”.<sup>170</sup> In February 1999, in Cartagena (Colombia) the US and several GMO-exporting countries succeeded in blocking the Protocol signing. After a compromise, the Protocol was signed in Montreal in 2000. Again, the EU and most developing countries insisted on stricter regulatory mechanisms. The small but powerful group of GMO-exporting countries (US, Canada, Chile, etc.) were against it. Trade related issues brought up the most controversial discussions. For example, the EU and most developing countries demanded provision of full information on exported GMOs. In contrast, GMO-exporting countries pushed for the

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<sup>168</sup> Munson, A. Genetically manipulated organisms: international policy-making and implications. *Royal Institute of International Affairs*, 1993, 69 (3): 497-517

<sup>169</sup> Pitt, D. 1992. *European envoys come to US aid*. Earth Summit Times: Rio de Janeiro. Cited in *ibid.* p. 502.

<sup>170</sup> Cartagena Protocol on Biosafety to the Convention on Biological Diversity. Article 1. Montreal. 2000.

minimization of information requirements.<sup>171</sup>

### 3. Property protection

In 1983, the issue of the ownership of genetic material was addressed in the International Undertaking on Plant Genetic Resources, a non-binding agreement, in which genetic material was defined as a part of global commons, a freely accessible good. Genetic materials were not under the sovereignty of any state. However, the agreement was neglected mostly by developed countries that started releasing patents for GM plants and animals, isolated and purified genes and genetic sequences. Later, despite the CBD provisions, the US Patent and Trademark Office issued patents on human genes. In their turn, developing countries, where various life forms are concentrated, succeeded in enclosing the rights over raw genetic materials into the Union for the Protection of New Varieties of Plants (UPOV). The concept of global commons of genetic resources was abandoned. Under the CBD, genetic resources are under the sovereignty rights of nations.<sup>172</sup>

In 1994, within the World Trade Organization the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) was adopted, according to which for any innovation in all fields of technology a 20-year patent could be provided. Property protection in biotechnology creates favorable grounds for the biotech-industry to make investments in the scientific and commercial development of this field. Revolutionary changes in the plant breeding sector shaped favorable sectors such as seeds, chemicals, and pharmaceuticals.<sup>173</sup> At the same time intellectual property protection may represent a tool for exercising economic and political power. The TRIPS is claimed to have threats such as the recolonization of the Third World. It protects profits of monopolist patent holders, hinders developing countries access to knowledge, impedes their potentials for innovations and competition. The TRIPS creates also a paradox of defining GM and non-GM products. In the context of biotechnology regulation, GMOs are defined as “substantively equivalent” to non-GM products and should be treated as same for regulatory purposes. However, when a patenting issue arises, the position of industry is that GM

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<sup>171</sup> Falkner, R. The first meeting of the parties to the Cartagena Protocol on Biosafety. *Environmental Politics*, 2004, 13 (3): 635-641.

<sup>172</sup> Safrin, S. Hyperownership in a time of biotechnological promise: the international conflict to control the building blocks of life. *The American Journal of International Law*, 2004 (4): 641-685.

<sup>173</sup> Buttel, F. and Belsky, J. Biotechnology, plant breeding, and intellectual property: social and ethical dimensions. *Science, Technology, & Human Value*, 1987, 12 (1): 31-49.

products are “novel” and differ from their non-GM counterparts and should be protected by intellectual property rights and justify benefits from the monopolistic prices.<sup>174</sup> Moreover, TRIPS disregards that farmers could not know that they are using patented seeds. Cross-pollination of GM seeds with non-GM crops may take place when farmers without knowing break the TRIPS agreement and can be sued.

### III. Biotechnology: a big commerce science

Multinational agro-corporations make huge investments in biotechnology development. It provides them with a competitive advantage in comparison to other market players and ensures large profits.<sup>175</sup> For example, Bayer is investing in biotechnology research and development more than all Latin America.<sup>176</sup> Corporations finance those streams in biotechnology that have the potential of providing economic returns. As a result, they have the power to influence the direction of scientific research in the field of genetic engineering. The basic scientific research generally based on *collective consensus of scientists* may be influenced and changed to support the work that could produce marketable products. Funding for basic science will be ensured if it goes alongside applicable commercial research. Hence, there is a threat that basic scientific research would go down or be kept on a minimum level.<sup>177</sup> Patenting is another powerful tool used by multinationals, especially in relation to new biotechnological processes, which are more profitable than product patenting. After patenting the process, the company can refuse it to competitors or receive royalty for its usage. Patenting of processes also prevents scientists from using them and making their contribution to science as a whole. Thus, patent owners influence the actions of competitors and public researchers. Moreover, cases were registered when the patented processes contained techniques that had been used previously by researchers.<sup>178</sup>

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<sup>174</sup> Zerbe, N. Seeds of hope, seeds of despair: towards a political economy of the seed industry in southern Africa. *Third World Quarterly*, 2001, 22 (4): 657-673.

<sup>175</sup> *Supra* note 32.

<sup>176</sup> Biotechnology and Development Monitor. 1990. Cited in *supra* note 30.

<sup>177</sup> Markle, G. and Robin S. Biotechnology and the social reconstruction of molecular biology. *Science, Technology, & Human Value*, 1985, 10 (1): 70-79.

<sup>178</sup> Markle, G. and Robin S. Biotechnology and the social reconstruction of molecular biology. *Science, Technology, & Human Value*, 1985, 10 (1): 70-79.

## 1. Mergers in the agro-sector

For using all market advantages, agro-chemical corporations acquired seed companies, providing the seed sector with more investments on biotechnology development. For example, in 2004, Syngenta bought 9 seed companies and gained control over 15% of maize and 13% of soybean market shares in North America.<sup>179</sup> Another incentive for mergers was the expiration of patents for agrichemicals and new patent periods for GM seeds. It also allows experiments with seeds to require the use of own chemicals and impose the selective demand for GM seed-chemical packages. For example, by enhancing herbicide tolerance in tomatoes, producers sell to farmers the package of seeds and herbicides together.<sup>180</sup> Many corporations that now constitute the top of biotech's gene giants have been formed on the basis of large agrochemical corporations and represent their successors. It is remarkable that the top ten agrochemical corporations control 84% of the global agrochemical market. The top ten seed corporations control 30% of the global seed trade and 100 per cent of the market for GM seeds.<sup>181</sup> Thus, multinationals dominate the biotechnology industry and control international trade in food and agriproducts.<sup>182</sup>

## 2. Terminator seeds

Monopolistic status provides corporations with many tools to direct biotechnology science and influence markets. In order to ensure patent rights protection of GM seeds, corporations developed special type of *terminator* seeds, which are sterile in subsequent generations. Using such seeds prevents farmers from saving seeds for subsequent years and forces buying them every year. This is a crucial socio-economic issue, given that in most developing countries more than 85% of seeds for planting are produced by farmers themselves or borrowed from neighbors. Introduction of terminator seeds, consolidation of using power of plat technology in a few hands and its transfer from the farmer to companies will severely impact the small-farming sector in these regions by hitting the poor farmers most.<sup>183</sup>

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<sup>179</sup> Action Group on Erosion, Technology&Concentration. Syngenta-the genome giant? Communiqué 86, Canada, 2005.

<sup>180</sup> *Supra* note 32.

<sup>181</sup> Pesticides Action Network Updates Service. *Handful of Corporations Dominate Commercial Agriculture*. 2001

<sup>182</sup> *Supra* note 4.

<sup>183</sup> *Supra* note 33.



For profit reasons, GM seeds are designed to avail economies of scale and promote large commercially intensive farms. There is a tendency for small farms not to stand the competition with large commercially intensive farms and to gradually disappear. In the US, the farms with sales of more than US \$500,000 generated profit 40% profit in contrast to 10% profit gained by sales less than US \$50,000.<sup>184</sup>

### 3. Transitional and developing countries under the threat of GMOs invasion

Rapid development of biotechnology and increase in GMO production in the US and other countries create the need for new markets for their production. EU markets are not easily accessible due to strong public resistance and strict regulations on production, trade, and use of GMOs. Countries, such as Japan and Korea, have hardened their policy towards GMOs. Even such exporters of GMOs as Australia and New Zealand require labeling for GM food.<sup>185</sup> Hence, gaining the markets of developing and transitional countries is a path of lowest resistance. Dependency on agriculture, high need for crop improvements, absence or deficiency of GMO regulation, imperfect institutional capacity, corruption and susceptibility to sanctions from powerful actors makes these countries more vulnerable to the pressure from invasive policies of multinationals. The present research is further extended to the case of Armenia, a country in transition, which ranks high in vulnerability to the consequences of production, trade, and use of GMOs, to highlight the situation concerning the GMOs and examination of related issues.

## IV. Case study: Armenia

A country of latitudinal variations and a great diversity of climatic zones, Armenia boasts an exceptionally rich variety of both landscapes and the diversity of flora and fauna, including many regionally endemic, relict, and rare species. Over 3,500 species of plants grown in Armenia

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<sup>184</sup> *Supra* note 15.

<sup>185</sup> Pollack, M. Shaffer, G. 2000. *The Washington Quarterly* 23 (4): 41-54.

amount to more than half of the 6,000 found in the entire Transcaucasus region. Indeed, the territory of Armenia falls within one of the five centers of diversity of cultivated plants described by Vavilov, the creator of the world's largest collections of plant germplasm. Wild species are a very important source of new genetic material needed for future crop adaptations to changing pests, pathogens, and extreme environmental conditions.<sup>186</sup> Therefore, this region may become a target for multinationals. Introduction of new “highly-yielding” GM varieties may displace traditional varieties and threaten with the erosion of this *in situ* (on-site) genetic diversity calling for well-balanced decisions regarding the introduction of biotechnological innovations and conserving the genetic heritage for present and future generations.

## 1. GMO-related legal and institutional structure in Armenia

Legal and regulatory framework relating to GMOs in Armenia is mainly shaped by:

- *The Constitution* is the first regulating tool committing the state to provide the protection and sustainable development of the environment.
- *The Convention on Biological Diversity (CBD)* was ratified in May 1993. Armenia is committed to ensuring the conservation and sustainable use of all the components of biological diversity: genetic resources, species, and ecosystems. Under CBD obligations, *the First National Report to the CBD* was produced along with *the Biodiversity Strategy and Action Plan* - a mechanism of assessing the government's actions and progress with regard to their obligations. Short- and long-term programs were developed for the promotion of biodiversity conservation, sustainable use, and regeneration.<sup>187</sup>
- *The Cartagena Protocol on Biosafety* was ratified in March 2004. Under the Protocol, Armenia committed to control transboundary movements of GMOs, set GMO standards (labeling of GMO imports), and impose “Advanced Informed Agreement” procedures on the import of seeds and other GMOs.<sup>188</sup> Since the Protocol provisions are not self-

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<sup>186</sup> Boyce, J. *Ecological Distribution, Agricultural Trade Liberalization, and In Situ Genetic Diversity*. Published Study. Political Economy Research Institute: University of Massachusetts. MA. 1996

<sup>187</sup> Ministry of Nature Protection. *Biodiversity Strategy and Action Plan for the Republic of Armenia*. Yerevan, 1999.

<sup>188</sup> Gardiner, R. and Hatherly, Z. *The Rio Conventions: Committing to Sustainability*. Stakeholder Forum. UK. 2002.

executing, Armenia should develop its own national strategies and action plans for monitoring.

- *The National Biosafety Framework* was developed in 2003 with the aim of ensuring the proper operation of mechanisms envisaged for safe transfer, handling, and use of GMOs. It was focused on identifying the deficiencies of existing legislative and institutional systems and developing recommendations for enhancing technical, institutional, and scientific capacities of a country to meet the requirements of the Cartagena Protocol with emphasis on improvement of information provision and public participation structures.<sup>189</sup>
- *The Draft Law on “Living Modified Organisms”* (LMOs) based on the Cartagena Protocol is at the draft stage. It regulates development, handling, transportation, usage, transfer, release, and disposal of any living organisms containing new genetic material obtained by gene engineering techniques. The Law is expected to ensure the simplicity, transparency, and legality of decisions on LMO utilization. It defines the system of state authorities responsible for activities relating to LMO obtaining, testing, transfer, use, and elimination. The Law is based on the precautionary principle and its scope covers licensing, risk assessment, prohibitive application, monitoring, reporting, information provision, and other activities.<sup>190</sup>
- Other Laws regulating GMO related issues include Laws “On Fauna”, “On Flora”, “On Consumers’ Rights Protection”, “On Environmental Impact Expertise”, “On Licensing”, etc.

The institutional framework of regulating biosafety issues comprises the following:

- Ministry of Nature Protection, responsible for ensuring biosafety;
- Ministry of Agriculture, responsible for ensuring state control of food safety;

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<sup>189</sup> FAO Regional Office for Europe. Agricultural Biotechnology and Biosafety for Food Security and Rural development in the Caucasus Region and Moldova. Proceedings of FAO/UNESCO Subregional Workshop. Yerevan. 2003

<sup>190</sup> Ministry of Nature Protection. 2004. *National Biosafety Framework for Armenia*. Yerevan

- Ministry of Health, responsible for evaluation of environmental factors impacting human health;
- Bio-resources Management Agency, responsible for releasing licenses for import and export of biological resources along with some duties for monitoring. Currently, environmental monitoring activities are implemented by NGOs. Yet, they do not directly monitor LMOs.
- The National Agency on Plant Genetic Resources for Food and Agriculture, responsible for development of a National Strategy on Plant Genetic Resources and other related laws.
- There are also a number of scientific institutes engaged in biotechnology research and application, such as the Scientific Research Institute of Biotechnology, the Center for Medical Genetics, the Institute of Zoology, the Center for Applied Zoology and Botany, etc.

Overall, the legislative and institutional structure is set up for regulation of GMO related issues though with a number of deficiencies and lack of coordination laws. There are also problems at the level of enforcement and monitoring agencies. In many laws, GMO related issues are not clearly defined or properly regulated. For example, Laws “On Flora” and “On Fauna” that prohibit import/export of animals and plants for acclimatization and selection purposes do not regulate access to genetic resources and benefit sharing. Laws on “Protection of Consumer Rights”, “Standardization and Certification”, and “Insurance of the Compatibility of Products and Services with Normative Requisites” do not have provisions for regulating the sale, export, import, packaging, and labeling of LMOs. They do not incorporate the requirement for provision of information about the genetic origin of products. Furthermore, there are laws, which though being directly connected with activities related to LMOs, do not refer to them at all. For example, Government Resolution No 621 “On approving the rules for VAT-free import of potato, spelt, and barley seeds into Armenia” regulating the quality verification of imported seeds lacks any statement about LMOs. The Government resolution No 1173 on “Procedures for export and import of biological collection and separate samples in the region of the Republic of Armenia” does not provide definite procedures for protecting biodiversity from LMOs.<sup>191</sup> To some extent

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<sup>191</sup> *Supra* note 48.

these deficiencies are explained by the draft status of the principal Law on “Living Modified Organisms”, which hampers further legislative and institutional developments in the field.

## 2. Are GMOs produced or used in Armenia?

Officially, GMOs are neither imported nor commercially produced in Armenia.<sup>192</sup> However, after the review of a number of documents, publications, GMO studies and the analyses of the ongoing debate around the issue, findings were made to doubt about this official position.

A number of state officials, civil society representatives, and experts are concerned about uncontrolled introduction of GM food, seeds, seedlings, and animal feed into Armenian markets. The UNEP representative in Armenia claims that since 1994 Armenia has received GMO containing products, particularly, GM soya, at first, as a humanitarian aid and then on a commercialized basis. The volume of these imported food products is growing from year to year.<sup>193</sup> The analysis of international support or cooperation programs may affirm this. For example, within the frameworks of the Fast Growing Tree Project since 1994 the US and Canadian hybrid poplar trees from 55 different hybrid clones have been planted in different sites in Armenia.<sup>194</sup> Within the framework of the Civil Society and Humanitarian Aid program, the Armenian Technology Group received \$16 million worth vegetable and corn seeds from the US. As is well-known, corn is one of the largest GM field crops in the US, so there are doubts about the possible genetic origin of this “humanitarian” aid. Interestingly, none of the reports on international aid programs has a reference to “genetic modification” or “genetic engineering” or other similar phenomena.

According to state officials of the Health Ministry, GMOs are sold in the markets of Armenia. Another state official from the Plant Selection Office at the Ministry of Agriculture states that there is a great risk that GM seeds are being imported into Armenia because on the

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<sup>192</sup> *Ibis*.

<sup>193</sup> Harutyunyan, N. *Genetic Engineering in Agricultural Landscapes*. LAMBERT Academic Publishing, Saarbrücken, 2012.

<sup>194</sup> Bisharyan, A. *Priroda znayet luchshe (Nature knows better)*. *Ecologicheskii Byuleten (Ecological Bulletin)* Association for Sustainable Human Development, 2004, 4: 6-8

border the seeds are tested only for the identification of a disease.<sup>195</sup>

The majority of seeds and food products imported into Armenia are from the US, Canada, Brazil, Russia, and Turkey. The genetic origin of imported plants, animals, seeds, and seedlings is not registered and food products are not labeled properly. At the same time, the Health Ministry Decree 181/2003 requires mandatory labeling of food products made of GM soy, GM corn, and GM potato. However, this requirement practically has not been fulfilled<sup>196</sup>. Food products are not labeled properly, partially because there is no point in the certificate requiring the registration of the genetic origin of an imported product.<sup>197</sup> Moreover, there is no GMO testing laboratory. Hence, it is not feasible to ensure proper monitoring of imported products or to store statistical data on the amount of GM products and amount of GM ingredients in different food products.

A study based on interviews with farmers in Armenia demonstrated that there is a mass usage of new seeds (tomatoes, potatoes, etc.) imported from abroad, mainly from the US. They give high yields and possess necessary the marketing features. For example, many farmers mentioned about “Superstrain” and “Elitar” tomato seeds, which gave high yields of attractive, big, less juicy, firm tomatoes, which could be carried in bags and kept long. All the respondents also mentioned the deterioration of flavor properties of all products. Moreover, the farmers pointed out that these new seeds did not give yields in subsequent generations. They could use the seeds for one or maximum two years. The majority of farmers also reported to have new seeds received as a humanitarian aid in the beginning. Interestingly, to the question whether the new seeds were used by their friends or neighbors, farmers answered that all farmers they knew used new seeds. Some farmers used new seeds for trading and old traditional seeds for personal consumption.<sup>198</sup>

While the issue of whether GMOs exist in Armenia is discussed among various stakeholders, the signs of corporations’ doings have already come into sight. AstraZeneka (now Syngenta) has already recorded Armenia in its list of 80 countries to which the agrogiant can make patent application of its GM crops and “determine who has access to which gene and which

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<sup>195</sup> Grigoryan, M. More Than a Question of Taste: Worries over Food Product Modification. ArmeniaNow, June 2005

<sup>196</sup> Yegoyan, A. Genetikakan modifikacvac organizmneri orensdrakan kargavorman midzazgayin porcy ev iravichaky Hayastanum (International. experience on regulation of genetically modified organisms and situation in Armenia). *Ecologicheskii Byuleten (Ecological Bulletin)* Association for Sustainable Human Development, 2004. 4: 13-15

<sup>197</sup> *Supra* note 49.

<sup>198</sup> *Supra* note 52.

crop and at what cost".<sup>199</sup> Another agrogiant, Monsanto, has already introduced its genetically modified New-leaf potatoes to Georgia, a neighbor to Armenia. GM potatoes were totally defeated by fungal disease entailing great losses to farmers.<sup>200</sup> Due to lack of regulatory mechanisms, the GM potato from Georgia was transferred to neighboring Azerbaijan.<sup>201</sup> About Armenia there is no information. Small relief is that Armenia produces potatoes in excess of its domestic needs and even exports its production. Yet, the possibility of Bt potato seed exchange may remain.

## Conclusion

The debate around GMOs is driving up with contested research results coming up. Application of GMOs along with controversial benefits carries a number of unpredictable health and environmental risks, as well as threats of social and economic dimension. While scientists are disputing on risks and benefits, GMOs are already widely spread and sold worldwide. The scale and rate of cultivated GM crops is growing from year to year. Through enforcement of intellectual property rights, power to influence scientific directions and process of national and international regulatory regime development, corporations monopolize and control biotechnology and profit at the expense of small farmers. Since European markets are not accessible due to public resistance and GMO prohibition laws, corporations' interest is redirected to countries of less resistance, where social and economic conditions weaken the capacity to resist GMO corporate expansion.

The case study of Armenia examining the situation associated with GMOs revealed that the legislative and institutional framework on regulating GMO related issues is basically established. However, there is weak coordination between various related laws, insufficient implementation of legislation and lack of monitoring service, which prevents effective monitoring of any GMO imported or locally produced. The study showed that though according

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<sup>199</sup> McCrea, I. and Mayer, S. AstraZeneca and its genetic research Feeding the world or fuelling hunger? ActionAid's food rights campaign, 1999, p. 25, on-line: <http://www.actionaid.org.uk/wps/content/documents/astrazeneca.pdf>

<sup>200</sup> Kochladze, M., Gujaraidze, N., and Tavrtkiladze, L. Decade of Independence Effects of Economic liberalization in Georgia. Country report. Friends of Earth International, Association "Green Alternative", Tbilisi, 2002.

<sup>201</sup> Supra note 48.

to official figures GMOs are neither imported nor commercially produced in Armenia, not only scientists and civil society representatives but also state officials claim that there is a danger that GMOs are introduced, produced, and used in Armenia. Looking at the issue from the perspective of what is going on in farms with massive usage of new seeds that do not give yields in subsequent generations, also gives reasons not to trust official data. Moreover, the reports of agricultural international assistance programs, though not mentioning genetic modification, also raise suspicion about the genetic origin of products dealt. Furthermore, the example of Georgia, where Monsanto's GM potato is already planted and spread even to neighboring countries may signal that there are interests in the region for the introduction of GM products. Finally, having such a great variety of genetic resources within its territory, it is of high importance for Armenia to enhance and operationalize the legislative and institutional infrastructure and ensure increased investments for pursuing biosafety policy based on well-balanced decisions associated with introduction of biotechnological innovations. The country should be responsible for providing a safe and healthy environment and conserving its genetic diversity for the present and future generations.

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## THE LIABILITY ISSUE OF ENVIRONMENTAL CASES IN CENTRAL AND EASTERN EUROPE

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Gábor Kecskés

**Abstract:** *This paper focuses on the issues of Central and Eastern European environmental problems, primarily analysing their social and environmental associations in the light of liability concerns. In-depth examination of these specific issues can significantly bolster the endeavours of environmental policy and legislation in this region.*

**Keywords:** *transition, liability, environmental damage, sustainable development*

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### Introduction

Sustainable development, irrespective of the fact of being a principle with a high-level of objectiveness and with its roots traced back to abstract and soft legal demands, pertains to a special but relevant field of 'environmentalism', to which the term 'liability' is obligatorily linked. The legally accurate connection between cause and effect (the causal linkage), such as methods of pollution and environmental harm, is essential in order to compensate for and restore damage to the environment. Within the context of sustainable development, the liability issue (whether it has a social dimension or not) may be conducive to enforcing the realisation and requirements of sustainability and development. Thus a restored (or repaired) environment and social equilibrium shall indicate ideal dimensions of these values and interests.

This article surveys the interconnection between liability and the environmental as well as social dimensions of sustainable development with special regard to Central and Eastern European experiences and methods that are peculiar to the social, economic and environmental conditions of this region. The breaking point of the great paradigm shift was the package of reforms ushered in by Gorbachev (before the official collapse of the Soviet Union in the first year of the 1990s) entailing simultaneously the end of the Cold War era, wherein the Central and Eastern European states (thereinafter: CEE countries or CEE states) lacked not just of their sovereignty and self-determination but – and consequently – their people's transparency and other democratic *fora* as well as methods for accomplishing greater ecological and environmental goals.<sup>202</sup>

Sad memories of the Chernobyl disaster and a number of cases of pollution of border streams imposed the upon the States the drafting of much legislation and best practices aimed at achieving sustainable development and protection of the environment. Sustainability and liability, sustainable development and the repair of damage to the environment and social equilibrium as well as the question of remedies shall be emphasized in this article, with focus on Central and Eastern European issues. Bearing in mind the numerous aspects of social, economic and environmental reality in CEE countries, liability and sustainable development as abstract principles and legal or semi-legal concepts shall not prevail separately in the fragmented and disparate network of societal criteria of a 21<sup>st</sup> century State. Solutions involving probable liability and the requirements of sustainable development are integral parts of a modern State. Today's democracy also means green democracy, consisting of the essential conditions relating to public participation and transparency of environmental decisions for the sake of the interests of future generations. After the revolutions of 1989-90, CEE countries adopted the minimal and fundamental rules of democracies (Western-type, market-based and plural entities in favour of human rights with a democratic voice for the public), i.e. the legislation of democracies where green democracy and responsible environmentalism had, more or less, flourished.

This paper deals with the issues of implementing liability within the context of CEE-related environmental segments and problems as well as the challenge of ensuring region-

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<sup>202</sup> See further, Hill, P.: Environmental Problems after Socialism. *Cato Journal*. 1992, vol. 12, no.2, pp. 321-335.; Hamilton, I.: Transformation and Space in Central and Eastern Europe. *Geographical Journal*. 1999, vol. 165, no.2, pp. 135-144.; Carmin, J. – Vandever, S.: Enlarging EU Environments: Central and Eastern Europe from Transition to Accession. *Environmental Politics*. 2004, vol. 13, no.1, pp. 3-24.

specific sustainable development in the light of liability solutions and variations.

## I. The Term and Meaning of Liability and Its Relevance

Liability is a legal construct aiming to govern and redress cases wherein damage or loss has been incurred as a result of an activity having been conducted neither in breach of an obligation, nor in breach of *due diligence* obligations on the side of the party who caused the harmful event (the term 'liability' applies only to lawful acts not prohibited by legal provisions that involves risks and transboundary damage; thus, wrongful acts are excluded from the concept of liability and belong to the domain of responsibility). In this respect, liability shall be adjudicated for damages caused to the injured party irrespective of the fault of the liable party.<sup>203</sup>

Theoretical law and legal practice both stipulate their own methods and mechanisms in response to damage and in order to compensate for the damage to the injured entity and to punish the liable party or to have it declared responsible for the injurious result. The aim is twofold, either a restitutive/reparative or a punitive function (or both of them) shall predominate the field under analysis. However, the restitutive/reparative goals of liability are conspicuous and almost exclusive instead of establishing and assigning a punitive purpose to a legal concept that largely presupposes negligence or lawful but harmful activities. Contrary to the doctrinal concept of liability, the other side of the coin, the term 'responsibility' is applied to unlawful acts prohibited by international law.

In addition to the abstract concept, in practice the transcending spread of liability in binding treaty-based regimes is recognized to be a noticeable trend being backed up by a considerable number of pivotal so-called "environmental treaties".<sup>204</sup> The treaties including nuclear and oil damage as well as transboundary movement of dangerous goods and dumping

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<sup>203</sup> On the regime of environmental liability in detail, see, Fitzmaurice, M.: International Responsibility and Liability. In: Bodansky, D. – Brunnée, J. – Hey, E.: *The Oxford Handbook of International Environmental Law*. Oxford: Oxford University Press, 2007, p.1010-1035.

<sup>204</sup> Until the 1960s, it was thought that customary law standards and the *due diligence* rules were adequate to cover ultra-hazardous activities. This paradigm changed fundamentally due to the experiences of hazardous accidents. From the 1960s, a large number of liability and compensation treaties were signed within the extended fields of hazardous and significant transboundary risks: oil pollution at sea and nuclear accidents. These measures and codification endeavours have shown exemplar paradigms influencing the codification process of the ensuing decades. On the grounds of nuclear and oil liability regime initiatives, liability theory occupies the whole subject of waste and hazardous activities dangerous to the environment.

of waste are the most relevant instruments having proven this characteristic.

Thus, the added value of this liability regime could achieve great effectiveness in the protection of the environment against “eco-systematic” injurious dangers and threats. Most environmentally unfriendly activities are more common at this level of technical and economic development with special regard to the extension of scientific knowledge. We are witnessing the needs of a growing population, economic expansion of society with newly invented and discovered technological processes, where liability must reach higher relevance and is essential in handling numerous pollution cases. Higher levels of technological development mean higher risks to living standards (e. g. for the environment) and a greater need for legal safeguards against potential detrimental events. In the eyes of the public, the list of priorities for the environment is as follows:

- Firstly, to avoid the occurrence of such damage, pollution and degradation (through technical and legal certainty, e.g. safety standards and tight legal regulation), it shall be emphasized that prevention is on the top of the priority list;
- Secondly, to promptly mitigate any damage that has occurred;
- Thirdly, to enact efficient liability rules, whereupon the injured parties can claim prompt, adequate and full compensation as a remedy (and to enact sanctions against the liable party).

For decades, the problem has consisted of answering the question of “who shall bear the loss in the event of harm”, which was fundamental to all questions of liability and responsibility. Currently, international legislation is almost always based on the generally accepted approach of the operator’s strict liability pursuant to effective nuclear, oil and hazardous waste liability conventions, which regulate liability in respect of third parties under international law, since regulation is analogous to that on liability for activities involving increased danger. Liability in other integral parts of (international) environmental law, by necessity, plays a smaller and less important role; for example, the areas of climate change and sustainable development which, due to their multidisciplinary character (legal, political, technological and economic) impede the

clear legal qualification of liability issues.

Considering the area under analysis with special regard to the participation of CEE countries in liability-based treaties within the scope of environmental law, a relatively small number of core or fundamental treaties or relevant international as well as EU norms<sup>205</sup> have been adopted to provide for interconnection between hazardous activities and liability theory: 1963 Vienna Convention on Civil Liability for Nuclear Damage; 1992 Convention on the Transboundary Effects of Industrial Accidents; 1993 Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment; 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters; 1999 Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and Their Disposal; 2003 Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters to the 1992 Convention on the Protection and Use of Transboundary Watercourses and 2004 Directive 2004/35 on Environmental Liability with Regard to the Prevention and Remedying of Environmental Damage.

The numerous treaties share similar and analogous features. Most of these documents apply i) *strict liability* imposed upon the operator of the hazardous activity with exonerations; ii) *the exact but regime-specific notion* of transboundary damage with a narrowed geographical scope with the most relevant definition measures, iii) *limits to liability* that bounds the real subject of liability in financial ways (limits on the amount of reparation) and legal ways (limits on the time and operators and jurisdiction of State – i.e. where the competent court must be assigned).

In summary, based on common features, the universality of each field shall be traced back to the applicability of the liability treaties in the context of hazardous waste. The relatively large amounts of the damages and the inevitable participation of the private sector in the carrying out of one-time public duties yielded the recognition that the private sector will not be able to compensate all possible amounts of damage, pollution or harm. In CEE countries this problem was exacerbated by the fact that the private sector has a relatively short history without organic development or wide ranging experience – nevertheless, social, economic and

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<sup>205</sup> For a general overview of the pre-1995 documents, compare with Birnie, P. – Boyle, A.: *Basic Documents on International Law and the Environment*. Oxford: Clarendon Press, 1995, p.680.

environmental conditions are similar. Discounting the continent-like extension of Russia, the geographical territory of CEE countries is relatively small (the interconnection is relevant); the biodiversity of any CEE country is akin to other CEE countries, historical and sociological factors are analogous; thus the added value and contribution of CEE countries towards the achievement of sustainability are worth highlighting. Equal exposure to environmental problems and accidents (see the Chernobyl disaster and its environmental impact on the region) as well as the EU membership status of most CEE countries naturally leads to this region being considered a unique and unified interest group, especially for environmental issues.

## II. Central and Eastern European Countries and Environmental Issues

### Before the End of Communism

The environmental liability issues of CEE countries became prominent after the revolutions of 1989 and 1990, due to the fact that environmental transparency, market economy-based solutions and the launching environmental jurisdiction (claimable and actionable environmental damages) all hit the agenda after 1989. The change of political paradigm stemmed from the collapse of Soviet dominance of the region, which had left environmental interests out of consideration for many decades. The Soviet sphere of interests, the logic of the Cold War and role of CEE as determined by the Soviet Union had compelled some CEE countries to engage in environmentally unfriendly and heavily polluting manufacturing processes (e.g. expansion of heavy industry had been imposed upon several CEE countries). Dealing with the persistent problem of environmental damage by keeping it under unbroken and strict secrecy had also been a regular feature of the Communists' political attitude and sporadic environmental policies (which had merely amounted to some limiting of industrialisation with reference to the protection of nature).

Prior to 1989, the lack of democracy, transparency, NGOs and other organised interest groups, as well as the absence of requirements for preliminary environmental impact assessment had also been descriptive symptoms of the situation at the time. It is worth

mentioning that the foundations of the present Aarhus-based system (so-called environmental democracy) were still absent from international relations. This was made worse by centrally-planned economy and industry and the existence of almost exclusively state-owned, megalithic plants ("industrial mammoths"), which were responsible for the greatest and heaviest pollution, while they were at the same time unactionable and badly as well as inefficiently managed by the state.<sup>206</sup> In addition to that, in municipal laws the liability rules had been adopted *de jure* and were incorporated into Civil Acts but in practice they had no *de facto* impact and relevance in concrete cases before the courts. Last but not least, the scientific certainty regarding the impact of industry on the environment was also significantly lower and less proven as a consequence of under-developed scientific monitoring, poor assessment results and inferior scientific infrastructure.

### After the End of Communism

The opportunity for allocation of liability entered public discourse after the end of Communism. The shift towards democracy produced a need for environmental data and public participation in environmental matters, creating an ideal political and legal backdrop for further progress. Yet several questions were raised and left unanswered by CEE democracies in the ensuing two decades. Nevertheless, the efforts toward gaining EU accession always kept these issues in the realm of political commitments, while international endeavours were also noteworthy and reached new horizons through the term 'sustainable development' and by means of several crucial international treaties. The fledgling democracies of CEE were evolving simultaneously with the Golden Era (or in other words, the pre-decline era) of international environmental law symbolised by the Rio achievements in the early 1990s.

Since 2004 (when many CEE states acceded to the European Union) the situation has been somewhat different and promising. The EU has played a leading role in several universal issues within the framework of international environmental law, such as its high-level commitment to combatting climate change using strict and ambitious limits on CO<sub>2</sub> emissions.

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<sup>206</sup> By Hill's apt remark, "the lack of private property rights meant the legal system was ineffective in terms of stopping pollution. One of the features of private property is the ability to stop other people from taking actions that damage your property [...] under socialism the lack of private rights meant individuals could not use the system to prevent harm to property." Compare, Hill: *op. cit.* 328.

The liability issue was also incorporated and codified into European law by the adoption of Directive 2004/35 on Environmental Liability with Regard to the Prevention and Remedying of Environmental Damage<sup>207</sup>, legislation that requires implementation by member states (being a directive, it is a non-executive norm stipulating only the general aims to be achieved in relatively free-form implementations by member states). The Directive shall apply (see Article 1, Para. 9) to any occupational activities other than those already directly or indirectly identified by reference to EU legislation as posing an actual or potential risk to human health or the environment, and the operator is liable whenever he is at fault or negligent. In Article 1, Para. 13, further additional requirements have been included, such as the need for there to be one or more identifiable polluter(s), that damage shall be concrete (not abstract in nature) and quantifiable (there is also a variety of exceptions in Article 4), and that a causal link should be established between the damage and the identified and proven polluter(s).

Steenge stated that pursuant to the long-time isolation of CEE countries from Western European countries, it is not surprising that Eastern European economies today have many features that are reminiscent of Western Europe during the use of obsolete industrial production techniques of the 1940s and 1950s, thus “environmental consequences are also reminiscent of the situation in the West European countries one or two generations ago.”<sup>208</sup>

The situation has since changed significantly – with tighter EU integration, the effective, environment-friendly solutions used in Western Europe can (and should) be shared with CEE countries under the banner of the EU.<sup>209</sup>

### Principal Environmental Liability Issues in CEE Countries

The theoretical basis of environmental liability requires explicit liability rules within the context of binding laws that are in force. In contrast, the term ‘responsibility’ may not be based upon written normative regulation, because unlawful and injurious acts require a breach of

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<sup>207</sup> For further details, see Jans, J. – Vedder, H.: *European Environmental Law after Lisbon*. Fourth Edition. Groningen: Europa Law Publishing, 2012, pp. 383-390.

<sup>208</sup> See Steenge, A.: A Survey of Environmental Problems in Eastern Europe. *Structural Change and Economic Dynamics*. 1991, vol. 2, no.2, pp. 326.

<sup>209</sup> Cf. Jans-Vedder: *op. cit.* 32-52. and 97-104.



obligation in connection with the general prohibition of causing damage. Thus, due to wrongful acts an activity could be judged to be a responsibility issue in the absence of specific normative (responsibility-based) regulation.

In the wake of the institutionalisation of 'environmentalism' and following the accelerating pace of international environmental legislation, a considerable number of pertinent environmental liability-based treaties have been concluded, wherein CEE states take part as contracting parties. It must be stated that only a limited number of the integrative environmental sectors (air, water, soil, biodiversity and man-made environment with links to surroundings) have their own liability rules within the realm of international relations. However, municipal law of the contracting parties shall provide for some liability issues within the scope of civil law liability or criminal responsibility, etc.

Inter-state environmental liability issues in CEE focus on the following five crucial areas and sectors:

1. *Information sector (e. g. notification) and green democracy and its links to liability*
2. *Border streamline cases and liability* (cases relating to dams on the River Danube and pollution or overuse, over-exploitation of border streamlines and other water-management issues<sup>210</sup>)
3. *Liability for pollution* (and its impact on a variety of issues)
4. *Waste management and disposal and its liability implications* (e. g. disposal of waste originating from Western European countries in CEE countries without the preliminary consent and permission of the official authorities of the destination country)
5. *Sustainable development and its relationship to liability.*<sup>211</sup>

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<sup>210</sup> For further details see Kundzewicz, Z.: Water Problems of Central and Eastern Europe – a Region in Transition. *Hydrological Sciences Journal*. 2001, vol. 46, no.6, pp. 883-896.

<sup>211</sup> However, Hill emphasised four nodes influencing environmental policy, namely i) incentive problems; ii) information problems; iii) lack of exchange solutions and iv) no evolution of property rights. See Hill: *op. cit.* 321-335. According to Steenge, from the transition "all problems related to environmental economics – economic growth and development, the sustainability issue, cost-benefit evaluations – need to be considered simultaneously." Cf. Steenge: *op. cit.* 316. It must be stated that both of these opinions arbitrarily exclude the added value of liability issues while concentrating on policy matters.

The common features of the above mentioned five crucial points are that, in theory, all of them exhibit the interdependence among CEE states with special regard to similarities in geographical, historical and political situation and features.

As for the first issue of information and notification, within a relatively small region of CEE countries (except for Russia) the states and liable parties shall notify and warn each other about potentially hazardous activity and its impact on the environment of other states. Thus originating states (where the polluting person or corporation, such as a firm or factory resides or is located) have a strict obligation to provide prompt notifications of imminent dangers.<sup>212</sup> It must be highlighted that the notification obligation is irrespective of whether liability is attached to the state itself or to an individual or corporation. States, while maintaining ultimate and supreme control of their territory, must act first and foremost in cases of danger in the small area that CEE countries occupy (identical geographical scope, relief features and hydrological integrity combined with the small territorial extent of CEE countries are conducive to fostering 'environmental interconnectedness' in the region). The lack of notification was a crucial point in the handling of the Chernobyl disaster<sup>213</sup> by the Soviet authorities – by keeping the event secret for several days, the emission of dangerous materials via air to the atmosphere of a number of European states went unchecked.

Liability for failing to provide notification is regulated by a whole spectrum of treaties on environmental preparedness and emergencies and derives from the generally accepted legal principle of good neighbourliness (whose roots can be traced back to the timeless Roman maxim of *sic utere tuo ut alienum non laedas*), reinforced after being cemented by the Trail Smelter arbitration panel.<sup>214</sup> The incorporated duties and added values of the maxim are twofold: firstly, states have a duty to prevent injury, harm and to enact *ex ante* anticipatory measures; secondly,

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<sup>212</sup> After the collapse of the Soviet Union and the growth of democracy in Eastern Europe, information flow has been much freer and the extent of environmental disruption has become more widely known. Compare, Hill: *op. cit.* 321.

<sup>213</sup> The exact account of impact consist of the immediate death of more than thirty people "and, as a result of the high radiation levels within a twenty-mile radius, 135 000 people had to be evacuated for an indefinite period. Clouds contaminated by radiation moved from Chernobyl to Sweden where increased radiation was first noticed by measuring equipment in Western Europe. Easterly winds transported radiation to Central Europe, causing damage to vegetables and fruit as far away as Austria and Switzerland." See Hinteregger, Monika: *Environmental Liability and Ecological Damage in European Law*. Cambridge: Cambridge University Press, 2008, p.45.

<sup>214</sup> As the so-called Trail Smelter arbitration committee declared in the first half of the 20th century (awards in 1938 and 1941): "no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence." Pursuant to coherent legal practice on this issue, experts witnessed that international law does not allow states to conduct or permit activities within their territories or in common spaces, without regard for the rights of other states or for the protection of the environment [the modern day equivalent of the ancient 'sic utere tuo' principle – the author]. See, Birnie, P. – Boyle, A.: *International Law and the Environment*. Second Edition. Oxford: Oxford University Press, 2002, p.104.

they have a *post-facto* duty and financial obligation to mitigate any resulting damage and the extent of the harm through posterior measures. Liability generally plays its role exclusively in the post-facto phase in the shape of posterior duties to compensate for harm caused (to bear the costs of restoration, indemnification) and to punish the liable party or to permit action to be taken against the liable party.

The *distinctive characteristics* of the above-mentioned cornerstones (points 1-5) relating to sectors and liability are also relevant, because these areas represent:

- i) The divergent level of threats to endangered goods, species, natural resources etc.
- ii) Divergent aims of regulation (protection of a border streamline and fostering the achievement of sustainable development cannot be compared to each other in isolation due to the varied levels and peculiarities of biodiversity and environmental resources as well as economic aims underlying the exploitation of the environment).

Furthermore:

- iii) Only activities posing danger to the environment, the border streamline-based and waste management areas have their own, sector-specific and explicit liability rules (although neither of them have entered into force and the CEE countries have demonstrated a poor record general lack of interest in ratifying them)<sup>215</sup> – while liability for sustainable development exists exclusively in the political context but not in legislation
- iv) Green democracy and liability for damages are not necessarily interlinked and mutually required but a transparent legal regime of liability can confidently rely on democratic challenges.

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<sup>215</sup> See e.g.:

- 1993 Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (not in force),
- 1999 Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and Their Disposal (not in force) and
- 2003 Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters to the 1992 Convention on the Protection and Use of Transboundary Watercourses (not in force).

It is worth highlighting that the *raison d'État* of states on economic interests predominate over the other issues being transboundary in themselves and being linked to environmental protection. Bearing in mind the numerous environmental policies and liability methods adopted by states within the region under analysis, it has been a general trend to allocate liability for private corporate activity (civil liability guaranteed by international treaties and municipal laws).<sup>216</sup> These methods of allocation and the role as well as the economic weight of these activities determine the attitude of states in the way they dedicate themselves to environmental goals by attaching liability to entities other than the state itself. A related problem emerges from certain significant historical realities of CEE countries: political transition spawned a privatisation process that has fundamentally shifted the motivation of states towards the preservation of the environment. The combination of political, economic and environmental changes was met by an accelerated institutionalisation of international environmental law after the 1992 Rio Conference, and the new-born democracies witnessed the birth of the concept of sustainable development.

The transition from the former focus on state-owned heavy industry with limitless pollution (pre-revolution mammoth factories and firms) to liable environmentalism (privatised industrial sector dominated by enterprises employing environmental-friendly technology and activities directed by a range of international and municipal legislation with detailed supervisory and control systems in place) has significantly altered the context of codification matters and the environmental commitment of CEE governments through the development of policies and legal provisions based on liability and sustainability.

The in-depth analysis of the liability regime under scrutiny consists of the following basic tenets, delineating the fundamental tools and components of liability theory:

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<sup>216</sup> It is based on the theory that a state has a duty to regulate private activity within its "territory or control", and possibly on the ability of a state to require insurance or financial security from private actors. See Magraw, D.: Transboundary Harm: The International Law Commission's Study of "International Liability". *American Journal of International Law*. 1986, vol. 80, no.2, pp. 323.

- i) The notion of damage is sector-specific and not all-inclusive in its scope<sup>217</sup>
- ii) Civil liability with the burden of liable concerns channelled to the operator of the polluting entity
- iii) Strict liability, irrespective of whether or not it is third-party liability, and focussing on harm to staff members and employees as well
- iv) Liability is limited in time (for the purpose of avoiding the retroactive application of liability in cases of damage originating from the state-owned heavy industrial mammoth factories, firms, etc.), and also limited in amount
- v) Wide-range of exceptions and
- vi) The applicable law (municipal law) designated by international legal provisions (the reparation and reimbursement methods shall be specified under these circumstances and on this legal basis).

Based on the above, it is evident that liability is not a *panacea* for curing the symptoms of harmful activities hazardous to the environment. Liability is, however, a generally accepted way of indemnity, and in CEE countries a number of negative aspects of this method persist. The most common and principal CEE-related environmental problems have involved ineffective technology and quality controls (heavy industry had been given priority at a very high level), neglected regulatory and permit apparatuses, and the lack of rehabilitation of contaminated sites.

The industrial preference from keeping these impacts secret was a key issue stemming from a lack of attention and from a desire to channel more funds and government aid. These hidden environmental issues entailed difficulties after the fall of Communism for investors who had been unaware and who certainly would not have risked their financial stability and

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<sup>217</sup> Although the term 'liability' is triggered by violation of environmental standards, even in the absence of proof of environmental damage in CEE and OECD member states. Compare with *Liability for Environmental Damage in Eastern Europe, Caucasus and Central Asia (EECCA). Implementation of Good International Practices*. Paris: OECD, 2012.

business interests by taking on 'slippery' one-time industrial giants without firm and clear standards on liability for past environmental contamination requiring considerable funds to clean up. Given the legacy of severe environmental degradation and hazards inherited by newly established CEE democracies, it is crucial to enact systematic liability reform to aid the clean up of existing pollution sources and to create incentives for future environmental risk reduction.<sup>218</sup>

## Conclusions

According to Hill, pre-1989 CEE economies experienced significant environmental problems while also suffering from having rigid structures that did not allow property rights to develop in response to changing values.<sup>219</sup> Both meant that environmental disruption was likely, while the resulting costs were hidden by being incorporated into the state-dictated prices of many consumer's goods.

"While important in their own right, discontent with the state of the environment and environmental protection offered citizens opportunities to criticise government institutions and ultimately helped destabilise the CEE communist states."<sup>220</sup> In-depth analysis has clearly shown that in the first decade following the paradigm shift of 1989, more and more civil society initiatives have focussed on environmental issues, bringing specific matters to public attention.

My propositions are at least fivefold:

1. Green democracy shall be integrated into the fabric of democracy. Society, economy and the environment are interlinked and form an integral unit under the protection of the state.
2. The role of the EU is unavoidable in developing liability issues both at state level (providing best practices for underdeveloped and environmentally unfriendly

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<sup>218</sup> Compare, Boyd, J.: Environmental Liability Reform and Privatisation in Central and Eastern Europe. *European Journal of Law and Economics*. 1996, vol. 3, no.1, pp. 39-60.

<sup>219</sup> See Hill: *op. cit.* 333.

<sup>220</sup> Compare with Carmin-Vandevier: *op. cit.* 6.

economies) and at the community level by means of EU legislation.<sup>221</sup>

3. CEE countries must take part in ratifying more liability-based treaties that aim to protect and preserve the environment. Flexibility is important when considering participation of CEE countries in such treaties.
4. Strict liability channelled to the operator must be preserved, which entails greater responsibility towards the environment (for a liable party the costs of relieving damage, restoration, etc. are very high).
5. Principles such as sustainable development, PPP, precaution, intergenerational equity, as well as the 'Aarhus principles' (both its legal and policy aspects)<sup>222</sup> shall be integrated and implemented into the governance and legislation of states.

In summary, it is worth mentioning that the generally accepted principle of PPP ('polluter pays principle') had not actually functioned in the CEE region before 1989 due to *"the lack of proper empowerment. Pollution fees were low and poorly collected. As a result, the nation (...) and national enterprises polluted the national environment."*<sup>223</sup>

However, considerable time has passed, PPP has become a leading principle in environmental cases, and is now considered a channelling method, declaring the polluting party liable (irrespective of proof of negligence or fault on the side of the operator) as well as a method of enforcing reparation (in the form of compensation). Environmental policy and management techniques have also lifted many lessons from the legal components of PPP, making more practical and management-focussed.

To wrap up on an optimistic note, let us quote an apt remark of Carmin and Vandever, which reads: *"(S)ome hardships of the transition period – decreases in real wages of large segments of the population, high inflation rates, unemployment, and other social and economic problems – have pushed environmental problems further down the agenda. These difficulties, which are more than*

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<sup>221</sup> On the enforcement and direct effects of the environmental law and policy of the European Union, see Jans-Vedder: *op. cit.* 163-170. and 183-215.

<sup>222</sup> Compare with *Ibid.* 368-377.

<sup>223</sup> Cf. Kundzewicz: *op. cit.* 889-890.

*understandable, may slow the process of environmental improvement, but by no means will they halt it.*"<sup>224</sup>

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<sup>224</sup> See Carmin-Vandever: *op. cit.* 14.



## IDEOLOGICAL TRANSFORMATIONS. THEORETICAL AND POLITICAL IMPLICATIONS OF POST-SOCIALIST CITY

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Karol Kurnicki

**Abstract:** *The paper critically analyses post-socialist city in the perspective of social production of space. The main argument is that ideology is decisive in the processes of urban transformation. However, the term ideology must be used for the description of mediation between actors, their practices and space. Provided examples show that ideological transformation of post-socialist cities should be analyzed as a political issue concerning not only systemic shift, but also spatial changes and everyday life of urban dwellers.*

**Keywords:** *post-socialist city, ideology, urban space, social practice*

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### Introduction

The article deals with the phenomenon of post-socialist city from an angle different than usually employed. Presented approach is based on the assumption that central category of analysis should be the social production of space. This translates to the urban analysis in several ways. First of all, a city is perceived as a socio-spatial structure constantly being produced and reproduced in the course of social process. It means that the model of post-socialist city needs rethinking and revisiting, especially when it is treated as strictly descriptive sociological, historical or geographical category. Secondly, although general social, economic or political

transformations are relevant for the situation of the city, they do not constitute it in a direct, immediate way, but must be localized through the social process of production of urban space. The post-socialist city can thus be treated as such not because of the systemic shift and collapse of socialist state, but in the first place because of the specific social and spatial phenomena inherent in particular historical moment and geographical location or territory. Thirdly, because of the very process of social production of space, social and spatial changes of post-socialist cities must be treated not as a neutral course of modernization, integration (with “Western world”), globalization or Europeanization<sup>225</sup>, but rather by their politically and ideologically laden decisions and transformations. The article employs the notion of ideology in order to reveal and describe a post-socialist city according to abovementioned assumptions.

Additionally, cities are also characterized by their *longue durée*, their spatial, social and cultural structures have history, and this historical heritage is always very relevant to their present existence and functioning. This also means that post-socialist city was not instantly established by the rapid structural and political transformation in Central and Eastern Europe, but that it is a still not fixed result of these changes, which at the same time has very complex and multi-layered character.

## I. Post-socialist city?

Before the presentation of further arguments, it is necessary to look once again critically at the term “post-socialist city” itself. Perhaps this name needs not to be taken for granted but instead should be revisited and problematized. My aim here is not to come up with a new definition, but to pay attention to the widely acknowledged usage of the term, which seems to be accepted too easily for the description of very different places and phenomena. Moreover, the usual definition of post-socialist city cannot be sustained for the purposes of this article.

First of all, there is a certain set of characteristics which describe post-socialist city in opposition to a socialist city. In his depiction of Polish socialist cities<sup>226</sup> Grzegorz Węclawowicz

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<sup>225</sup> Węclawowicz G.: *Geografia społeczna miast* [Urban Social Geography]. Warszawa: Wyd. Naukowe PWN, 2003.

<sup>226</sup> Węclawowicz, G.: *From Egalitarian Cities in Theory to Non-Egalitarian Cities in Practice. The Changing Social and Spatial Patterns in Polish Cities*. In: Marcuse P., Van Kempen R. (eds.), *Of States and Cities. The Partitioning of Urban Space*. Oxford, New York: Oxford

lists their several typical features: employment dominated by industrial production sector, centrally arranged allocation of housing, dependency on central government for finances (plus organizational division of cities), uniformity of architecture and urban landscape, ignorance of land value.<sup>227</sup> The transformation of the 1990s resulted in the reversal of these features and the emergence of new ones: return of market mechanism and land rent, changes in the ownership structure (esp. private ownership), shift of control over space to local governments and administration, increase in number of actors competing for urban space, introduction of market criteria in the allocation of people (housing), and the domination of service sector employment.<sup>228</sup> It is clear in this account that there is a simple binary opposition between two models of cities, which results in the definition of post-socialist city. Also noticeable is that this perspective, although apparently concerned with spatial and social changes, is linear and temporal. This in turn brings concentration on the processes of change understood as parts of general systemic transformation. In other words, the changes of space and social relations of post-socialist cities are based on the newly introduced capitalist mode of production and are in fact an appropriation of an external model of development. As Weclawowicz explains, "the new market forces are rapidly gaining importance, resulting in growing polarization between different areas within the city in terms of income."<sup>229</sup> The polarization is described as rather straightforward, automatic and inevitable outcome of post-socialist transformation processes.

Other problems with the discourse on the post-socialist urban transformation are identified by Kiril Stanilov, who rightly points out that two main areas of interests have been politics and economy, while investigation of "changes of urban form and structure have been quite rare."<sup>230</sup> This argument confirms that the notion of post-socialism is conceived of as a historical (temporal) phenomenon, and typically spatial problematic is by and large out of picture. It is also noteworthy that the term "post-socialist" itself suggests in one hand a certain fixed point of reference (that is: a socialist city), and in the other unifying and particular temporal course of change (prefix *post-*). What is lacking, however, is the stress on the relevance of space

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University Press, 2002, pp. 183-199. [It might be treated as a model of post-socialist urban transformation in general, in accordance with Weclawowicz, who in the first words of his chapter refers to the "spatial effects of *post-communist transformation in former Eastern Europe*" (Ibid., p. 183; italics added)].

<sup>227</sup> Ibid., p. 186.

<sup>228</sup> Ibid., p. 194.

<sup>229</sup> Ibid., p. 183.

<sup>230</sup> Stanilov K.: *Taking stock of post-socialist urban transformation. A recapitulation*. In: Stanilov K. (ed.) *The Post-Socialist City. Urban Form and Space Transformation in Central and Eastern Europe After Socialism*. Dordrecht: Springer, 2003, p. 3.

as constitutive and crucial for the urban processes. If we accept that the abovementioned features of a post-socialist city are fundamental, then they indeed might be viewed as a result of simple transfer of capitalist rules predominant in the Western Europe to post-socialist territories or direct imposition thereof. But at the same time, they seem to cover what is the important real and alive heritage of socialist city, namely form, function and structure of its space. It is complete abandonment of those levels (or “moments”) of space identified by Lefebvre in his spatial triad<sup>231</sup>, which could otherwise facilitate critical and more complex understanding of post-socialist cities.

Secondly, recognition of the spatial and geographical interpretation of post-socialist city equals with the acceptance of various and multiple post-socialisms. It also means that linear and straightforward accounts of transformation are not longer so pertinent. Instead, what emerges is a multiplicity of trajectories of socio-spatial changes inscribed or rooted in particular localities. Moreover, highlighting the relevance of space relates to the increasing importance of social contingency of post-socialist cities. Instead of “changes of space” we have “spaces of change”. This kind of reformulation suggests a need to abandon the analysis of the impact of general (temporal) transformations on city and to treat particular and concrete locations as places of social negotiation of post-socialist urban changes. As convincingly shown by Alison Stenning and Kathrin Hörschlemann in their post-colonial interpretation of post-socialism, the avoidance of determinism in thinking about these issues “moves us away from any notion, which demands that post-socialism must be singular to be theoretically convincing, and it challenges the historicism and essentialism of the more culturalist accounts of post-socialist difference.”<sup>232</sup> Moreover, “with this kind of multiple histories and uneven legacies, space is created for alterity, the always present other, which would allow us to construct of post-socialism as partial and hybrid, as not always explanatory.”<sup>233</sup>

## II. Ideology and practice of space

Ideology is one of the terms whose meaning is not only debatable, but virtually resisting

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<sup>231</sup> Lefebvre H.: *The Production of Space*. Transl. D. Nicholson-Smith. Malden, Oxford, Victoria: Blackwell, 2010, p. 33.

<sup>232</sup> Stenning A., Hörschlemann K.: History, Geography and Difference in the Post-socialist World: Or, Do We Still Need Post-Socialism? *Antipode*. 2008, 40 (2), p. 330.

<sup>233</sup> *Ibid.*

stabilization. Terry Eagleton lists at least sixteen various notions of ideology, of which some are contradictory or not exclusive.<sup>234</sup> At the same time, two general streams of understanding of the term ideology are distinguishable. First has its roots in the Marxist tradition of “false consciousness”, that is “a situation wherein subjects mistakenly believe that they act autonomously and independently of material constraint when, in fact, the very basis of their mental activity lies in their relation to socially established modes of production.”<sup>235</sup> Second stream (which could be named cultural or anthropological) defines ideology as social representation reflecting social and material reality, serving as a mean of group integration and working as a framework of perception and knowledge.<sup>236</sup> Neither of these interpretations of ideology could be fully accepted for the purpose of this article. Therefore it is necessary to outline the understanding of ideology which might prove useful for the analysis of social production of (post-socialist) space. In case of socialist city the ideological interpretation seems to be relatively easy, especially with the commonly used notion of ideology (communist, socialist, etc.). The issue is however even more complicated because the post-socialist transformation is perceived as an abandonment of old, wrong ideologies of people’s republics and subordination to some kind of “neutral” and “objective” instance, for example to economic development, market forces of capitalist system.

My main hypothesis is that social production of post-socialist urban space is intermediated by ideologies. It contradicts the aforementioned distinction between “ideologically-ridden socialist city” and “post-ideological” or “ideologically-free post-socialist city”. It also turns attention to the more general fact that focus on the transformation of space itself is an ideological gimmick which conceals crucial social processes behind the discourse of modernization, development, etc. In other words, the absence of ideology from the analysis of the post-socialist city says a lot about the necessity to return to this problematic. Importance for critical analysis of ideology in urban space is even more signalling if we accept Lefebvre’s argument about a city as crucial for the sustainability and transformation of social relations.<sup>237</sup>

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<sup>234</sup> Eagleton T.: *Ideology. An Introduction*. London, New York: Verso, 1991, pp. 1-2.

<sup>235</sup> Decker J.: *Ideology*. New York, London: Palgrave MacMillan, 2004, p. 7.

<sup>236</sup> Chiapello E.: Reconciling the Two Principal Meanings of the Notion of Ideology. The Example of the Concept of the “Spirit of Capitalism. *European Journal of Social Theory*. 2003, 6 (2), p. 159.

<sup>237</sup> Lefebvre H.: *The Urban Revolution*. Transl. R. Bononno. Minneapolis, London: University of Minnesota Press, 2003, pp. 165-180.

It is not necessary to ponder upon “falsity” or “veracity” of ideology because it is relevant not in the context of problematic of representation, but only when it is functional for the social relations of domination. In addition, the more certain situation is presented as not ideological, the more probable is that some kind of ideologies is at play, and their workings are effective.<sup>238</sup> In the case of post-socialist city the more it is perceived as existing in “neutral” context of capitalism, globalization or general social transformations, the more possible is that it is primarily shaped by intrinsic ideologies. As also observed by Slavoj Žižek, “the mechanisms of economic coercion and legal regulation always ‘materialize’ some propositions or beliefs that are inherently ideological (the criminal law, for example, involves a belief in the personal responsibility of the individual or the conviction that crimes are a product of social circumstances).”<sup>239</sup> My understanding of ideology<sup>240</sup> follows this trait in accenting that ideologies working within the society might indeed be found in the very concrete, material spaces. This hypothesis needs to be clarified in at least few aspects.

Above all, what needs to be comprehended is the key question of “ideological space”. The notion of ideology which might be helpful in this case is based largely on the Louis Althusser’s theory of ideology.<sup>241</sup> Although his analysis is closely related to the explanation of reproduction of production relations within capitalist mode of production and therefore is entangled in the structuralist stream of Marxist philosophy<sup>242</sup>, certain elements of this proposition are useful strictly for critical theory of ideology. Leaving aside closer examination of Althusser’s approach to the problematic of social reproduction, two things are worth noticing. First, his hypothesis that ideology is inherent in any social formation, with accordance to known statement that “ideology has no history”. Secondly, it is clearly stated that ideology could be observed in material artefacts and apparatuses, i. e. can also be found in urban space. The most important feature of Althusser’s theory of ideology is that it is treated as a certain form (or relation) of power. Here

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<sup>238</sup> Žižek S.: *Mapping Ideology*. New York: Verso, 1994, pp. 1-33.

<sup>239</sup> *Ibid.*, p. 15.

<sup>240</sup> It is not to be treated as an attempt to define “ideology” in any decisive or final way. I subscribe to Fredrick Jameson’s remark that “ideology is not an achieved concept at all, but rather a problematic, itself subject to profound historical change and upheaval on both slopes of its mediatory function” (Jameson F.: *The Ideologies of Theory*. London: Verso, 2008, p. IX). With regard to social production of space and spatial theory in more general terms, it is this mediatory function I would like to pay special attention to.

<sup>241</sup> Althusser L.: *Ideologies and Ideological State Apparatuses (Notes towards an investigation)*. In: Althusser L. *Lenin and Philosophy and Other Essays*. Transl. B. Brewster. New York, London: Monthly Review Press, 1971.

<sup>242</sup> Callinicos A.: *Althusser’s Marxism*. London: Pluto Press, 1976.

ideology is a realization of this power in society.<sup>243</sup>

In the context of my analysis, space is defined after Doreen Massey as a “product of interrelations, as constituted through interactions, from the immensity of the global to the intimately tiny” and as “the sphere of the possibility of the existence of multiplicity in the sense of contemporaneous plurality” as well as “always under construction.”<sup>244</sup> This conceptualization directs us towards the acceptance of social influence on space in the one hand, and at the same time treating space as an active element of social relations in the other. The definition of “ideological space” would then be situated somewhere on the meeting point between material theory of ideology (Althusser) and relational understanding of space (Massey). Thus, space is ideological, because it is plastic, under influence of direct and indirect, visible and tacit actions of groups and individuals. As argued by Kanishka Goonewardena with the help of his “Urban Sensorium” concept, “space of the city is a vital ingredient and determinant of our ‘sensate life’<sup>245</sup>, which – through aesthetics understood as “discourse on body” – makes it a territory of mediation of ideology and possible production of hegemony.

Secondly, ideological social production of urban space is to be found in concrete practices of groups and individuals. Bourdieu’s theory of practice<sup>246</sup> is worth recalling at this point for a few reasons. His understanding of practice is as an intermediary concept, which bridges the gap between objectivism and subjectivism (at the level of theory) and between social structure and agency (at the level of society). Bourdieu’s practice might to some extent resemble ideology in a sense that both of these terms potentially turn attention to active social processes and therefore invalidate the tension between binary oppositions (here: structure – action, society – space).<sup>247</sup> Secondly, practice is contingent upon habitus, i.e. is not mechanic reaction, but is constituted by partially undetermined individuals through their strategies and with relation to existing conditions. Important feature of habitus is that it is not only conceivable structure, but is inscribed in automatic body characteristics. Similarly, practice, located in space and time, is not wholly consciously organized and orchestrated.<sup>248</sup> Bourdieu’s theory of practice might also help

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<sup>243</sup> Ostolski A.: *Fakty niedokonane*. [Imperfect Facts]. Introduction to: Althusser L.: *W imię Marksa* [For Marx]. Warszawa: Wydawnictwo Krytyki Politycznej, 2009, p. 10.

<sup>244</sup> Massey D.: *For Space*. Los Angeles, London, New Delhi, Singapore, Washington DC: SAGE, 2005, p. 9.

<sup>245</sup> Goonewardena K.: The Urban Sensorium: Space, Ideology and the Aestheticization of Politics. *Antipode*. 2005, 37 (1), p. 47.

<sup>246</sup> Bourdieu P.: *Outline of a Theory of Practice*. Transl. R. Nice. Cambridge: University Press 1995.

<sup>247</sup> The investigation of this resemblance or analogy requires more complex study than is possible in this article.

<sup>248</sup> Jenkins R.: *Pierre Bourdieu*. London, New York: Routledge 1992.

with emphasizing that at the most basic level of production of space what is left are bodies and space (or bodies-in-space), a thought that can be found throughout Lefebvre's "Production of Space", as in this fragment: "The whole of (social) space proceeds from the body, even though it so metamorphoses the body that it may forget it altogether – even though it may separate itself so radically from the body as to kill it."<sup>249</sup> Although those bodies-in-space are constitutive for the production of space, we must not forget that they are entangled in multiple social systems, historical trajectories, etc.

How does it relate to ideology and space? As argued before, ideology is neither predominantly a certain representation, set of values or attitudes, nor might be reduced to dominating internalized and external discourses. Social production of space is closely related to practice in the sense of daily and physical (material and bodily) actualization and modification of a given spatial situation. Luc Boltanski and Eve Chiapello noted that every form of social organization requires justification by the society, but also engagement of individuals in the justification and reproduction of existing relations.<sup>250</sup> A city as a fluctuating structure constantly in the process of production might be treated in a similar way. It is not sustained only by material substance or dominating discourses (or underlying social structure). It requires continuous support of its inhabitants and users. Additionally, this support must be rooted in their actions and behaviours. In the case of post-socialist city the switch of dominating rules by introduction of free-market economy or privatization of land in the one hand, and material changes (new buildings, zoning, etc.) in the other are not suffice to say that a new model of a city has been established. It is so, because the crucial element is the reformulation of ideologically intermediated social practice. For instance, the transformation of factory buildings into offices or shopping centre is irrelevant inasmuch there are no people who would make use of it. However, fully comprehended social production of space entails two-sided dialectical relation, which means that ideologically constructed space is active and therefore has an impact on the society. If we simply reverse above example we might suggest that if there still was a factory instead of shopping or office centre, we would still have workmen and not consumers or office workers as primary users of this space.

It is also worth recalling Marthina Löw's concept of intrinsic logic of space. Her main

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<sup>249</sup> Lefebvre H.: *The Production of Space.*, p. 405.

<sup>250</sup> Boltanski L. Chiapello E.: *The New Spirit of Capitalism*. Transl. G. Elliot. London, New York: Verso, 2005, pp. 12-16.



hypothesis claims that “specific and distinct constellations of coherent stocks of knowledge and forms of expression develop in every city.”<sup>251</sup> The explicit assumption here is that urban space may be treated as one of the constitutive elements of both constitution of meanings and material relations of bodies. “Cities crystallize into contexts of meaning, which influence people variously in their practices, that is to say in their identity, in their emotions, attitudes, thinking. At the same time and vice versa, these practices reproduce a logic specific to the given city.”<sup>252</sup> Löw does not use the term ideology, although there is an analogy between her approach and one proposed in this paper. Instead of talking of city logic, focus is on urban ideology or rather ideologies, whose stabilization and bonding within a city creates specificity of a given location. Moreover, ideology is also closely related to people’s action in a particular space, not necessarily equal to a city as a whole (or as certain practical, affective and discursive entity). Ideology may therefore be used for the analysis which does not neglect wider categories, like class or race. One of the characteristic material features of post-socialist cities is the existence of a big housing project. This is the example how modernist ideology of certain dispersion of population in space was in different conditions (i. e. in relation to different ideologies) appropriated to serve different social aims.<sup>253</sup>

It is all relevant for the apprehension of post-socialist city especially because actually there is no such thing as “post-socialist city”. There are rather post-socialist cities, each and one of them subjected to general transformations, but at the same time very specific, with its own “intrinsic logic” or set of practiced ideologies and its own peculiar production of space. The model or type of a post-socialist city does not have to be totally rejected as it is ultimately possible to define a short list of its defining characteristics. But to stop at the model in the analysis is to close the possibility of multifarious approaches and to defy the importance of space in the whole process. What is even more dangerous in this context is the implicit eradication of the politics of space by turning attention to “unavoidable” course of transformation and its impact on a city instead of stressing opposition existing in spatial relations. For instance, the situation of historical capital post-socialist cities is significantly different than that of industrial centres established in

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<sup>251</sup> Löw M.: *The Intrinsic Logic of Cities. Towards a New Theory on Urbanism*. Unpublished conference article, EURA, September 24. 2010, p. 6.

<sup>252</sup> Ibid.

<sup>253</sup> For different example see: Pobłocki, K.: “Knife in the Water”. *The Struggle over Collective Consumption in Urbanizing Poland*. In: Bren, P., Neuburger, M. (eds.): *Communism Unwrapped. Consumption in Cold War Eastern Europe*. Oxford: Oxford University Press, 2012, pp. 69-86. Pobłocki also notices that in many cases the social and spatial characteristics of post-socialist cities have their roots in post-war era.

the 20<sup>th</sup> century. Approaching them with the same general categories is to miss the point. Similarly, their today's politics and policies, although based in the situation of global market and neo-liberal context, are very dissimilar. In a result, their citizens and users must be prepared to tackle different issues. This argument is not a new one, but must be reformulated for the purpose of spatial and urban research. While there are accounts of post-socialism which stress local variations in terms of politics and economy<sup>254</sup>, urban research is mostly divided between the systemic analysis (as in the case of global network theory) and very local, idiosyncratic case studies. The need for the connection of those two streams with a critical analysis of production of space becomes even more evident if we accept the argument about the influence of space on the society understood as material and tangible process.

There are two studies which can exemplify the importance of social practice as crucial element or field of post-socialist transformation. They do not employ the notion of ideology in a sense which I am suggesting, but point to the direction that we should be looking at while analysing social and spatial production of the new system.

First is the study which use category of domestication to describe economic practice and social reproduction in the post-socialist cities.<sup>255</sup> Domestication is described at two levels, as a factor of absorption of neo-liberal policies by national elites (politicians, academics, think tanks, institutions, etc.) in the one hand, and – more importantly – as a process in which neo-liberalism is “understood, negotiated, contested and made tolerable” in everyday life practices.<sup>256</sup> The neo-liberal system can be seen through these practices as an active process (neo-liberalization), which in turn is transformed and appropriated by everyday strategies rooted in the specific domestic and workplace situations. Second study, conducted by Elizabeth Dunn<sup>257</sup>, is concentrated on the influence of foreign investment on the local work relations, but its scope also includes wider economic and social transformations of Poland in the 1990s. Anthropological orientation of the study shows that one of the main aims and results of the transformation was in reality the creation of a new kind of worker and consumer. It was evident both in the marketing strategy

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<sup>254</sup> Bunce V.: *Postsocialisms*. In: Antohi S., Tismaneanu V. (eds.) *Between Past and Future. The Revolutions of 1989 and Their Aftermath*. Budapest, New York: Central European University Press, 2000, pp. 122-152.

<sup>255</sup> Stenning A., Smith A., Rochovska A., Świątek D.: *Domesticating Neo-liberalism. Spaces of Economic Practice and Social Reproduction in Post-socialist Cities*. Malden, Oxford: Wiley-Blackwell, 2010.

<sup>256</sup> *Ibid.*, p. 3.

<sup>257</sup> Dunn E.: *Prywatyzując Polskę. O bobofrutach, biznesie i restrukturyzacji pracy*. Transl. P. Sadura. Warszawa: Wydawnictwo Krytyki Politycznej, 2004.

(based on the opposition between socialism and capitalism) and in the strategies used for the change of relations within the company. The discursive transformation, like the change in the nomenclature of workplaces (from Polish “kierownik” to “manager”, etc.) was only part of the process. More profound was the attempt to change employees in their practices and bodies, which can be exemplified by the imposition of new dress codes, ways of expression, accepted attitudes, etc. In both cases, the transformation could have not been successful only by declaration; it must have been transplanted into the materiality of bodies in space and their various practiced relations.

Those examples might also serve for the understanding of socially (and in consequence materially) petrified structures which are being transformed during periods of change. In this context urban space in its architectural and structural materiality is crucial in a sense that it delimits, restricts and at the same time directs and enables social practice, and is conceived of as active and influential. A post-socialist city would therefore be characterized by two main categories: durable historically shaped spatial relations and new, post-transformation set of ideologies (partially universal, partially specific for different locations). In other words, the defining characteristics of post-socialist city are related to the inherited architecture and urban arrangements (housing estates, post-industrial zones, communication networks, etc.) at least as much as to the new systemic political and economic changes. It is so because existing material urban space in spite of the change of social context maintains to a great extent its functions and influence on daily life of its users. Systemic transformations are in most cases considerably rapid and able to restructure economy, law or politics in very short time.

Assertion of ideologies during transformation is likewise fast-paced as is the shift in their mutual relations. Their impact is quickly felt on social level, in practice and everyday life. Yet the material structure of post-socialist cities, whose reshaping is undeniably accelerated, is nevertheless resistant and still active in the (re)production of the society in accordance with older ideologies. Social production of post-socialist city takes place in historically pre-determined space, which – although is also being transformed – remains relevant for this production. Paradoxically, it is noticeable in the demolition of symbolic spaces and artefacts (e.g. monuments), which are considered as propaganda carriers for previous regime. Mariusz Czepczyński notices that there are three phases of the process of change in the landscape:

separation, transition and reincorporation.<sup>258</sup> Separation means sorting out “good” and “bad”. Transition is the period during which the “old landscape is re-interpreted and de-contextualized, while the new landscape is constructed.”<sup>259</sup> In the third phase the division between “old” and “new” becomes irrelevant. Czepczyński’s analysis is mainly focused on “cultural landscapes” and concerned with cultural process of meaning attribution. As argued before, the production of space during the post-socialist transformation is not primarily related to the cultural sphere, but is located on the level of practice. This means that previous “cultural landscape” (if associated with material structure) is never to be totally overwritten with new meanings. Additionally, most of the cities were never truly “socialist” because their historical (i.e. pre-socialist) material structure remained in place, and spaces produced by past societies are to greater or lesser extent overlapping and influencing today’s circumstances.

### III. Spatial politics of ideology

Another context of ideology and ideological space is related to the issue of power and influence. It is pretty clear that ideologies and social relations do not form neutral and “natural” spaces. Despite ideologies are not characterized only as mental constructs or representations but are closely entwined with practices, they can nevertheless create nodal points and hegemonic structures. Understanding of hegemony in this case is relational and draws loosely from Ernesto Laclau and Chantal Mouffe.<sup>260</sup> Their more or less successful post-structural attempt of reformulation binary (base – superstructure) and deterministic Marxist interpretation of hegemony is relevant here because it might help to explain multiplicity of ideologies and their functioning in space. It might also facilitate understanding of the construction of specific configurations of ideologies in particular locations.

If a city is shaped by many different ideologies (in spatial terms likewise internal and external), it might be assumed that in specific socio-spatial circumstances they have to be

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<sup>258</sup> Czepczyński M.: *Cultural Landscapes of Post-Socialist Cities. Representation of Power and Needs*. Aldershot, Burlington: Ashgate, 2008, p. 113.

<sup>259</sup> Ibid.

<sup>260</sup> Laclau E. Mouffe C.: *Hegemonia i socjalistyczna strategia. Przyczynek do projektu radykalnej polityki demokratycznej* [Hegemony and Socialist Strategy]. Transl. S. Królak. Wrocław: Wydawnictwo Naukowe Dolnośląskiej Szkoły Wyższej Edukacji TWP, 2007.

stabilized in order to be operational for practice. It might mean bonding national ideology with ideology of some form of capitalism which results in domination of relations supporting local (national) and closed social urban system. Practice then would be concentrated on reproduction of small-scale market relations between members of this same group (a nation). In this light the problematic of post-socialist city is not to be approached by essentialist assumptions, but rather through the analysis of peculiar relations within which wide-ranging external ideologies gain dominant position, likewise in discourse and in practice. In many post-socialist cities we might observe hegemony of a neo-liberal form of capitalism with ideologies of Europeanization or modernization. Yet to fully understand spatial and social relations of a given city, one would have to analyze its historical spatial configurations, social structure, today's practice and – most importantly – ideologies which have been intersecting all abovementioned elements. The outcome of the shifting and stabilizing ideologies in a city is a dominated space, partially described by Lefebvre.<sup>261</sup> Dominated space on the surface seems to be unproblematic, almost unnoticeable, while it is full of these ideological operations of power: ruptures, conflicts, mediations or compromises.

Power in space might be described as not only operating on the level of “symbolic power”<sup>262</sup>, but also as “spatial power”, which is inherent in the material structures. Every materialization of ideology in space (mainly through built structures, but not exclusively) equals its establishment as an active element of influence. This influence can be to some extent modified by further practice, but is always retained in the durable material structure.

Findings of Michel Foucault could also be helpful for this spatial analysis, although his almost total rejection of the notion of ideology and concentration on a discourse instead has to be noted.<sup>263</sup> All in all, it was Foucault who became especially attentive to the problematic of space (and body), particularly in the context of power relations. It is also interesting that his understanding of *dispositif* (apparatus) might be of help if placed vis-a-vis practically and spatially understood ideology. *Dispositif* is “a thoroughly heterogeneous ensemble consisting of discourses, institutions, architectural forms, regulatory decisions, laws, administrative

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<sup>261</sup> Lefebvre H.: *The Production of Space*, p. 164.

<sup>262</sup> Bourdieu P.: *Logic of Practice*. Transl. R. Nice. Stanford: Stanford University Press, 1992.

<sup>263</sup> Foucault M. (1998) *Trzeba bronić społeczeństwa. Wykłady w College de France 1976*. [In Defence of Society]. Transl. M. Kowalska. Warszawa: Wydawnictwo KR, 1998, p. 42. And: Hawkes D.: *Ideology*. London, New York: Routledge, 2001, pp. 160-168.

measures, scientific statements, philosophical, moral and philanthropic propositions”.<sup>264</sup> The apparatus (dispositive) is “the nature of the connection that can exist between these heterogeneous elements”.<sup>265</sup> It is this kind of connection which in urban or – more broadly – spatial setting could be defined by ideology. *Dispositif* itself can actually be comprehended in spatial terms as describing spatial processes and relationships.<sup>266</sup> What differs *dispositif* from ideology is a more restricted, socio-spatial character of the latter. Moreover, ideology is proposed here as a more political term. Even though it is inherent in the social and spatial relations, it must also be understood as a critical, in both negative and positive connotation. Negative in a sense that it could be politically challenged and undermined in the process of social spatial practice. Positively as much as it might be socially created in order to change existing relations through material structures and practice. Space as produced through the order of knowledge (especially expert knowledge) is already laden with forceful politics and violence which influences social practice. This kind of space, described by Lefebvre as “abstract”<sup>267</sup>, if treated as a specific constellation of ideologies can be changed (appropriated) and disrupted in a more or less organized action. The problem is that materialized, ideological space is overwhelming in its capabilities to structure social practice. But as the example of socialist city shows, the change of dominating ideologies is even more powerful and can quickly transform both practices of people and assert new spatial elements and relations.

For instance, in post-socialist cities previously unknown hypermarkets and shopping centres are mushrooming. They can be treated not as neutral elements of space, related to “normalization” or adaptation to the Western market rules, but as structures containing and affirming certain form of power and violence. It is especially evident in their capacity to create a completely new sort of practices, new lifestyles<sup>268</sup>, new time regimes (shopping on Sunday), etc. In a result, it also influences production of new bodies, exemplified by consumer in his or her particular, mundane and quasi-automatic actions and behaviours. So-called public space is another example. During the rule of socialist political regimes public space was not – maybe paradoxically – supported and reinforced because any congregation of people could have

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<sup>264</sup> Foucault M.: *Power/Knowledge. Selected Interviews and Other Writings 1972-1977* (edited by C. Gordon). New York: Pantheon Books, 1980, p. 194.

<sup>265</sup> Ibid.

<sup>266</sup> West-Pavlov R.: *Space in Theory. Kristeva, Deleuze, Foucault*. Amsterdam, New York: Rodopi, 2009, pp. 150-151.

<sup>267</sup> Lefebvre H.: *The Production of Space*, p. 49.

<sup>268</sup> Makowski G.: *Świątynia konsumpcji. Geneza i społeczne znaczenie centrum handlowego*. [Temple of Consumption. Genesis and social meaning of shopping centre] Warszawa: Wydawnictwo TRIO, 2004.

resulted in threat to the organized state power. With the declarative introduction of post-socialist civil society it could have been hoped that this situation will change. Yet the transformations of “public spaces” in post-socialist cities are very often unsuccessful in that attempt. Spaces are indeed projected and discursively defined as public but their actual material structure is repeatedly commercialized and commodified or at least unused instead of being supportive of (positive) uncertainty, conflict or social contact. It is so because the aim of prevailing neoliberal ideology is the subjection of people to capitalist relations rather than facilitating civic agitation. Power and violence in post-socialist cities is localized both in space and practiced ideology. The distinction between these two elements is of rather analytical matter; in reality they are closely enmeshed.

## Conclusion

The political issues concerning post-socialist city in the context of ideology and social production of space need to be further analyzed. For now, I would like to propose arguments which might explain the importance of more differentiated approach to this problematic.

Firstly, the absence of analysis of post-socialist city in light of critical spatial theory is noteworthy, because it can itself indicate ideological functions and mechanism. If space is seen as critical for the understanding of transformation in its diversified tectonic restructuration on different levels of social relations then the focus on the systemic general changes in research and discourse is indeed a clever move to erase problems concerning the basic reality of post-socialist societies. Highlighting spatial aspects would have to result in more problematical understanding of restructuration of the last 20 years. In this perspective, the post-socialist transformation could be seen as a social process which produces its own spaces and bodies. It is easier to pay attention to some abstract things like the development of market system, democratization or modernization of a country or city than look at the concrete and equivocal situations in their material and bodily facets. Returning to Lefebvre's thought again, we might suggest that the apprehension of post-socialist space has been dangerously warped because of the concentration on representations of space and ignorance of its more practical and everyday aspects. It is thus necessary to point out repeatedly that without close and critical analysis of other aspects of

space, namely these related to social practice in space, and especially those which shape everyday and bodily experience of people. One passage from "Production of Space" explains it aptly: "What we are concerned with (...) is the long *history of space*, even though space is neither a 'subject' not 'object' but rather a social reality – (...) a set of relations and forms. This history is to be distinguished from an inventory of things *in space* (...) as also from ideas and discourse *about space*. It must account for both representational spaces and representations of space, but above all for their interrelationships and their links with social practice".<sup>269</sup>

Bringing attention to the spatial dialectic of post-socialist city is even more important because of its political consequences. Concealing space equals muffling and repressing the possibility of various social processes. When there is only one pre-determined course of history, there is no chance for diversity, for different spatial strategies and tactics of opposition ("There Is No Alternative"). Truly considering spatial dialectics is to be ready for the radical openness of Thirdspace, for the critical "thirthing-as-Othering".<sup>270</sup> Now, analysing ideologies in post-socialist cities might prove useful for the formulation of this kind of tense and political arguments as well as for the development of alternative modes of production of urban spaces. At the same time we must realize that understanding of ideological relations in a city is not enough as long as neither materiality of space ("architecture") nor practice (actions and behaviours) are included.

Throughout the article I was trying to bond ideology and practice closely. In doing so, I emphasized the dialectical relation between the realms of how people construct their conscious and unconscious attitudes toward space and how these attitudes are played out in the everyday actions, not determining the exact nature of this relation. Its vagueness and undefined character might not necessarily be a defect for it at the same time enables its appropriation for different purposes and situations. The only suggestion for using the ideological and practical approach to social production of space might be that it is not a matter of rigid scientific strategy but rather a proposition of certain perspective. It is also to emphasize that even the way we approach a post-socialist city (or, as a matter of fact, any city) is always involved in some sort of ideological struggle or negotiation. Commenting on Lefebvre, Andy Merrifield observed the fact that in the daily practice of academic work we tend to deal mainly with abstract space, which makes us

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<sup>269</sup> Lefebvre H.: *The Production of Space.*, p. 116.

<sup>270</sup> Soja E.: *Thirdspace. Journeys to Los Angeles and Other Real-and-Imagined Places.* Malden, Oxford, Victoria: Blackwell, 2010, p. 60.



responsible for the order it imposes.<sup>271</sup> "When we write about space, we should (...) think about what space we mean".<sup>272</sup> Considering ideology in the analysis of city is therefore not only an analytical tool, but might also help to locate the sociological practice within framework of spatial dialectics of power.

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<sup>271</sup> Merrifield A.: *Henri Lefebvre: a socialist in space*. In: Crang M., Thrift N. (eds.) *Thinking Space*. London, New York: Routledge, 2000, p. 181.

<sup>272</sup> Ibid.

# SUSTAINABLE DEVELOPMENT IN POLAND AND ANTI-AVOIDANCE PROVISIONS: THE RATIONALE FOR INTRODUCING CFC RULES INTO THE POLISH TAX LAW SYSTEM

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Błażej Kuźniacki

**Abstract:** *The aim of the present study is to briefly present the interrelations between taxation, anti-avoidance provisions and sustainable development in the case of international tax avoidance through the use of controlled foreign companies by Polish taxpayers. It is argued that negative consequences of international tax avoidance through the use of CFCs may be countered by introducing CFC rules into the Polish tax system, which would be an important step towards sustainable development.*

**Keywords:** *sustainable development, anti-avoidance provisions, CFC rules, Polish tax system*

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## Introduction

It is rather unconventional to start a discussion about sustainable development with tax issues, as it seems that the interrelations between taxation and sustainable development are not immediately obvious. In this article I aim to give arguments in support of the thesis that the introduction of the controlled foreign company rules (hereinafter referred to as: "CFC rules") into

the Polish tax law system may be conducive to the achievement of sustainable development in that country.

According to the definition given in the Brundtland's Report of 1987, sustainable development is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs"<sup>273</sup>. Leaving aside rather populist overtones of this definition<sup>274</sup>, one may conclude that sustainable development is based on certain standards, in particular such modes of consumption and production that do not destroy natural resources, but protect the environment, promote equitable distribution of GDP and decrease poverty. This understanding of sustainable development implies *de facto* the need for mutual reinforcement of economic growth, social development and environmental protection<sup>275</sup>.

Such a vision of sustainable development may be achieved only in an ideal world where governments have enough resources to finance it. And, as a rule, the most important sources of financial inflows for countries are taxes. In consequence, it may be said without exaggeration that sustainable development cannot be effectively achieved without a well-functioning tax system. To use the words of Bräutigam who stated that "without the ability to raise revenues effectively, states are limited in the extent to which they provide security, meet basic needs or foster economic development. Yet the political importance of taxation extends beyond the raising of revenue (...) [as] taxation may play the central role in building and sustaining the power of states, and shaping their ties to society (...) by enhanc[ing] accountability between states and their citizens"<sup>276</sup>.

Establishing an effective tax system, however, cannot be based exclusively on consistent

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<sup>273</sup> *Report of the World Commission on Environment and Development: Our Common Future*, UN Documents. Full text of the document is available online at: <http://www.un-documents.net/our-common-future.pdf>, date of access: 7.01.2013.

<sup>274</sup> Richardson indicated that "it was a catch-all definition which left all the commissioners happy: a good political fudge – and an excellent political slogan – but on deeper analysis a vague, contradictory, even meaningless concept". See Richardson, D., *The Politics of Sustainable Development*, in: Baker S., Kousis M., Young S. (eds.), *The Politics of Sustainable Development: Theory, Policy and Practice Within the European Union*, London: Routledge 1997, p. 46.

<sup>275</sup> Connolly J., *The European Union and Sustainable Development*, CEUS Research Working Paper 1/2007, s. 6.

Such understanding of sustainable development is also expressed in the Communication from the Commission: *EUROPE 2020 A strategy for smart, sustainable and inclusive growth*, Brussels, 3.3.2010, COM(2010) 2020, which states that "Europe 2020 puts forward three mutually reinforcing priorities: (i) smart growth: developing an economy based on knowledge and innovation; (ii) sustainable growth: promoting a more resource efficient, greener and more competitive economy; and (iii) inclusive growth: fostering a high-employment economy delivering social and territorial cohesion".

<sup>276</sup> Bräutigam D.A., *Introduction: Taxation and State-Building in Developing Countries*, in: Fjeldstad O.H., Moore M. (eds.), *Taxation and State-Building in Developing Countries. Capacity and Content*, Cambridge University Press 2008, p. 1.

tax law with high tax rates and broad tax base<sup>277</sup>, as it also requires relevant anti-tax avoidance provisions. Otherwise taxpayers may easily avoid paying taxes by conducting their transactions in such a way that their actions fall outside the scope of taxation, for instance by creation of cross border tax optimization structures. This phenomenon is visible especially in contemporary economy, where globalization contributes to the disappearance of economic, legal, political, social and psychological barriers that previously restricted free movement of capital or affected its localization<sup>278</sup>. In addition, taxpayers are relatively free to transfer their company seat and start their business in another country<sup>279</sup>; they also have a good knowledge of various tax systems in countries around the world<sup>280</sup>. All of these economic and legal factors create perfect business environments for the development of tax avoidance, particularly international tax avoidance. Several studies on the phenomenon of international tax avoidance have shown that circa half of all trade in world passes through *tax havens*<sup>281</sup>; however, these are merely *paper transactions* between multinational companies and their subsidiaries. Similarly, half of bank assets and a third of foreign direct investment are routed through tax havens<sup>282</sup>.

It is rather obvious that international tax avoidance requires very sophisticated and expensive tax optimization structures. Hence, this activity is performed only by very rich individuals and very profitable companies. In consequence, international tax avoidance leads not only to the erosion of tax base in particular countries, but also the deepening of the

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<sup>277</sup> Some scholars argue that avoidance emerges from deficiencies in tax legislation and in consequence this phenomenon will not occur if tax legislator will be consistent. See J. Rosander, *Generalklausul mot skatteflykt*, JIBS Dissertation Series No. 040, Jönköping 2007, pp. 34-35. This approach, however, overlooked cross border issues of tax avoidance; namely domestic legislator both has no influence on foreign legislators and he cannot force domestic tax residents to not using the preferential tax provisions in force in other countries in order to avoid taxation.

<sup>278</sup> Kalir D.M., *Taking Globalization Seriously: Towards General Jurisprudence*. *Columbia Journal of Transnational Law*. 2001, no. 39, p. 792-793.

<sup>279</sup> It should be, however, noted that transfer of company seat from high tax country to low tax country does not result in reducing a tax burden as such transfer does not trigger itself a corresponding transfer of tax liability. For relevant provisions of the Treaty on the Functioning of the European Union and the Agreement on the European Economic Area which eliminating economic and legal barriers by providing freedom of establishment and free movement of capital see articles: 18, 27, 45, 48, 49 and 63; Treaty on the Functioning of the European Union, Official Journal of the EU 30.3.2010, C-83/69 and articles: 28-45 of the Agreement on the European Economic Area, Official Journal of the EC 3.01.1994, L 1/3, s 11/t. 52; In literature see Brzeziński B., Kalinowski M., *Europejskie prawo podatkowe w świetle orzecznictwa europejskiego Trybunału Sprawiedliwości*, Ośrodek Doradztwa i Doskonalenia Kadr, Gdańsk 2001, p. 24; Justyński J., *Podstawy prawne polityk gospodarczych Unii Europejskiej. Na tle orzecznictwa Europejskiego Trybunału sprawiedliwości*, TNOiK, Toruń 2004, pp. 39-40.

<sup>280</sup> See Zielke R., *International Tax Planning with Comtax*. *Intertax*. 2009, vol. 37, issue 3, Kluwer Law International 2009, the Netherlands, pp. 200-206; Merks P., *Dividend Withholding Tax Planning Techniques: Part I*. *Intertax* 2011, vol. 39, issue 10, Kluwer Law International, the Netherlands, p. 460; Authors refer to useful tax planning instruments such <International Tax Expert Online> available at [www.ibfd.org](http://www.ibfd.org) and <Comtax System> available at [www.comtaxit.com](http://www.comtaxit.com).

<sup>281</sup> A brief description of tax haven is included in the next section of this article.

<sup>282</sup> See Sheppard L.A., *A Tax Haven by An Other name*, *Tax Notes International*. 2011, June 13, p. 8; For more information about the amount of income transferred to tax havens in order to avoid paying taxes see: Shaxson, N., *Treasure Islands: Tax Havens and the Men Who Stole the World*, London: Bodley Head 2011; the information provided by the Tax Justice Network available online at the following website: <http://www.taxjustice.net>, date of access: 8.01.2013.

differences between the poorest and the richest individuals, which may seriously distort sustainable development.

Taking all the above remarks into account, I intend to discuss the positive influence of anti-avoidance provisions on sustainable development in Poland. In particular, the main aim of this article is to give arguments for introduction of CFC rules into the Polish tax law system.

The remaining part of the paper starts with Section 2 which includes a concise description of the concept of tax haven. Section 3 presents tax avoidance through the use of controlled foreign companies (hereinafter referred to as “CFCs”) as well as a discussion of legal measures which can decrease this phenomenon – CFC rules. In Section 4 includes some facts in favor of the assumption that Polish taxpayers avoid paying taxes by the use of CFC. Section 5 briefly analyses the effectiveness of Polish domestic anti-avoidance measures currently in force in combatting international tax avoidance through the use of CFCs. Finally, Section 6 concludes.

### A brief overview of the concept of tax haven

It should be noted that it is practically impossible to clearly define the concept of *tax haven*, because what under a particular jurisdiction may be considered a *tax haven* is subjective and should be judged from the perspective of a particular taxpayer (investor). Furthermore, any definition of *tax haven* depends on the results of comparing effective tax rates of two jurisdictions, which is extremely difficult in practice<sup>283</sup>. According to the OECD report from 1998<sup>284</sup>, there are four factors that help to identify tax havens: (i) no or only nominal taxation, (ii) lack of transparency in the operation of the legislative, legal or administrative provisions, (iii) lack of effective exchange of information, and (iv) lack of a requirement that the business activity of taxpayers must be substantial. It is worth noting here that on 2<sup>nd</sup> November 2011 only two tax jurisdictions – Nauru and Niue – were classified by the OECD as tax havens, because only these jurisdictions continuously fail to promise to become more transparent and to

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<sup>283</sup> See Arnold B.J., *The Taxation of Controlled Foreign Companies: An International Comparison*, Canadian Tax Paper no. 78 Canadian Tax Foundation 1986, Chapter 5; Hampton M. P., *The offshore interface: tax havens in the global economy*. Basingstoke: Macmillan 1996; Fernández Rodríguez E., Martínez-Ariaz A., Determinants of Effective Tax Rate: Evidence for USA and the EU. *Intertax* 2011, vol. 39, issue 8/9, pp. 381-395.

<sup>284</sup> See OECD Report on Harmful Competition – An Emerging Tax Issue, 1998, p. 26.

introduce effective exchange of information in tax matters<sup>285</sup>. This is caused by the fact that currently the OECD considers lack of cooperation in the field of transparency and exchange of tax information the main criterion for classifying a particular tax jurisdiction as a tax haven. Leaving aside this quite questionable approach of the OECD in this respect<sup>286</sup>, the phrase *tax haven* is understood in this paper as a tax jurisdiction characterized by no income taxation or a low effective taxation of particular income, for example dividend or capital gains, that facilitate international tax avoidance<sup>287</sup>.

### International tax avoidance through the use of CFCs and the method of combatting this phenomenon

According to current science and practice of tax law, it is essential to separate concept of tax avoidance from concept of tax evasion. The latter usually leads to a complete elimination of tax burden, for example, by concealing sources of income or by falsifying documents necessary to calculate the tax. Such taxpayer behaviors usually constitute illegal activity which triggers criminal liability. Tax avoidance, on the other hand, is the choice of such a form and structure of transactions results in reducing tax burden within the scope and limits of the current tax law, however, in a way that is contrary to the policy or spirit of tax legislation. Due to the fact that different financial transactions and legal structures have different tax burdens, the selection of those most favorable to taxpayers cannot constitute a violation of tax law<sup>288</sup>. Hence, international tax avoidance may be defined as a legal way of reducing tax burden by taxpayers

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<sup>285</sup> See *OECD Progress Report on the Jurisdictions Surveyed by the OECD Global Forum in Implementing the Internationally Agreed Tax Standard*. This Report is available online at the following website: <http://www.oecd.org/dataoecd/50/0/43606256.pdf>, date of access: 12.01.2013.

<sup>286</sup> Some scholars state that the current OECD approach to the classification of tax havens is *artificial* and often inadequate to the economic situation and fiscal issues. See for instance Peter-Szerenyi L., *The OECD's Artificial Approach to Tax Havens – Part 1 & 2*, *Journal of International Taxation*, 2003, no. 13 and 14, McLaren L., *The Distinction Between Tax Avoidance and Tax Evasion Has Become Blurred in Australia: Why Has It Happened?* *Journal of the Australasian Tax Teachers Association*, 2008, vol.3 no.2, p. 141; But see arguments in favor of this approach from perspective of international public law in: Orlov M. *The Concept of Tax Haven: A Legal Analysis*, *Intertax*, 2004, vol. 32, issue 2, pp. 108-111.

<sup>287</sup> Compare: Hines J.R., Rice E., *Fiscal Paradise: Foreign Tax Havens and American Business*, *The Quarterly Journal of Economics*, 1994, no. 109(1), pp. 149-182.

<sup>288</sup> See Brzeziński B., *Wstęp do nauki prawa podatkowego*, TNOiK, Toruń 2003, pp. 87-91; Stiglitz J.E., *The General Theory of Tax Avoidance*, *National Tax Journal* 2001, Vol. XXXVII, p. 325; Templemann L., *Tackling Tax Avoidance* [in:] Shipwright A. (ed.), *Tax Avoidance and The Law. Sham, Fraud or Mitigation*, Key Haven Publications PLC, Oxford 1997, p. 1. It is worth noting here that if particular methods of tax avoidance fall within an application of general anti-avoidance rule, then tax avoidance arrangement may be considered void and violated of tax law, however, never in terms of penalized tax evasion. See Prebble Z., Prebble J. *Morality of Tax Avoidance*, in: *The Symposium on Estate Planning: Moral, Religious and Ethical Perspectives*, *Creighton Law Review* 2009-2010, vo. 43, issue 3, pp. 703-705.

through the arrangement of tax-driven transactions across tax boundaries<sup>289</sup>.

Although a modern taxpayer may access a variety of international tax avoidance methods<sup>290</sup>, one of the most frequently used ones is to establish a company in a preferential tax jurisdiction by its shareholders (partners)<sup>291</sup>. As a result, the source of income is shifted to preferential tax jurisdiction and consequently the income (typically passive income, e.g.: interest, dividend, royalties, capital gains) is generated or received by the foreign company. It should be noted that the company established in a tax haven is controlled by its shareholders, both individuals and companies, with substantial shareholding (usually more than 50%); therefore, from the perspective of the shareholders' country, it is recognized as *controlled foreign company* (CFC). Shareholders of a CFC may transfer their income to this company in many ways, among which the most tax effective are: debt management and earnings stripping, transfer pricing of intangible assets and intellectual property, manufacturing contracts, hybrid instruments and cross-crediting<sup>292</sup>.

The income of the CFC is taxable only in the country of the company's tax residence under ordinary tax provisions. Bearing in mind that the CFC is established in a tax jurisdiction with no or very low income taxation, the income of the CFC is not taxed in the CFC shareholders' country until the income is distributed by the CFC to its shareholders or shares in CFC's are sold by them. Such postponement of domestic taxation of shareholders' income is usually known as tax deferral<sup>293</sup>. Furthermore, if the income distributed by the CFC to its shareholders is exempt from taxation in the country of the CFC's shareholders, then the income of the CFC's shareholders income is not taxed at all. In consequence, international tax avoidance through the

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<sup>289</sup> Compare to Wisselink M.A., *Methods of international tax avoidance* [in:] *International Tax Avoidance. A Study by the Rotterdam Institute for Fiscal Studies. Volume A. General and Conceptual Material*, Kluwer, The Netherlands 1979, p. 29.

<sup>290</sup> See Zimmer, F., *Internasjonal inntektsskatterett* (4<sup>th</sup> ed.), Oslo: Universitetsforlaget 2008, pp. 37-47; Russo, R., *Fundamentals of International Tax Planning*, IBFD, Amsterdam 2007; Langston, R., *Tolley's International Tax Planning 2009-10*, LexisNexis UK 2009; Zielke, R., *International Tax Planning with Tax Havens – Objectives and Strategies in a Multinational Group of Affiliated Corporations. Bulletin for International Taxation*, February 2011, pp. 80-87; Merks, P., *Dividend Withholding Tax Planning Techniques: Part I & Part II. INTERTAX*, Vol. 39 October & November 2011, pp. 460-471 and 526-534; Kuźniacki, B., *Tax optimization of dividend payments – selected methods*, *PTE Toruń Working Papers* 2012, no. 17, pp. 1-13.

<sup>291</sup> In this paper the phrase *shareholder* or *shareholders* is synonymous with the phrase *partner* or *partners*.

<sup>292</sup> For more information about the methods of income transfer to the CFC in: Gravelle J.G., *Tax Havens: International Tax Avoidance and Evasion*, Congressional Research Service Report for Congress, R40623, pp. 13-17; Lamon H., *Financial Buy-outs - Value drivers, deal structuring, financial instruments and funds. Analysis from investors and management standpoint of Belgian practice*, Larcier, Cahiers Financiers, Brussels 2005; Rusek J., *Instrumenty hybrydowe – możliwości wykorzystania na gruncie polskiego prawa podatkowego. Prawo i Podatki*. 2012, no 3, pp. 6-11.

<sup>293</sup> In context of international tax avoidance with the use of CFCs, "tax deferral" takes place if the CFC shareholders' countries use a tax credit method in order to avoid double taxation of foreign source income earned by domestic taxpayers. For information on the concept of tax deferral with regard to international tax avoidance through the use of CFCs see Arnold B.J., *The Taxation of Controlled Foreign Companies: An International Comparison*, Canadian Tax Paper no. 78 Canadian Tax Foundation 1986, Chapter 4.

use of CFCs has negative consequences. In particular, this phenomenon contributes to the erosion of tax base in the CFC's shareholders country, distorts the vertical equity of taxation (the taxpayer's ability to pay)<sup>294</sup>, and may also serve as an instrument of money laundering<sup>295</sup>. The remedy for negative effects of international tax avoidance through the use of CFCs may take quite a drastic form, because the country of the CFC's shareholders, as a result of tax base erosion, will be obliged either to cut spending or increase tax rates. Thus, some countries have introduced specific anti-avoidance measures combating this phenomenon called CFC rules<sup>296</sup>.

The content of CFC rules differs across countries; however, in general, CFC rules can be defined as specific anti-tax avoidance measures that grant the country of the CFC's shareholders the right to attribute income of the CFC to its shareholders and subsequently levy tax on it. CFC rules may be applied either by regarding the CFC as a transparent entity (disregarded legal entity approach) or by deeming a distribution of the undistributed profits received and generated by the CFC to the shareholder (deemed profits approach). Under those rules, shareholders of the CFC are taxed currently on their proportionate share of certain type (usually only passive income, transactional approach) or all of the CFC's income (entity approach). To sum up, a common feature of CFC rules is to not lose tax revenue in the CFC's shareholders countries by curbing the use of international companies established for the sole purpose of avoiding income taxation<sup>297</sup>.

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<sup>294</sup> Taxpayers, who have a large and a very large income, and consequently a large ability to pay taxes, usually avoid paying taxes by the use of CFCs. On the other hand, taxpayers who do not have large income cannot afford to use CFCs to avoid taxes and bear a greater tax burden than the former, even though they have much less ability to pay taxes; see Kuźniacki B., Unikanie opodatkowania przez wykorzystanie kontrolowanych spółek zagranicznych, *Kwartalnik Prawa Podatkowego* 2012, no. 2, pp. 42-43.

<sup>295</sup> Money laundering in this case is the transfer of illegal income to the CFC located in a tax haven by its shareholders. Such income is subject to tax and an eventual exemption from taxation in tax haven is irrelevant with regard to money laundering. It follows from the fact that income once subjected to tax is recognized as legitimate and its origin is very seldom scrutinized by tax and criminal authorities; see Nawrot R.A., Problematyka prawna oraz metody przeciwdziałania szkodliwej konkurencji podatkowej w kwalifikowanej postaci, *Kwartalnik Prawa Podatkowego*, 2010, no. 1, p. 67 et seq; Nawrot R.A., Opodatkowanie brudnych pieniędzy, *Doradztwo Podatkowe*, 2008, no. 10, p. 20 et seq.

<sup>296</sup> Currently, CFC rules are in force in 28 countries. 7 countries introduced CFC rules between 1962 and 1989: the United States in 1962, Germany in 1972, Canada in 1976, Japan in 1978, France in 1980, the United Kingdom in 1980, New Zealand in 1988. Another 16 countries introduced CFC rules between 1990 and 2000: Australia in 1990, Sweden in 1990, Norway in 1992, Finland in 1994, Spain in 1994, Denmark 1995, Portugal in 1995, South Korea in 1996, Mexico in 1997, Hungary in 1997, South Africa in 1997, Argentina in 1999, Venezuela in 1999, Estonia in 2000, Italy in 2000 and Israel in 2000. After 2000, CFC rules were introduced by five countries: Brazil in 2001, Lithuania in 2002, Turkey in 2006, China in 2009 and Iceland in 2009. *Controlled Foreign Company Regimes Essentials*, The Deloitte International Tax Source (DITS), pp. 1-56 available at [http://www.deloitte.com/assets/DcomGlobal/Local%20Assets/Documents/Tax/Taxation%20and%20Investment%20Guides/matrics/dttl\\_tax\\_CFC\\_regimes\\_essentials.pdf](http://www.deloitte.com/assets/DcomGlobal/Local%20Assets/Documents/Tax/Taxation%20and%20Investment%20Guides/matrics/dttl_tax_CFC_regimes_essentials.pdf), date of access: 14.01.2013.

<sup>297</sup> See Maisto, G., Pistone, P., A European Model for Member States' Legislation on the Taxation of Controlled Foreign Subsidiaries (CFCs) - Part 1, *European Taxation* 2008, October/November, p. 505.

More about CFC rules see Arnold B.J., *The Taxation of Controlled Foreign Companies: An International Comparison*, Canadian Tax Paper no. 78 Canadian Tax Foundation 1986; Sandler D., *Tax treaties and controlled foreign company legislation: pushing the boundaries*, Chartered Institute of Taxation, Kluwer Law International 1998; Lang M., Aigner H.-J., Scheuele U., Stefaner M. (eds.), *CFC Legislation, Tax Treaty and EC Law*, Eucotax on European Taxation Series, Kluwer Law International 2004.

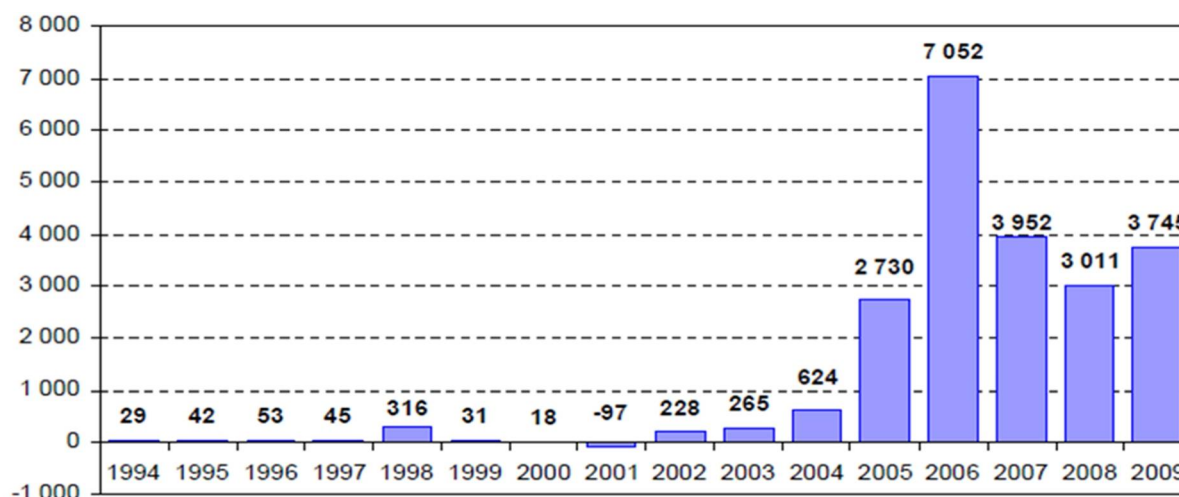


### International tax avoidance through the use of CFCs by Polish taxpayers

It may be safely assumed that the practice of foreign investment through companies established in tax havens is connected with tax avoidance through the use of CFCs. Therefore, in order to conclude whether Polish taxpayers avoid taxation through the use of CFCs, it is necessary to determine whether they realize investments through CFCs located in tax havens.

In this context, of relevance is the data quoted in the “Report on Polish Direct Investments in 2009” (2011) by the Department of Economic Analyses and Forecasts in the Ministry of Economy (hereinafter referred to as “Report”).

**Diagram I: The value of Polish foreign direct investment (FDI) 1994-2009 in millions of PLN**



Source: Departament Analiz i Prognoz Ministerstwa Gospodarki (2011), *Polskie Inwestycje Bezpośrednie w 2009 roku*, Warszawa.

According to the data indicated in the above diagram I, the value of Polish foreign direct investment<sup>298</sup> (hereinafter referred to as “FDI”) was at the level below PLN 50 million per year, with the exception of 1998 (PLN 316 million) in the period 1994-2000. In subsequent years, there

<sup>298</sup> FDI may include capital flows related to: (i) acquiring an existing company on the foreign market (brownfield investment), (ii) establishing a new company or branch (greenfield investment), or (iii) creating joint venture companies with foreign capital. It is important to note that FDI encompasses not only the initial transaction between the two entities but also all subsequent capital transactions between them and among affiliated enterprises; see OECD, *Benchmark Definition of Foreign Direct Investment*, Fourth Edition, Paris 2008, pp. 48-49.

was a significant increase in the value of Polish FDI from PLN 228 million in 2002 to PLN 2730 million in 2005, even up to PLN 7052 million in 2006. For the period 2007-2009, the following figures were given: PLN 3952 million, PLN 3011 million, PLN 3745 million. This Report also shows that most (55%) Polish FDI were made in European tax havens, such as Luxembourg, Switzerland, the Netherlands and Cyprus. Interestingly, the majority of Polish FDI in these countries was not associated with acquisitions of foreign companies, acquisitions of significant shareholdings in foreign companies or direct investment by establishing a branch of a Polish company from scratch<sup>299</sup>. Instead they relied only on pure financial flows between parent companies and their subsidiaries<sup>300</sup>. Furthermore, the companies located in tax havens were initially controlled by Polish taxpayers and mostly operated as holding companies, disengaged from any form of genuine economic activity beyond the transfer of dividends between companies in the group. Thus, these investments were made in the form of structures often used for international tax avoidance through the use of CFCs.

Moreover, the data produced by one of Polish investment funds shows that 35 people from the list of 100 richest Poles published in the Polish edition of *Forbes* run their business through the so-called closed-end investment funds<sup>301</sup>. Needless to say, within this structure taxation on income from current business activity run within the territory of Poland is limited to zero due to fact that investment funds, both Polish as well as those located in one of the countries of the European Economic Area, are subjectively exempt from taxation under the Polish tax law<sup>302</sup>. Subjective exemption from income taxation of investment funds means that the income generated by this entity from any kind of business activity carried out in Poland is eventually untaxed in this country. Furthermore, the distribution of income from an investment fund to Polish taxpayers in the form of dividend or the sale of participation certificates may be reduced from 19% to zero by the use of CFCs with seat in Cyprus and Slovakia, in such case CFCs will act as *conduit company* holding the so-called investment fund

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<sup>299</sup> Radomska E., *Bezpośrednie Inwestycje Zagraniczne (BIZ) polskich firm, Zarządzanie Zmianami. Biuletyn Polish Open University*. 2010, no. 5 (39), the article is available online at: [http://www.wsz-pou.edu.pl/biuletyn/index.php?nr=27&p=&strona=biul\\_radom\\_biz](http://www.wsz-pou.edu.pl/biuletyn/index.php?nr=27&p=&strona=biul_radom_biz), date of access 17.01.2013.

<sup>300</sup> *Polskie Inwestycje Bezpośrednie w 2009 roku*, op. cit., p. 6.

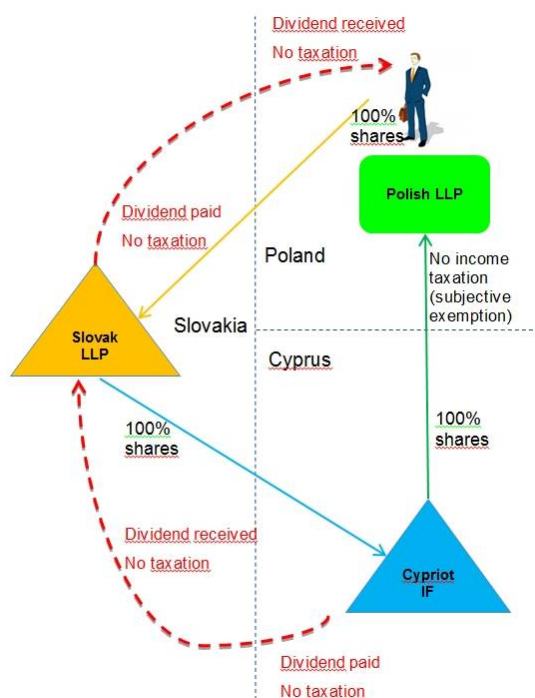
<sup>301</sup> This information was published in an electronic version of „Gazeta prawna”, a Polish legal daily, [http://podatki.gazetaprawna.pl/artykuly/560596.z\\_cypryjskiego\\_raju\\_do\\_polski\\_wielka\\_ewakuacja\\_milionerow.html](http://podatki.gazetaprawna.pl/artykuly/560596.z_cypryjskiego_raju_do_polski_wielka_ewakuacja_milionerow.html), date of access: 17.01.2013.

<sup>302</sup> See article 6 paragraph 1 point 10 and 10a Corporate Income Tax Law act from 15<sup>th</sup> February 1992, Journal of Laws 2011, no. 74, item 397, consolidated version.

participation certificates.

At this point it is crucial to briefly discuss one important example of international tax avoidance by Polish taxpayers through the use of CFCs. This example regards the use of limited partnership with seat in Slovakia (hereinafter referred to as “Slovak LLP”) and investment fund with seat in Cyprus (hereinafter referred to as “Cypriot IF”). It may be said that this example is well-documented by the Ministry of Finance, as on its official website one may find currently more than 120 individual tax interpretations, wherein the ministry confirms the petitioners’ views concerning the tax consequences of the tax optimization structure with the use of CFCs with seat in Slovakia and Cyprus. According to these interpretations, no stage of the tax optimization structure involving Polish taxpayers and CFCs established in Slovakia and in Cyprus is taxable in Poland<sup>303</sup>. This structure illustrates the diagram II below.

**Diagram II: Polish taxpayers and CFCs – an example taken from current practice**



<sup>303</sup> For example see individual tax interpretation of the Director of the Tax Chamber in Katowice of 27 April 2011, No. IBPBI/1/415-102/11/BK; individual tax interpretation of the Director of the Tax Chamber in Poznań of 2 December 2011, No. ILPB2/415-981/11-4/JK individual tax interpretation of the Director of the Tax Chamber in Warsaw of 17 July 2012, No. IPPBI/415-469/12-3/KS. These interpretations are available at the official website of the Ministry of Finance: <http://sip.mf.gov.pl>.

In brief, the above structure may be described as follows: (i) a Polish taxpayer being an individual run business in Poland (hereinafter referred to as "taxpayer") via a Polish limited partnership (hereinafter referred to as "Polish LLP"); (ii) due to fact that the Polish LLP is wholly owned by Cypriot IF in which taxpayer holds 100% of participation certificates there is no taxation of income from business activity of the Polish LLP; (iii) taxpayer in-kind contributes all of Cypriot IF's participation certificates to Slovak LLP (tax neutral transaction); (iv) dividend payments from Cypriot IF to Slovak LLP is not taxed both in Cyprus and in Slovakia under the ordinary domestic tax law provisions; (v) there is also no taxation of dividend paid by Slovak LLP to its Polish shareholder (taxpayer). Of course, the petitioners forgot to mention that due to domestic tax provisions in CFCs' countries, there will be no income taxation at all. From the perspective of Polish state budget, such "artificial escape" of taxable income from Poland to CFCs' countries is negative whether or not this income will be taxed abroad.

In order to determine whether Polish taxpayers make investments through CFCs established in countries and territories considered as tax havens, it is important to discuss studies presented by Markle and Robinson in "Tax Haven Use Across International Tax Regimes"<sup>304</sup>. This article contains data about 31 countries from 2010, including 22 countries with t CFC rules and 9 countries without such laws, including Poland. The data shows that 40%<sup>305</sup> of 89 Polish international companies<sup>306</sup> have subsidiaries in tax jurisdictions considered tax havens. The Polish international subsidiaries are located in following tax havens: Cyprus (55%), Luxembourg (35%), Switzerland (15%) and Ireland (15%), the Netherlands Antilles (10%), Singapore (5%), Panama (5%), Barbados (5%), British Virgin Islands (5%) and Bahrain (5%)<sup>307</sup>. Finally, Robinson and Markle express the view that in countries with CFC rules, when compared to those without CFC rules, there is less interest of domestic taxpayers in establishing CFCs in tax havens to avoid

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<sup>304</sup> See Markle K., Robinson L., Tax Haven Use Across International Tax Regimes, June 2012; the article is available online at the following website: <http://www.sbs.ox.ac.uk/centres/tax/conferences/Documents/Markle-Robinson%20FINAL.pdf>, date of access: 21.01.2013.

<sup>305</sup> It should be noted that the discussed research excludes subsidiaries established in tax havens such as Jersey, Guernsey, Alderney and the Isle of Man, as the authors used data on the location of subsidiaries of domestic parent companies in tax havens from Orbis – Company database, wherein these tax jurisdictions are considered a part of the United Kingdom; see. Markle K., Robinson L., Tax Haven Use Across International Tax Regimes, op. cit., footnote 38. For this reason, one may conclude that if the research also included the mentioned tax havens, then the percentage of the Polish international companies with subsidiaries in tax havens would be higher than 40%.

<sup>306</sup> See *ibidem*, appendix B1 and B2, p. 50 and 51. International company for the purposes of the discussed article means a domestic company (parent company) which has got at least one subsidiary (daughter company) with a seat in a different country than the company seat of the international company (parent company).

<sup>307</sup> The percentages exceed in total 100% because some international companies have subsidiaries in more than one tax haven. Hence, the sum of percentage of all the subsidiaries in tax havens usually exceeds 100%. It should be also noted that the given percentages regard only the subsidiaries of the Polish international companies with seat in tax havens (not all subsidiaries).

income taxation<sup>308</sup>.

As has been demonstrated above, Polish taxpayers avoid taxation through the use of CFCs and the scale of this phenomenon has increased over the past few years. This applies especially to the wealthy and very wealthy Polish taxpayers who have sufficient financial resources to undertake tax avoidance structures involving CFCs established in tax havens. Consequently, in order to conclude whether or not there is rationale for introducing CFC rules into the Polish tax law system, it is necessary to examine the effectiveness of Polish domestic anti-avoidance measures in combatting the phenomenon of tax avoidance through use of CFCs.

### A brief overview of the effectiveness of Polish domestic anti-avoidance measures in combatting international tax avoidance through the use of CFCs<sup>309</sup>

Due to fact that international tax avoidance through the use of CFCs results in the reduction of income taxation, it is necessary to take into account the anti-avoidance measures which may apply to income taxation cases in order to evaluate the effectiveness of Polish domestic anti-avoidance measures in combatting the phenomenon of tax avoidance through the use of CFCs. This type of legal measures may be found in Polish statutory law in the Tax Ordinance Act (hereinafter referred to as "TOA")<sup>310</sup>, and the Personal Income Tax Act<sup>311</sup> (hereinafter referred to as "PITA") and the Corporate Income Tax Act<sup>312</sup> (hereinafter referred to as CITA). In the TOA, there are both general and specific anti-avoidance measure, whereas in the PITA and the CITA only the latter.

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<sup>308</sup>The also expressed that in countries with CFC rules statutory tax rates are similar to effective tax rates, there is a steady growth in gross domestic product, and a growing number of double tax treaties with tax havens. It is worth noting, too, that higher effectiveness of CFC rules in combating international tax avoidance with the use of CFCs was more often observed in countries with tax credit method rather than in countries with tax exemption method of avoiding double taxation; see *ibidem*, p. 27.

<sup>309</sup> This section of the article does not aim to provide a comprehensive review of the topic in question.

<sup>310</sup> Tax Ordinance Act, 29 August, 1997, Journal of Laws 1997, no. 137 item. 926, with amendments.

<sup>311</sup> Personal Income Tax Act, 26 July, 1991, Journal of Laws 2012, no. 361, consolidated version.

<sup>312</sup> Corporate Income Tax Law act from 15<sup>th</sup> February 1992, Journal of Laws 2011, no. 74, item 397, consolidated version.

## General anti-avoidance measures

First of all, it is important to note that there is currently no general anti-avoidance rule (hereinafter referred to as "GAAR") in force in the Polish tax law. The GAAR was introduced in 2003 as article 24b §1 TOA<sup>313</sup>, however, this provision was brought before the Constitutional Tribunal by the President of the Supreme Administrative Court and the Ombudsman in order to review its constitutionality. The Tribunal in its judgment in 2004 held that the article 24b §1 TOA was in breach of article 2 (the principle of the rule of law) in conjunction with article 217 (the principle of legislative base for tax liability) of the Polish Constitution<sup>314</sup>, and therefore declared it to be null and void<sup>315</sup>. In consequence of this judgment, GAAR was repealed from the TOA<sup>316</sup>. Needless to say, this judgment laid down very demanding criteria of reintroducing the GAAR for the Polish legislator<sup>317</sup>, so it is rather unlikely that such provisions will be introduced into the Polish tax law in the foreseeable future<sup>318</sup>.

Currently, the article 199a TOA is frequently deemed to be a type of general anti-avoidance provision, albeit, it differs substantially from its predecessor as it relates solely to the procedure<sup>319</sup>. Thus, the very resemblance of the article 199a TOA to the GAAR does not mean that this provision is the GAAR<sup>320</sup>. According to §1 and §2 of this article, tax authorities during interpreting contracts concluded by taxpayers must take into account the aim and the common intention of the parties, not only the literal content of their statements. Furthermore, *if, while disguised as one legal act, another legal act was performed, tax consequences shall be a result from the*

<sup>313</sup> See act of 12 September 2002 about the amendment of the TOA and amendments of several others acts, Journal of Laws 2002, no. 169, item 1387.

<sup>314</sup> The Constitution of the Republic of Poland of 2 April 1997, Journal of Laws 1997, no. 78 item 483.

<sup>315</sup> See the judgment of 11 May 2004 in the case K 4/03, OTK 2004, No. 5a, item 41. This judgment may be considered as rather controversial, especially if one takes into account that art. 24b §1 TOA was a very similar to general anti-avoidance rules in other countries. See Brzeziński B., Olesińska A., *Klauzula normatywna zapobiegania unikaniu opodatkowania*, in *Prawo podatkowe. Teoria. Instytucje. Funkcjonowanie*, Brzeziński B. (ed.), Toruń 2009, pp. 290–294.

<sup>316</sup> See the act of 30 June 2005 about the amendment of the TOA and amendments of several others acts, O.J. 2005, No. 143, item 1199. More about GAAR in the Polish tax law see Brzeziński B., *Prawo materialne czy procedura podatkowa – dylemat kwalifikacji art. 24b § 1 Ordynacji podatkowej*, *Kwartalnik Prawa Podatkowego*, 2003, No. 4, pp. 10–13; Karwat P., *Obejście prawa podatkowego na tle art. 24b znówelizowanej Ordynacji podatkowej*, *Przegląd Podatkowy*, 2003, No. 2, p. 46 et seq; Kaźmierczyk-Jachowicz A., *Klauzula obejścia prawa podatkowego*, *Rejent*, 2007, No. 4, p. 132 et seq.

<sup>317</sup> Compare to Brzeziński B., Lasiński-Sulecki K. *History of the GAAR. Poland – National Report*, in *A Comparative Look At Regulation Of Corporate Tax Avoidance*, Brown K.B. (ed.), Springer, Washington DC 2012, p. 273.

<sup>318</sup> Discussions on this issue began after the removal of the GAAR on 10 January 2012. The Ministry of Finance jointly with the Department of Financial Law, Faculty of Law and Administration at Warsaw University hosted a conference "Is the general clause against the circumvention of tax law needed in Poland?". Now, however, there is no further discussion and no legal steps were taken by the Ministry of Finance in that regard.

<sup>319</sup> See Zalański A., *National Report – Poland*, in: *Tax Treaties and Tax Avoidance: Applications of Anti-Avoidance Provisions*, IFA Cahiers 2010, vol. 95a, p. 641–642.

<sup>320</sup> Brzeziński B., Lasiński-Sulecki K. *History of the GAAR. Poland – National Report*, op. cit., p. 274.

*disguised legal act*. Briefly, it may be concluded that articles 199a §1 and §2 TOA in most cases cannot apply to international tax avoidance through the use of CFCs, because the creation of tax optimization structures including CFCs and its subsequent realization does not constitute sham transactions, which, as a rule, results from legal actions well-documented and consistent with the requirements of company law and tax law. According to §3 of this article, *if the legal means of proof collected in the tax proceeding (...) raise doubts as to the existence or non-existence of a legal relation or a right, that gives rise to certain tax consequences, a tax authority shall refer the case to the ordinary court for determining the existence or non-existence of the legal relation of the right*. The applicability of article 199a §3 TOA in the discussed matter is significantly reduced due to the fact that tax avoidance with CFCs is always related to foreign jurisdiction. Therefore, the cognition of Polish ordinary courts in such cases is limited and results from relevant provisions of international private law<sup>321</sup>.

### Specific anti-avoidance measures

There are several specific anti-avoidance measures in the Polish tax law that apply to income taxation cases, although none of them is of similar nature to CFC rules. What is more, there are no provisions that implement the anti-avoidance provisions of the Parent-Subsidiary and Interest and Royalties Directives in the CITA. Specific anti-avoidance measures applicable to income taxation case are: (i) provisions regarding taxpayers' obligation to collect, prepare and submit information about remunerations of non-resident individuals to tax authorities<sup>322</sup>; (ii) provisions regarding the determination of market value in transactions involving unrelated parties<sup>323</sup>; (iii) transfer pricing provisions<sup>324</sup>; (iv) thin capitalization provisions<sup>325</sup>; (v) provisions regarding the implementation of the anti-avoidance provisions of the Merger Directive<sup>326</sup>; and finally (vi) provisions regarding the certificate of tax residence and the legal basis of exchanging

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<sup>321</sup> To the best of my knowledge, there has been no judgment of a Polish civil court that interpreted foreign private law relations of taxpayers based on article 199a § 3 of the TOA yet. See also Zalasinski A., *National Report – Poland*, op. cit., p. 645.

<sup>322</sup> See article 82a TOA.

<sup>323</sup> See article 19 PITA and article 14 CITA.

<sup>324</sup> See article 25 PITA and article 11 CITA.

<sup>325</sup> See article 16 paragraph 1 points 60-61 CITA.

<sup>326</sup> See article 10 paragraph 4 CITA.

tax information by tax authorities<sup>327</sup>. To put it briefly, as a rule, all of the above specific anti-avoidance measures are either irrelevant to international tax avoidance through the use of CFCs (numbers: i, ii) or their relevance is of very little effectiveness (numbers: iii, iv, v, and vi). The same conclusion applies to an evaluation of the effectiveness of the anti-avoidance measures included in the double tax treaties (hereinafter referred to as "DTT") signed by Poland. In this case, only Polish-Israeli and Polish-Luxembourg DTT include GAAR as a part of limited of benefits clause<sup>328</sup>; however, the provisions have never been applied. It is also worth noting that in the double tax treaty signed between Poland and Germany<sup>329</sup>, Norway<sup>330</sup>, and Luxembourg<sup>331</sup> there are provisions called the switch-over clause. In general, the application of this provision allows to "switch" from the exemption method to the tax credit method, if particular income or wealth may be subjected to double non-taxation or taxation at a lower rate than the rate applicable to particular income in Poland or in Germany, Luxembourg or in Norway. Given the fact that tax rates on income generated by individuals and legal persons in Germany and Norway are much higher than the corresponding tax rates in Poland<sup>332</sup> and these jurisdictions do not offer a favor tax treatment to Polish taxpayers, the application of the switch-over clause by the Polish tax authorities based on the Polish-German and the Polish-Norwegian DTT is not likely. But the switch-over clause includes in the Polish-Luxembourg DTT may be of some use as the Luxembourgian jurisdictions offers to Polish taxpayer a preferential tax treatment with regard to particular income, especially dividend, divestment gains and liquidation proceeds<sup>333</sup>.

<sup>327</sup> See article 6 paragraph 3; article 18 paragraph 1j point 2, paragraph 22b; article 26 paragraph 1, paragraph 1c point 1, paragraph 1g point 1 CITA and article 6 paragraph 3a, paragraph 4a point 3, paragraph 12; article 21 paragraph 23, paragraph 27; article 26 paragraph 6e point 2, paragraph 13c; article 27b paragraph 4 point 3; article 29 paragraph 2, paragraph 4 point 2, paragraph 5; article 30 paragraph 9; article 30a paragraph 2; article 30b paragraph 3; article 41 paragraph 2a, paragraph 9; and article 45 paragraph 7a PITA.

<sup>328</sup> See article 25 paragraph 2 letter a) of the Agreement between the Government of the Republic of Poland and the State of Israel for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income, signed at Jerusalem of 22 May 1991, O.J. 1992, No. 28, item 124; article 7 of the Protocol between Poland and Luxembourg amending the Convention between the Republic of Poland and the Grand Duchy of Luxembourg for the avoidance of double taxation with respect to taxes on income, signed at Luxembourg on the 7<sup>th</sup> June 2012.

<sup>329</sup> See Article 24 paragraph 3 of the Agreement between the Government of the Republic of Poland and the Federal Republic of Germany for the avoidance of double taxation with respect to taxes on income and wealth, signed at Berlin of 14 May 2003, O.J. 2005, No. 12, item 90. For more information about the switch-over clause and CFC rules in the light of European Union law see Meussen G. K., *Columbus Container Services – A Victory for the Member States' Fiscal Autonomy*, *European Taxation* 2008, no. 4, pp. 169-173; Calderón, J., Baez, A., *The Columbus Container Services ECJ Case and Its Consequences: A Lost Opportunity to Shed Light on the Scope of the Non-discrimination Principle*, *Intertax* 2009, vol. 37, issue 4, pp. 212-222.

<sup>330</sup> See Article 2 of the Protocol between Poland and the Kingdom of Norway amending the Convention between the Republic of Poland and the Kingdom of Norway for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Warsaw on the 9<sup>th</sup> day of September 2009.

<sup>331</sup> See Article 5 of the Protocol between Poland and Luxembourg amending the Polish-Luxembourg DTT.

<sup>332</sup> German tax rates for individuals are 14%- 42%, and for legal persons 33.3% in 2012; Norwegian tax rate for individuals are 28-40%, and for legal persons 28%, whereas in Poland the corresponding tax rates are 18%-32% and 19%. Source: <http://www.taxrates.cc/>.

<sup>333</sup> See Zdyb M, *Opodatkowanie spółek holdingowych w wybranych krajach Unii Europejskiej. Przegląd Podatkowy*. 2008, no. 12, p. 38-39; Luxembourg 2012: Participation Exemption Regime;



Nonetheless, the switch-over clause in the Polish-Luxembourg DTT applies only if Luxembourg exempts income from taxation based on the discussed treaty provisions or levies tax on income at a lower rate according to Article 10 (2) or Articles 11 or 12 of this treaty. Taking account that the preferential tax treatment is applicable in Luxembourg under its domestic tax provisions, and not the Polish-Luxembourg DTT provisions, the usefulness of switch-over clause in question with combating tax avoidance is rather vague.

### Judicial doctrines on combatting tax avoidance

At present, there are no judicial doctrines on combatting tax avoidance in Poland and this state of affairs is unlikely to change in the nearest future<sup>334</sup>.

As has been briefly demonstrated above, the Polish domestic anti-avoidance measures currently in force are not sufficient to effectively combat international tax avoidance through the use of CFCs.

## Conclusions

Sustainable development understood as the mutual reinforcement of economic growth, social development and environmental protection is simply impossible to achieve without sufficient financial sources. Since taxes are the most important source of financial inflows for countries, one may conclude that sustainable development cannot be effectively achieved without a well-functioning tax system with appropriate anti-avoidance provisions, in particular

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<http://www.kpmg.com/LU/en/IssuesAndInsights/Articlespublications/Documents/2012-Luxembourg-Participation-Exemption-Regime.pdf>.

<sup>334</sup> Historically, between 1991 and 2003 Polish administrative courts developed the so-called judicial doctrine of "circumventing the tax law" which provided for the application of the civil code provision on the circumvention of law in the field of tax law. It should be noted that this doctrine was strongly criticized by academics and practitioners of tax law and was eventually abolished as a result of the judgment of the Seven Judges Chamber of the Supreme Administrative Court of 24 November 2003 in the *Optimus* case, case no. FSA 3/03; see: Brzeziński B., *Narodziny i upadek orzecznictwa doktryny obejścia prawa podatkowego. Przegląd Orzecznictwa Podatkowego*. 2004, No. 1, p. 7 et seq; Kalinowski M., *Granice legalności unikania opodatkowania w polskim systemie podatkowym*, Toruń 2001, p. 76 et seq.

CFC rules. This assumption results from the fact that both theoretical<sup>335</sup> and empirical<sup>336</sup> research proves that the lack of CFC rules is conducive to international tax avoidance through the use of CFCs. In other words, in countries with CFC rules observe the less interest of international tax avoidance, especially through the use CFCs with seat in tax havens, because taxpayers in such countries likely obtain smaller benefits due to higher costs of planning to circumvent CFC rules.

International tax avoidance may lead to the erosion of tax base, deepen the differences between the poorest and the richest individuals, and seriously distort sustainable development. Owing to the fact that the most wealthy Polish taxpayers do avoid paying income taxes through the use of CFCs and that currently there are no Polish anti-avoidance measures which may allow to effectively combat this phenomenon, it is fully justifiable to conclude that CFC rules should be considered a part of a future Polish tax law reform, if Poland intends to partake in sustainable development.

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<sup>335</sup> See Maffini, G., Territoriality, Worldwide Principle, and Competitiveness of Multinationals: A Firm-Level Analysis of Tax Burdens. *Working paper*. 2012, No. 10; Voget, J., Relocation of Headquarters and International Taxation. *Journal of Public Economics*. 2011, No. 95, pp. 1067-1081; Clausen, K., D. Shaviro, A Burden-Neutral Shift from Foreign Tax Creditability to Deductibility? *Tax Law Review*. 2011, No. 64(4), pp. 431-452.

<sup>336</sup> See Markle K., Robinson L., Tax Haven Use Across International Tax Regimes, op. cit., pp. 1-50.

## THE ORIGINS OF ALTERNATIVE APPROACHES TO CAPITAL MARKET REGULATION IN CEE

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Olga Markiewicz

***Abstract:** This paper argues that different approaches to capital market's regulation undertaken by Poland and Czechoslovakia after the collapse of communism in 1989 can be explained by the level of vulnerability. Highly vulnerable political leaders are more likely to provide regulatory set-up that sought to prevent market failure and reduce its socio-economic costs than political leaders that rule in a more comfortable environment.*

***Keywords:** capital market, regulations, investor protection, Poland, Czechoslovakia*

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### Introduction

Scholars studying the development of markets for shares in Central and Eastern Europe (CEE) have demonstrated that after the collapse of communism Czechoslovakia and Poland, two leaders of economic transition in the region, adopted strikingly different approaches to the regulation of stock market.<sup>337</sup> Czechoslovak approach was constructed around strong free-

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<sup>337</sup> Pistor, K.: Law as a determinant for stock market development in Eastern Europe. In *assessing the value of law in transition economies*. Edited by Peter Murrell. Ann Arbor: University of Michigan Press, 2001; Coffee, J.: Inventing a corporate monitor in transitional economies: the uncertain lesson from Polish and Czech experience. In *Comparative corporate governance: the state of the art and emerging research*. Edited by Klaus Hopt. Oxford Clarendon Press, 1998; Glaeser, E., S. Johnson & A. Shleifer: Coase vs. Coasians. *Quarterly Journal of Economics*. 2001, vol. 116, no. 3, pp. 853-900. Kogut, B. & A. Spicer: Capital market development and

market orientation and characterized by unwillingness to regulate anticipated problems. By contrast, Polish approach can be characterized by anticipatory prevention of potential market problems. Thanks to legal scholars we know a lot about differences in regulatory solutions adopted in both countries. We also know that Polish approach turned out to serve better the development of market. Nevertheless, it still unclear why countries, which share so many similarities, addressed the problem of capital market governance so differently. This paper seeks to fill this gap. It argues that the attitude to market regulation was determined by the level of vulnerability understood as extraordinary political conditions. It demonstrates that the highly vulnerable political leaders were more likely to provide regulatory set-up that sought to prevent market failure and reduce its socio-economic costs. By contrast, political leaders that ruled in a more comfortable environment introduced only necessary minimum and were not concerned by potential market failures and their costs. These findings not only explain different approaches to capital market in the post communist environment, but they also contribute to a broader debate on the causes of state regulatory intervention in markets.

Theories of market regulation argue that regulatory reform and adoption of new set of rules is usually preceded by the failure of existing governance set-ups, implying that state regulatory intervention is an *ex post* answer to market deficiencies. Studies on regulatory capture, state capture and corruption show, however, that market failure might not suffice for state to intervene as state actors might lack both incentives and capacities to do so. While we have better understanding of why market failure does not always trigger regulatory response, it is still unclear why state actors engage in regulatory actions *ex ante*. That is why they introduce regulations aimed at preventing market crashes and reducing their social costs in the absence of market failure and domestic demand for regulatory reform. Findings of this paper help to understand their motives.

## I. Alternative approaches to regulation of capital markets:

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mass privatization are logical contradictions: lessons from Russia and Czech Republic. *Industrial and Corporate Change*. 2002, vol. 11: 1-37.

## Czechoslovakia and Poland

In 1989 new political leaders in Czechoslovakia and Poland faced a difficult task of reforming their financial system. This task entailed deep reform of banks and building markets for shares from scratch. Poland adopted key acts regulating issuance and trading of shares in 1991 and in the same year the Warsaw Stock Exchange (WSE) started its operation.<sup>338</sup> Czechoslovakia adopted its securities legislation in 1992 and in 1993 two markets: Prague Stock Exchange and RM-System launched trading in shares.<sup>339</sup> Yet, the content of legislation and the way markets were organized in both countries differed substantially. Czechoslovak political leaders introduced only fundamental rules regulating property rights and exchange, while their Polish peers had also provided rules that protected shareholders and secured transparency of markets. Moreover, Poles decided to delegate enforcement of these rules to an independent securities agency.<sup>340</sup>

The discussion of different approaches to capital market regulation needs to be preceded by the explanation of specificity of capital market. Whereas on commodity markets market participants exchange goods, on capital markets they trade with property rights, called shares. Shares are legal documents that entitle their owners to the portion of a company's profit and give them right to decide about company future. When an entrepreneur needs capital for further development he or she might sell portion a company to dispersed individuals promising them high returns on invested capital. Here comes the first problem inherent to capital market – information asymmetry. As an insider, entrepreneur knows both past performance and future prospects of a company, but potential buyers do not know whether information provided by entrepreneur is truthful. Moreover, they are not able to verify it.<sup>341</sup> The second major obstacle for capital market development stems from the fact that ownership and management are separated.<sup>342</sup> The dispersion of ownership affects the way in which corporation is managed as those who own the company are no longer the ones who run it on the day to day basis. This creates agency problem.<sup>343</sup> Shareholders delegate running of the company to salaried managers,

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<sup>338</sup> Prawo o publicznym obrocie papierami wartościowymi i funduszach powierniczych. Dz.U. 1991 nr 35 poz. 155.

<sup>339</sup> The Stock Exchange Act (214/1992) and the Securities Act (591/1992)

<sup>340</sup> Supra note 1.

<sup>341</sup> Black, B.: Legal and institutional preconditions for strong securities market. *UCLA Law Review*. 2001, vol. 48, pp. 781-855.

<sup>342</sup> Berle, A. and G. Means: *The modern corporation and private property*. New York: Brace & World Inc., 1932.

<sup>343</sup> Jensen, M. and Meckling, W. Theory of the firm: managerial behavior, agency costs and ownership structure. *Journal of Financial Economics*. 1976, vol. 3, pp. 305-360.

whose interests are however not identical with the interests of the owners. Managers might engage in a number of activities that will increase their personal profits, but could harm profits of shareholders. The most common practices include excessive compensation, stealing and other decisions that are harmful to the interest of investors. For markets to function properly these challenges need to be resolved.

There are two broad ways of tackling these problems: through self-regulation or state regulation. The debate among adherents of these methods reflects the debate on the role of state in market governance. On the one side of the debate there are those who argue that market actors can resolve aforementioned problems through self-regulation and that state's role should be limited to the provision of property rights and judicial system capable to resolve disputes among market actors. When property rights are well defined and transaction costs are zero, market participants can achieve efficient outcomes without government's "corrective" regulations.<sup>344</sup> In other words, capital markets efficiency can be achieved by the mixture of private contracting (e.g. company charters) and various forms of bonding (e.g. certification by intermediaries).<sup>345</sup> For centuries share trading was primarily regulated by self-regulatory stock exchanges, but this form of governance was unable to prevent market crashes and spurred calls for the engagement of state in the functioning of capital markets.

Therefore, on the other side of the debate there are proponents of government regulatory intervention who argue that governments should do more for markets than only the provision of property rights and efficient courts. James Landis is the author of the most forceful argument ever written in favour of state regulation of capital market.<sup>346</sup> After the crash of the US stock market in 1929, Landis pushed for enactment of Securities Act and establishment of government agency dedicate to regulation and surveillance of stock market. He argued that state regulation was necessary because stock market produced externalities that not only affected market actors but also had impact on wider public, e.g. workers of listed companies and their families. Following Landis, the law and finance literature argues that development of capital markets is strongly related with the state ability to develop investor protection legislation and its enforcement. Consequently, countries with better investor protection rules have bigger and

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<sup>344</sup> Glaser at al. Supra note 1.

<sup>345</sup> Stigler, G.: The theory of economic regulation. *Bell Journal of Economics and Management Science*. 1971, vol. 6, no. 2, pp. 3-21.

<sup>346</sup> McCraw, T. *Prophets of regulation: Charles Francis Adams, Louis D. Brandeis, James M. Landis, Alfred E. Kahn*. Cambridge: Harvard University Press, 1984, p. 212.; Landis, J. *The administrative process*. New Haven: Yale University Press, 1938.

better functioning stock markets when compared to countries where investor protection rules are scarce.<sup>347</sup>

## 1. Czechoslovakia: the minimalist approach to regulation of equities

Czechoslovak ruling elite had strong free market orientation. The economic philosophy of the administration of Prime Minister Vaclav Klaus was to foster competitive markets with minimal government interference. Czechoslovak reformers saw state interference in economic affairs as the fundamental cause of economic inefficiency. Therefore, they opted for a limited state role in the process of systemic transformation. Klaus and his collaborators believed that the market was a natural phenomenon that did not require corrective intervention of the government.<sup>348</sup> They argued that the only way the state could facilitate development of market in the post communist environment was privatization and deregulation. The state's role in transition was to be limited to these two functions also because post communist state lacked both expertise and resources to undertake regulatory intervention.<sup>349</sup> With regards to capital market regulations the government was against the implementation of shareholder protection rules. The government argued, that it did not have time to engage in regulatory deliberations when almost 100 per cent of the industry remained in state hands and complicated legislative works would only delay privatization. Moreover, the adoption of shareholder protection rules and establishment of the market watchdog did not guarantee safety because of the lack of experienced law enforcers. *"We were in a legal vacuum and we knew that it would take a generation to improve law enforcement, to have an efficient legal framework, to have judges. For them to emerge decades were needed."*<sup>350</sup>

As a result the initial legislation that provided a legal basis for trading in securities did not included most shareholder protection measures.<sup>351</sup> Moreover, the government did not

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<sup>347</sup> La Porta, R., F. Lopez-de-Silanes, A. Shleifer, & R. Vishny. Law and finance. *Journal of Political Economy*. 1998, vol. 106, no. 6, pp: 1113-1155.

<sup>348</sup> Kogut & Spicer p. 8-9, supra note 1.

<sup>349</sup> Pauly, J. & D. Triska. Investment funds in the Czech Republic. In *Privatization in Central Eastern Europe*. Edited by Marko Simoneti and Dusan Triska, Ljubljana: CEEP, 1995, p. 33.

<sup>350</sup> Interview with Dusan Triska.

<sup>351</sup> Pistor, K, M. Raiser & S. Gefler. Law and finance in transition economies. *Economics of Transition*. 2000, vol. 8, no. 2, pp. 325-368; World Bank. *Czech Republic-Capital Market Review*, Washington DC, 1999; Glaser et al. Supra note 1.

establish a market watchdog to monitor markets and instead the surveillance over capital markets was placed in the hands of the Finance Ministry, which did not take this task seriously.

The regulatory approach adopted by the Czechoslovak elite in 1992 led to market failure. Unwatched and uncontrolled insiders found myriad of ways to enrich themselves at the expense of individual shareholders. As a result Czechoslovak capital market developed into a place where fraud and embezzlement became everyday activities. This, in turn, led to the erosion of trust in capital market instruments and institutions, and resulted in the flee of investors from market. The study of the Czech Finance Ministry found that:

*“One of the main reasons why the capital market has become a target for criticism from the general public can be considered to be the large number of cases where individuals or groups of individuals have prospered and obtained considerable financial gains at the expense of ordinary citizens. A great number of dubious operations are taking place on the capital market, which leads to suspicious reactions on the part of the general public and also of domestic and foreign investors”<sup>352</sup>*

## 2. Poland: comprehensive approach to capital market

Although the institutional foundations of the Polish capital market were laid by political leaders who also sought to limit the role of state in economy, their approach to capital market was strikingly different. Polish reformers felt that not only did they have to build a capital market, but also the market needed to be safe. They were aware that any scandal or fraud would spoil the market's reputation and drive small investors from the exchange and, as a consequence, endanger privatization. A capital market failure would make it impossible for the state to sell enterprises on the stock exchange. Thus, state officials were determined to build a market with a solid reputation. *“The welfare of the market will depend on the trust that investors have as to the functioning of the securities and of intermediaries (brokers). In the most ‘liberal’ countries, trust comes from law and regulations and the institutions that carry them out”<sup>353</sup>* The fear of market failure made them look for institutional solutions that minimized its risks. *“We wanted to build a capital*

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<sup>352</sup> Czech Finance Ministry, 1997.

<sup>353</sup> Government Plenipotentiary for Ownership Changes, *“The Polish Capital Market – General Concept”* (Warsaw, 1990).



*market similar to markets we saw in other countries*".<sup>354</sup> They were inspired by the transnational standards in capital market governance that spread worldwide in the 1980s. These standards required extensive disclosure and banned a set of trading practices that could harm the integrity of markets. Above all, they required establishing a public watchdog to monitor and enforce the aforementioned rules.

Observers of Polish market argue that the adoption of stringent rules and establishment of powerful market watchdog allowed Polish market to avoid severe problems. Although Polish market, as any other market, was not immune to fraudulent practices, these were isolated cases which did not manage to undermine market standing. Polish market gained reputation of safe trading place, which contributed to its development. It is now the biggest market in the region with the highest capitalization and the significant, by CEE standards, number of foreign issuers.

## II. State regulatory intervention in functioning of markets

The studies on the capital market governance reveal that governments engage in regulatory interventions when self-governance, understood as market participants ability to write rules, resolve disputes and levy sanction without relying on a third party enforcer, fails to provide optimal conditions for the development of market. Crashes, frauds and other types of imperfections that reveal deficiencies of self-governance trigger demand for state regulatory intervention.<sup>355</sup> Therefore, government regulates capital markets when there are groups that ask for state help. The demand might be generated by market participants themselves or by broader group of societal actors whose welfare is affected by market's negative externalities. In the former case market actors, such as brokers, dealers or investors whose interests are endangered by poor governance, ask ruling elite to strengthen regulatory regime by provision of stringent rules and enforcement mechanism. In the latter case calls for state regulatory intervention come from societal actors, like workers and pensioners, who bear the costs of inefficient governance.<sup>356</sup> Yet, this understanding of the origins of capital market regulations

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<sup>354</sup> Interview with Wiesław Rozłucki.

<sup>355</sup> Coffee, J.: The rise of dispersed ownership: the role of law and the state in the separation of ownership and control. *Yale Law Journal*. 2001, vol. 111, no. 1, pp. 1-82.

<sup>356</sup> Glaeser, E. and A. Shleifer: The rise of the regulatory state. *Journal of Economic Literature*. 2003, vol. 41, no. 2, pp. 401-425.

tacitly assumes that once there is demand for state regulation ruling elites would adopt them.

This, however, is not always the case.

First of all, demand implies that there is already a market for shares and that there are actors, or at least some of them, that are dissatisfied with existing governance regime. Demand explanations do not tell us much about how markets and self-governance came about in first place. The studies on the emergence of capital markets in post communist countries observed that there was a bottom up tendency to issue shares and trade with them. However, there was nothing “natural” in the emergence of self-governance on capital markets. Frye argued that prospects of self-regulation on capital market were linked to state actors’ ability to mitigate the costs of sharing information.<sup>357</sup> When state actors sought to reduce these costs market participants’ chances to govern themselves in a relatively efficient way were higher. Second, the mere fact of the existence of the demand for state regulatory intervention does not automatically trigger the supply of needed rules, because the demand might be simply too weak. Those who bear the costs of inefficiently governed markets might be dispersed or lack resources to push for the policy change. Moreover, state actors might be captured by powerful market actors, who obtain extra profits from poorly regulated markets and whose interests might be endangered as a result of state regulatory intervention. When the state or regulatory agency are captured by powerful market actors the chances that the voice of those who seek change will be taken into account by the state actors are small.<sup>358</sup> Improvement of decision-making transparency on the state level and extension of state actors accountability is seen as remedy for the problems of demand. Summing up, state actors regulate securities markets when there exist demand for regulations and mechanism that allow demand side to have impact on the state decision-making process.

Whereas demand for state regulatory intervention explains why regulation is an *ex-post* government reaction to governance problems, it is still less clear why governments supply regulations *ex-ante*, anticipating these problems and seeking to prevent them. To answer this question, this paper proposes to link the insight from the literature on the origins of developmental state with the insight of the literature on the democratic economic policy

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<sup>357</sup> Frye, T: *Brokers and bureaucrats. Building market institutions in Russia*. Michigan: Ann Arbor, 2000.

<sup>358</sup> For the theory of regulatory capture see Stigler, G: The theory of economic regulations. *Bell Journal of Economics and Management Science*. 1971, vol. 2, pp. 3-21. For an excellent review of state capture by oligarchs see: Hellman, J.: Winners take all: the politics of partial reforms in post-communist transitions. *World Politics*. 1998, vol. 50, pp. 203-234.

making. Developmental state refers to state that intervenes in economy in order to facilitate economic growth.<sup>359</sup> It has several features distinguishing it from other types of capitalist states. The most important one is an existence of expert and coherent bureaucracy with sufficient scope of freedom to collaborate with industry and labour in order to spur growth. Many scholars have argued that this institutional feature was key for the spectacular economic success of a small number of Asian countries. In their study of the origins of developmental states in East Asia, Doner et al. argue that developmental state have political origins.<sup>360</sup> Specifically, political leaders who confront extraordinary political environment – vulnerability, build economic institutions that facilitate development. Such environment results from geopolitical insecurity, lack of natural resources and the existence of a restive popular sector. Doner et al. found that the mixture of these factors provided incentives for building new institutions of economic transformation in East Asia. The concept of vulnerability is helpful in understanding why ruling elite engages in the coordination of markets when there is no demand for state to step in. Yet it was developed for authoritarian regimes and requires some adjustment, if it is to explain incentive to regulate, coordinate and monitor capital markets in new democracies. Provision of securities regulations and monitoring institutions by state in the West democracies is usually associated with the rise of regulatory state. Developmental state and regulatory are often portrayed as two antagonistic forms of state. It is often argued that the rise of the regulatory state led to the decline of developmental state.<sup>361</sup> Therefore, it might seem counterintuitive to apply concepts developed to explain the origins of developmental state to the explanations of the origins of regulatory state. Yet, from the institutional perspective both types of state represent an ongoing and largely continuous process of state and market building. The ultimate goal of the regulatory state is to allow, enforce and promote development and, in this sense, the regulatory state is a constitutive element of the developmental state.<sup>362</sup> Drawing on the literature on the systemic transition I modify Doner's concept of vulnerability and identify two factors that provide political elite with incentives to engage in market making process through provision of rules and mechanisms of their enforcement. These are: (i) severe economic situation, and (ii) high

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<sup>359</sup> Woo-Cumings, M. (ed.): *The developmental state*. Ithaca, NY: Cornell University Press, 1999, p. 1.

<sup>360</sup> Doner, R., B. Ritchie and D. Slater: Systemic vulnerability and the origins of developmental states: Northeast and Southeast Asia in comparative perspective. *International Organization*. 2005, vol. 59, no. 2, pp. 327-361.

<sup>361</sup> Johnson, C.: *MITI and the Japanese miracle: the growth of industry policy*. Stanford, CA: Stanford University Press, 1982.

<sup>362</sup> Levi-Faur, D.: State making & market building for the global South: the developmental state vs. the regulatory state? *Jerusalem papers in regulation & governance*. 2012, Working Paper no. 44, July.

accountability of political leaders.

I assume that democratic political elites are mainly interested in securing their posts and would not engage in building institutions of economic development on a voluntary basis. As long as the economy delivers sufficient resources, they can afford to pursue the policy of “minimal state”. Thus, it is enough if they ensure property rights. Moreover, when the economy grows and living standards improve, the politicians in power might ignore the demands of the opposition and other state or societal actors as long as the needs of the electorate are satisfied. However, a deterioration of economic conditions leads to societal tensions. The lack of resources to appease the electorate acts as an incentive to pursue a more hands-on approach to market. Yet, incentives to coordinate and intervene in economic affairs do not automatically translate into policies that improve functioning of markets. As it was mentioned earlier, powerful interests might divert regulation to serve their own ends. Whether policies that serve commonly accepted notion of public good are adopted depends on the organization of economic policy making. In other words it matters who has a say over the shape of policy and to whom ruling politicians are accountable. The more incumbents are exposed to diverse forms of political accountability, the stronger the pressure on executives to care for developing comprehensive market institutions will be.<sup>363</sup> Bruszt argues that mixed political regimes facilitate comprehensive market making, as they allow for multiple representation of political constituencies and have institutionalized forms of checks and balances to prevent the misuse of power. In such polities no social or economic actor has a monopoly for representing public good. Therefore, when state executives design policies, they have to take into account diverse interests. This is achieved by the constitutional separation of state powers and the possibility of each branch to defend its autonomy. Thus bicameralism, judicial review of legislative decision and rigid constitution on one hand, and proportional electoral rules on the other prevent any single actor monopolizing the decision-making process. However, clear rules of decision-making process are not sufficient for the provision of comprehensive market institutions by the state. Students of transition in CEE have showed that the extent of political competition also has an impact on the state ability to regulate markets in a balanced way.<sup>364</sup> In more competitive political systems, where many roughly equal parties

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<sup>363</sup> Stark, D. and L. Bruszt: *Post socialist pathways: transforming politics and property in East Central Europe*. New York and Cambridge: Cambridge University Press, 1998; McDermott, G.: Politics, power, and institution building: bank crises and supervision in East Central Europe. *Review of International Political Economy*. 2007, vol. 14, no. 2, pp. 220-250.

<sup>364</sup> For the role of political competition in shaping markets see: Vachudova, M.: *Europe undivided*. Oxford: Oxford University Press, 2005; Grzymała-Busse, A.: *Rebuilding Leviathan: party competition and state exploitation in post-communist democracies*, Cambridge;

compete for power, incumbents are under constant scrutiny by the opposition. When the opposition is powerful, its criticism is heard and thus it is able to monitor the ruling parties effectively. By contrast, when one political faction or constellation of political parties rules for long periods of time and controls most of the organs of state, the policies it produces tend to favour particularistic interests and lead to greater corruption. Grzymała-Busse argues that in post-communist environment political competition has been robust when the communist party managed to reform itself and transformed into Western type social democratic party.<sup>365</sup>

In summary, I argue that under “normal conditions” political leaders try to limit their regulatory intervention to necessary minimum. Thus, they will put in place rules that define property rights and let market actors to struggle with problem of governance through self-help measures. Their approach to market governance alters when they are confronted with extraordinary political environment. Therefore, vulnerability defined as a mixture of severe economic conditions and high accountability provides incentives to engage in market making.

### III. Political underpinnings of state regulatory approach

This section analyzes the conditions under which political leaders in Poland and Czechoslovakia started to build capital markets.

#### 1. Poland

The thinking about setting capital market in Poland started well before communism collapsed in 1989. The idea of establishing a stock market germinated in the heads of bureaucrats of the last communist government and was part of a broader reform programme aimed at reviving the crisis-driven economy. Since the 1980s Poland had struggled with a severe economic crisis. Centrally planned economy was a textbook example of the Kornai's shortage

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New York: Cambridge University Press, 2007; Frye, T.: *Building states and markets after communism. The perils of polarized democracy*. Cambridge: Cambridge University Press, 2011; Orenstein, M.: *Out of the red. Building capitalism and democracy in post-communist Europe*. Ann Arbor: The University of Michigan Press, 2001.

<sup>365</sup> See previous footnote Grzymała-Busse 2007.

economy where enterprise sector was not able to produce enough to satisfy demand for basic goods. Economic problems were further exacerbated by the mounting external debt, which Poland accumulated in the 1970s while attempting to stimulate its economy by capital and technology import. In 1981 the country owed Western creditors 25.5 billion dollars and was not able to pay back interest on time.<sup>366</sup> Political leaders sought to revive economy by increasing workforce productivity and price hikes. These attempts met with societal resistance and led to strikes and worker protests forcing political leaders to reform the system of central planning. When these reforms did not bring satisfactory results, political elite took bolder steps and at the turn of 1987/1988, started to transform Polish economy to market one.<sup>367</sup> The 1987/1988-reform plan assumed the launch of capital market and conceptual work on the possibility of establishing stock market were initiated.<sup>368</sup> However, the communist government did not manage to install capital market, as it fell in mid-1989. When the democratic opposition took power, the country was in the midst of a deep economic crisis. The GDP shrunk by 11.6 per cent in 1990 while hyperinflation reached almost 586 per cent.<sup>369</sup> Additionally, by the end of 1989, the external debt had grown to 41.4 billion dollars, putting Poland among the ten most indebted countries of the world. The extremely difficult economic situation forced new post-communist elite to act fast. They engaged in building capital market institutions and designing governance regime knowing that leaving this tasks to market actors was too risky. The government needed functioning and trustworthy market fast as it intended to sell the shares of state enterprises to thousands of citizens. Market failure could have undermined the reputation of the market and endanger privatization depriving state coffers of needed funds. Therefore, political leaders sought to avoid, at all cost, situation in which citizens do not get shares, or where their funds are defrauded by dishonest intermediaries or company managers.<sup>370</sup> The fear of market failure made them look for institutional solutions that minimized its risk. Polish policymakers decided to draw on the transnational best practice in capital market regulations, which required extensive disclosure and banned a set of trading practices that could harm the integrity of markets. Above all, it

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<sup>366</sup> Grala, D.: *Reformy gospodarcze w PRL (1982 – 1989). Próba uratowania socjalizmu*. Warszawa: TRIO, 2005, p. 82.

<sup>367</sup> Poznanski, K.: *Poland's protracted transition: institutional change and economic growth 1970-1994*. Cambridge; New York: Cambridge University Press, 1996, p. 36; Grala supra note pp. 306-307.

<sup>368</sup> Interview with Andrzej Wróblewski; Gomułka, S.: *Transformacja Polska. Dokumenty i analizy*. Edited by S. Gomułka. Warszawa: Scholar, 401.

<sup>369</sup> Orenstein 2001, p. 59, supra note 28.

<sup>370</sup> Government Plenipotentiary for Ownership Changes, *"The Polish Capital Market – General Concept"*, Warsaw, 1990.

required establishing a public watchdog to monitor and enforce the aforementioned rules.<sup>371</sup>

Incentives to engage in capital market making were not only an effect of dramatic economic situation but also of political constraints. Strong labour, which gave foundations for democratic opposition, limited the room for manoeuvre in economic policy making under communism. Communist elite, who run out of other options to improve economic situation, had to create markets and cooperate with opposition on this project.<sup>372</sup> Introduction of democracy brought further constraints for those in power. Whereas communist policy makers were constrained by relatively homogenous labour, the collapse of the regime disclosed heterogeneity of democratic opposition. During 1990, Solidarity, once an undifferentiated social movement, started to break up into competitive groups which soon transformed into competing political parties. As a result of power struggles, the first non-communist government stepped down and a new cabinet was formed in January 1991. The key government posts were assigned to neoliberals, who did not sympathize with the idea of a state-made capital market. However, they could not afford to ignore actors who did not share their beliefs and the work done so far by their predecessors. Therefore, they gave green light to the introduction of stringent rules and the establishment of Securities and Exchange Commission.<sup>373</sup>

## 2. Czechoslovakia

In contrast to Poland, Czechoslovak economy was the best performing one in the Eastern Block.<sup>374</sup> The growth rate was one of the highest in CEE throughout most of the post-war period. In 1989 in the Czech Republic alone GDP grew by 4.5 per cent. The situation on the consumer market was also much better than in Poland as most goods were available. With inflation oscillating around one per cent, low federal budget deficit and modest foreign debt Czechoslovakia was seen as crisis free zone and regional economic leader. The relatively good

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<sup>371</sup> Interview with Wiesław Rozłucki.

<sup>372</sup> Interview with Andrzej Wróblewski.

<sup>373</sup> Lewandowski J.: *Własność nie jedno ma imię*. Gazeta Wyborcza. 09 May 1996.

<sup>374</sup> On the economic conditions of the Czechoslovakia see: Desai, R.: Financial market reform in the Czech Republic, 1991-1994: The revival of repression, CERGE-EI Working Paper Series, 1995, no. 86, p.15; Myant, M.: *The rise and fall of Czech capitalism. Economic development in the Czech Republic since 1989*. Cheltenham, UK; Northampton, MA: Edward Elgar, pp. 21-46; McDermott, G.: *Embedded politics. Industrial networks and institutional change in post-communism*. Ann Arbor: University of Michigan Press, 2003, p. 67.

economic conditions by CEE standards and the tragic fate of the 1968 reform attempt prevented Czechoslovak state actors from engaging in economic reforms under communism. Also, new democratic leaders, who took power in 1989, did not have to start economic reforms immediately. Instead they engaged in a debate on the direction of transition. The debate was focused on fundamental issues such as the pace and method of conversion to market economy. Neoliberal wing of former democratic opposition opted for fast and radical economic change. Initially, this radicalism did not appeal to most government members. However, neoliberals' devotion to market-oriented reforms, their drive and simplicity of proposed solutions appealed to the elites and the general population which become impatient with the government sluggishness in transforming economy. In June 1990 the neoliberal agenda passed the electoral test, as Civic Forum won the first free election on a platform of neoliberal economic reforms. This electoral victory undermined the position of less radical members of Civic Forum. Neoliberals proposed an experimental mass privatization method, which entailed fast distribution of corporate shares among all adult population. Since the privatization was a top priority for a new government in which neoliberals controlled key economic posts, the works on capital market and relevant regulations started only after the Parliament approved privatization plan in 1991.<sup>375</sup> Known from their aversion to the state regulatory intervention in markets, Czech neoliberals proposed market design that was silent about rules addressing the problem of transparency, information asymmetry or shareholders protection.<sup>376</sup> Yet, under the strong criticism of less liberal economists and banks they agreed to some changes. The introduction of provisions that obstruct the formation of large financial groups was one of their main concessions.<sup>377</sup> However, by the time capital market legislation was discussed by the Parliament, neoliberals managed to secure majority in legislative body.<sup>378</sup> Their conservative party ODS (Občanská Demokratická Strana), which was carved out of Civic Forum in April 1991, won the parliamentary elections in June 1992. During the election campaign Klaus claimed authorship of an economic reform package and by the instrumental use of lustration managed to disarm Civic Movement - another political force that emerged from Civic Forum. As a result they were strong enough to secure

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<sup>375</sup> Klaus, V.: Comments on capital markets and their size, structure and regulation. Proceedings of the international conference: Effects of the Capital Market Regulation on the Economic Growth, Prague, May 1997; Orenstein, 2001, p. 102, supra note 28.

<sup>376</sup> Machacek, J.: Banky kontra ministerstvo financí. *Respekt*. April 6, 1992.

<sup>377</sup> Kogut and Spicer, supra note 1.

<sup>378</sup> Innes, A *Czechoslovakia: the short goodbye*. London: Yale University Press, 2001 pp. 80-94.



political support for their hands free approach to capital market.

## Conclusions

The analysis of the political environment in which Polish and Czechoslovak decision makers had to design and put in place capital market governance regimes shows that more vulnerable political leaders were more likely to engage in capital market making and to provide solutions minimizing market failure. Although regulatory set up enabling share trading was put in place in both countries roughly at the same time by the adherents of neoliberal ideas, the content of regulations differed substantially. Two factors have shaped the environment in which key decisions were made: the state of economy and the state of polity. Economic hardship increased decision-makers' propensity to engage in setting governance regime and to search for solutions that work. In Poland, severe economic recession together with inability to service external debt forced political leaders to engage in market making immediately and to build market that is safe and efficient. By contrast, the lack of economic pressure allowed the Czechoslovak reformers to take their time setting up the market. Although the communist regime fell in 1989, the trading on capital market started in the mid-1993. Regarding the state of polity, it mattered how much freedom elected politicians enjoyed while making economic decisions. If they had to take into account multiple and heterogeneous societal interests, they provided regulatory solutions that ex-ante sought to prevent market failures and thus protected society against market's negative externalities. The freedom of Polish political leaders was limited by strong labour waiting for shares of privatized companies and a large number of fractions within Solidarity proposing different paths transition. Therefore, they were under scrutiny of these actors and had to propose balanced solutions. By contrast, Czechoslovakia lacked strong labour or any other societal group able to influence policy process. Moreover, Czechoslovak neoliberals managed to discredit its political opponents in the eyes of citizens, which allowed them to pursue their free-market beliefs almost unconstrained. In summary, the constellation of economic conditions and the political accountability of political leaders determined the approach to capital market regulations in Poland and Czechoslovakia.

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## SPECONOMY<sup>379</sup> AS AN ALTERNATIVE MODEL FOR ECONOMIC DEVELOPMENT

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Olateju Olatunji

***Abstract:** Capitalism and socialism with their variations remain the two economic models that have dominated the course of history of the contemporary European economic systems. This papers maps out speconomy (socialised partnership economic system) as an alternative economic model to both capitalism and socialism that have for long separated individuals from the state to the detriment of the state's productive base. This alternative model serves as a production strategy that offers optimal utilisation of man's inseparable relationship with the state to reinvent and expand the shrinking productive base of the contemporary states in Europe.*

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### Introduction

The central objective of this paper is to create a novel pathway into the political economy. The underlying idea of the pathway is the placement of the partnership between man and state at the centre of political, economic and social discourses, and making such partnership as not only necessary, but as the driving force of state politics and economy. One justification for this is the cyclic distribution of inequality, poverty and unemployment by the global trade economy

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<sup>379</sup> Olateju, O A 'The Truth of Economic and Political Disorders in Africa and steps for Rectification' Proceedings of the Arts and Humanities Postgraduate Conference (Jed Chandler ed) Swansea University, Voulme 3, Summer Issue, 2012

arising as consequences of globalisation. Taking a queue in the '*site of contest*', speconomy presents an argument for the provision of production pathway through partnership between cooperative of individuals and the state to blaze the unique characteristics and comparative advantages of each country.

The stages of accomplishing the set objective of the paper include conceptualisation of speconomy as the starting block. This is followed by addressing the common deficiency of other economic models, speconomic welfare state, dynamics of speconomy in the global economy and the conclusion.

## I. Conceptualising Speconomy

Speconomy is a humanist economic system that shares Polanyi's 'vision' of a 'free, co-operative, democratic and just society based on social ownership and control of economic resources'<sup>380</sup>. While agreeing with Polanyi's formal classification of economy, speconomy however departs from the substantive's which Polanyi classifies as the interchange of man with his natural and social environment. Speconomy serves to elevate us beyond the politics of the right, centre or left. Its values are characterised by integration of individuals and state in a manner that will halt the increasing individualism associated with liberal market democracy. It is purely a concept of 'economic' which involves a society as it is, or could be. It is not averse to the dependence of man on nature and his fellows, particularly the state, but this should not be for purely improving the quality of life through consumption that could lead to a sense of consumer behaviour of crude materialism.

Though Polanyi provides a lee way to deconstruct 'economic thought' from the strictures of the neo-classical economics paradigm, speconomy however provides a deeper penetration of communitarian anarchism to deconstruct the expression of man<sup>381</sup> as a dependant of nature and his fellows for consumption required for his survival. Man becomes a parasite when he only

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<sup>380</sup> Polanyi-Levitt, 'Karl Polanyi as Socialist' in Kenneth McRobbie ed., *Humanity Society and Commitment: On Karl Polanyi*. Montreal: Black Rose Books, 1994, p.130

<sup>381</sup> Man in this paper denotes individual without any prejudice against the female gender

consumes what others produce, that is, develops consumption as philosophy.

A nation that measures and sustains the quality of her people's lives by consumption value rather than the productive worth is only developing and sharpening acquisitive tendencies of the citizenry and suppressing their productive instincts. Such a nation will always judge the achievement of her people with the quantity and quality of the acquired materials. The net effect of this is culture of dependence.

Though we need to understand man as a consumer of the material supplied by his environment and fellow men, such consumption should not connote any impression of man as a parasite. Man consumes for his survival and self-development if he consumes what he produces with his labour, technical skills and invariably his technology. This simply means man is self-reliant. The quality of man's production automatically reflects on the quality and quantity of his consumption such as the clothes he wears, the cars he drives, the house he lives, his communication system etc. Addressing the parasitic assumption of Polanyi's substantive definition, necessitates rectification of the 'broken linkages' by speconomy as they potentially play vital role in the invocation of the new economic vision that goes beyond individual's equality and fairness but one that is concerned more about our social fabric.

In speconomy, man and state are inseparable partners whose combination is required for the survival of each. Man is essentially a worker, producer and above all, a transformer of nature. In tandem with Dewey<sup>382</sup>, speconomy sees man as a being who naturally responds in action to the stimuli of his environment, therefore an agency of novel reconstruction, reorganising human experiences by making new things and reshaping old ones through arts and technological sciences. Perhaps this informs Olateju<sup>383</sup> to submit man as a natural technologist and a designer of nature who needs to establish and maintain an active relationship with his environment and not to just depend on it for his survival as submitted by Polanyi.

As man is daily confronted with problems of hierarchical needs, this realisation naturally compels him to see life as a struggle of which he cannot be passive<sup>384</sup>. Nyerere (1968) once

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<sup>382</sup> Dewey John, *Human Nature and Conduct*, (New York: Holt. 1992)

<sup>383</sup> Olateju O A. 'Technological Education and Self Reliance' in *Polytechnic Education in Nigeria: Problems and Prospects*, (Lagos: LASPOTTECH PRESS 2002), pp. 108 -125 (108)

<sup>384</sup> Olateju, O A *Neo-Communitarian Democracy and Speconomy as Alternative Models of Development for Sub-Sahara Africa*, (Ongoing PhD Thesis, Swansea University, 2012)

expressed that through active transformation of the environment, man becomes an architect of his destiny and self-fulfilled. In essence, man is not just a mere spectator of his environment or indolent but a creative and intelligent being whose collective efforts design a suitable society based on the collective experiences of man and his fellows.

The social processes of speconomy transcend the atomised intentions and actions of individuals, and it sees its neo-communitarian<sup>385</sup> theoretical task as creating a form of political economy that is appropriate to it<sup>386</sup>. It is all about creating a society where integration is central to the economic policy through equal opportunities for the integration and participation of all citizens in the production and distribution of economic goods and services. In speconomy, emphasis is laid on the reconfiguration of the relationship between the state, market and man; and diverting such relationship from the direction of predatory capitalism relished by liberal democracy. The economic system adopts participatory decision making and control mechanism to guide production and distribution of goods and services within the state. The system also seeks an economic order that ensures partnership between man<sup>387</sup> and the appropriate tiers of government in the production and distribution of such goods and services. Its philosophy does not support full public ownership of the means of production and distribution or promotes total laissez-faire economics and private property. The reason for this rejection is simple. Public ownership where state directs the economic activities and/or owned the means of production fails to recognise the fact that economic actions of individuals are primarily driven by self-interest. In essence, speconomy sets to address the Reagan's posers of who will do the managing, for whose benefit, what will be the goals, who will set them and how?"<sup>388</sup> It dissects these posers by providing a system that allows individuals to decide their productive economic interests but with a mandatory collaboration with the state for the execution of such interests for the benefits of the two partners.

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<sup>385</sup> Olateju, O A, *ibid*

<sup>386</sup> Olateju, O A *ibid*, Chapter 7

<sup>387</sup> Individuals refer to sole proprietor, cooperatives, local or international company

<sup>388</sup> Reagan, Michael, 'The Managed Economy' New York: Oxford University Press, 1963.

## II. Addressing the common deficiency of other economic systems

The mandatory collaborative partnership arrangement between the state and the individuals serves as speconomy's contrast to other forms of economic systems. A major deficiency of other economic models which speconomy sets to address is the alienation of man from the state. Speconomy stresses that such separation cannot occur without an adverse consequence. The state is a product of the relationship among the individuals in a given body politic. Without the individuals in their various nationalities and groups, the state remains an empty space. A group of people without the state remains a race. While the state gives the individuals an identity, the individuals on the other hand, not only provide the state with its unique identity but also preserve the identity for the state.

The uniqueness of the state becomes vague once the individuals are separated from it. It is the aggregate of the individuals' activities that serves as the moving spirit of the state while the state in return provides, through the same activities of individuals, the enabling environment for the individuals to plan and execute those various activities. Where the state fails to provide the enabling environment, planning and executing of the activities become tall dreams for the individuals. Both the individuals and the state therefore remain the two sides of the same coin and whose separation renders both worthless and ineffective.

The logic of shifting risks from government and corporations unto the individuals through social, cultural, political and economic policies and practices that stress individual autonomy as emphasised in free market capitalism is a logic of exploiting one partner to sustain the other and to entrench totalitarian rule as against democratic system. Let me explain this further. In either socialist or capitalist economy, there is a distinction between the business owners and workers. The workers earn much less than the value they create thereby providing space for excess profits that are always appropriated by the business owners which could be either state, corporate organisations or individuals.

Following Parenti's analysis<sup>389</sup> of how wealth and want in the United States are getting more extreme, corporations in all the contemporary models of economy, are 'organisational devices' to exploit labour and accumulate capital with the working people being society's real producers. Public corporations as the contemporary dominant institutions exist for one purpose supported by law. This is to maximise the value of share holders' equity size and dominance or be left behind. Their success is measured by their concentrated, virtual-monopoly size. Noam Chomsky calls them 'private tyrannies'<sup>390</sup>. According to Chomsky,

*...as state capitalism developed into the modern era, economic, political and ideological systems have increasingly been taken over by vast institutions of private tyranny that are about as close to the totalitarian ideal as any that humans have so far constructed*<sup>391</sup>

Chomsky is not alone in this perception. Chomsky's argument only echoes Robert Brady. In his submission, Robert Brady argues that,

*...within the corporation all policies emanate from the control above. In the union of this power to determine policy with the execution thereof, all authority necessarily proceeds from the top to the bottom and all responsibility from the bottom to the top. This is, of course, the inverse of "democratic" control; it follows the structural conditions of dictatorial power*<sup>392</sup>

Governments are mostly responsive to the needs of the corporate corporations through "tsunami" of benefits such as subsidies, bailouts and protections by taxing the public. For example, Stephen Lendman reveals in the review of Parenti's 'Democracy for the Few'<sup>393</sup> that immediately after the World War 11 and with the emergence of the US as the dominant nation left standing, President Eisenhower gave the private organisations the equivalent (in today's dollars) of \$300 billion worth of offshore oil reserves, public lands and utilities, atomic installations and much more in what Parenti and others call "socialism for the rich"<sup>394</sup>. The situation has not changed in the contemporary free-market economies as the big corporate

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<sup>389</sup> Parenti Michael, Democracy for The Few. (USA: Cengage Learning Inc. 2001)

<sup>390</sup> Chomsky, N. (2005) Chomsky on Anarchism. (Edinburgh: AK Press, p. 191).

<sup>391</sup> *ibid*

<sup>392</sup> Brady, R. (1943) Business as a System of Power. (New York: Columbia University Press. Emphasis added. Cited in Chomsky (2005), p. 191)

<sup>393</sup> Lendman, Stephen, Reviewing "Michael Parenti's Democracy for the Few" Thursday, July 26, 2007 Retrieved on Sunday, July 1, 2012 on [www.rense.com](http://www.rense.com)

<sup>394</sup> *Op cit* 11



organisations remain beneficiaries of multi-billion pounds and dollars support paid for by the public taxes. These supports come in forms of tax breaks, price supports, loan guarantees, bailouts, marketing services, exports subsidies, R&D grants, free use of the public broadcasting spectrum and other government-directed benefits. Production costs are socialised but profits are privatised in an enormous redistribution of income from the working populace to the corporate rich. The tax system is skewed in favour of the corporate capitalists with the corporations paying an insignificant percentage of their revenues, many not paying income taxes and many getting tax rebates. It is glaring from the above that man is being exploited to sustain the corporate organisations and the state. This is exactly what I meant by exploiting one partner to sustain the other.

The mandatory partnership of speconomy rests on understanding that the fundamental structural elements of an economy comprising of consumption, investment, savings, primary industry, secondary industry, tertiary industry, trade, money etc; are universal. However the particular way in which these elements combine and interrelated in any economy is unique and entirely specific both in place and time. This is why no country can copy another's economic policy, though it can learn from other economies<sup>395</sup>.

For this reason, it is emphasised in speconomy that these elements, in very different forms and combinations, are of major importance for economic development strategies. The specific forms and combinations in which elements are applied are entirely unique in each country and at different points in time. In essence the combination and form of partnership will be applied as uniquely applicable to each state without jeopardising the partnership relationship between man and state.

In speconomy no political economy could set itself above social reality; it is a part of the society which it inhabits. The economy was and is still, socially embedded, a belief Kropotkin and Polanyi firmly held to. Speconomy therefore represents a model of welfare state based on equality and equitable distribution of wealth but with emphasis on the state sharpening the productive aspect of man through collaborative domestic investments. In doing this, the state

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<sup>395</sup> Ross, J. (2011, June 22). 'Why Adam Smith's 'classical theory' correctly explained Asia's growth - and how this clarifies why Paul Krugman's critique of Asian growth failed to predict events'. Retrieved June 22, 2011, from Key Trends in Globalisation: [www.ablog.typepad.com/keytrendsinglobalisation/2011/06/adam\\_smith](http://www.ablog.typepad.com/keytrendsinglobalisation/2011/06/adam_smith)

will tackle six giants instead of Beveridge's five, the sixth is, 'Less jobs'. The five giants identified by Beveridge<sup>396</sup> are, being Want, Disease, Ignorance, Squalor and Idleness. Less jobs with soaring unemployment rate is identified as a major problem with other models especially the free market economy. Some of the after-effects of Less jobs are being want, disease, ignorance, squalor and idleness.

As in every other welfare state, in speconomy, government plays a vital role in the protection and promotion of the economic and social well-being of the citizens but the protection of the state's life is also vital. Without life, the state cannot protect and promote the well-being of the individual members. The state is a living entity that needs to be economically active like its individual members, rather than being used by the individuals just for the provision of social protections. While the individuals cannot just use the state for their own protection, the state too cannot just use the individuals for its own protection. The state needs to protect the individuals just as individuals need to protect the state as well. The two needs to collaborate for the protection of each and to jointly solve the problem of 'less jobs'

### Speconomic Welfare State

There are varieties of welfare states with different economic and social organisations ranging from 'Nordic model', which includes Sweden, Norway, Denmark and Finland with the Swedish model being referred to as 'Folkhemmet' which literally stands for 'folk home'. Others are 'social state' ('sozialstaat' in Germany or 'stato sociale' in Italy), 'state of well-being' or 'state of social well-being' ('estado del bienestar' in Spain or 'estado de providencia' in Portugal), 'providing state' ('previdencia social' in Brazil) to Britain's welfare state. Saudi Arabia<sup>397</sup>, Brunei, Kuwait,

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<sup>396</sup> In December 1942, the Report of the Inter-Departmental Committee on Social Insurance and Allied Services was published, known commonly as the Beveridge Report after its chairman, Sir William Beveridge, proposing a series of measures to aid those who were in need of help, or in poverty. Beveridge recommended to the government that they should find ways of tackling the five giants, being Want, Disease, Ignorance, Squalor and Idleness. He argued to cure these problems, the government should provide adequate income to people, adequate health care, adequate education, adequate housing and adequate employment. It proposed that 'All people of working age should pay a weekly National Insurance contribution. In return, benefits would be paid to people who were sick, unemployed, retired or widowed.'

<sup>397</sup> The Social Security section of the Ministry of Labour provides assistance to Saudi citizens in the following categories; the unemployed, widows and widowers, females who have no living family members to support them, orphans, the disabled, families of those serving custodial sentences, and victims of natural disasters. See Pawel Zaleski *Global Non-governmental Administrative System: Geosociology of the Third Sector*, [in:] Gawin, Dariusz & Glinski, Piotr [ed.]: "Civil Society in the Making", IFiS Publishers, Warszawa 2006

Qatar, Bahrain, Oman and the United Arab Emirates are all welfare states but exclusively for their citizens with no concern for all foreign nationals, including legal residents and legal long term employees who are prohibited from partaking in the benefits of the welfare state.

In all these varieties, the only aspect of man that is addressed is the consumption aspect leaving out the productive aspect. The consumption aspect is well sharpened by the state through the provision of subsidised services or social benefits, while the productive aspect is either not sufficiently addressed or completely ignored. While the state is expected to provide some social protection for individual members, the protection of the life of the state through the required responsibilities and duties of individuals is significantly lacking.

For example in the Nordic model the state only transfers funds to the services provided for the citizens such as education and health care and also providing direct benefits to the people. These provisions are funded through redistributionist taxation<sup>398</sup> that is often referred to as mixed economy<sup>399</sup> but how the individual can assist the state to continue deriving energies for the provision of these services is lacking in this model. Also the Swedish welfare state which dates back to 1936 is just a compromise between the trade unions and the big companies to provide a sort of mixed economy built on strong unions and a strong system of social security and universal health care.

A peep into the German welfare state that started during the period of Otto von Bismarck especially in the 1880s reveals that the welfare policies only covered the consumption aspect of the citizens such as old age pensions, accident insurance, medical care and unemployment

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<sup>398</sup>Redistribution of wealth is the transfer of income, wealth or property from some individuals to others caused by a social mechanism such as taxation, monetary policies, welfare, nationalisation, charity, divorce or tort law. Most often it refers to progressive redistribution, from the rich to the poor, although it may also refer to regressive redistribution, from the poor to the rich. The desirability and effects of redistribution are actively debated on ethical and economic grounds

<sup>399</sup> The underlying premise behind the mixed economy was straightforward. Keynes and like-minded reformers were not willing to give up on capitalism, in particular two of its basic features: that ownership and control of the economy's means of production would remain primarily in the hands of private capitalists; and that most economic activity would be guided by 'market forces', that is, the dynamic combination of material self-seeking and competition. More specifically, the driving force of the mixed economy, as with free-market capitalism, should continue to be capitalists trying to make as much profit as they can. At the same time, Keynes was clear that in maintaining a profit-driven marketplace, it was also imperative to introduce policy interventions to counteract capitalism's inherent tendencies—demonstrated to devastating effect during the 1930s calamity—toward financial breakdowns, depressions and mass unemployment. Keynes's framework also showed how full employment and social welfare interventions could be justified not simply on grounds of social uplift, but could also promote the stability of capitalism. For further details on mixed economies see Pollin Robert Resurrection of the Rentier, in Andrew Glyn, *Capitalism Unleashed: Finance, Globalization and Welfare* Oxford University Press: Oxford 2006, pp140-153. See also Schiller, Bradely. *The Micro Economy Today*, McGraw-Hill/Irwin, 2010, p 15; Stilwell, Frank. *Political Economy: The Contest of Economic Ideas*, 2nd ed., Oxford University Press. 2006; Hendricks, Jean and Gareth D. Myles. *Intermediate Public Economics*, The MIT Press, 2006, p. 4; Gorman, Tom. *The Complete Idiots Guide to Economics*, Alpha Books (2003), p. 9

insurance. The policies were specifically designed to win the support of the working class for the Empire and reduce the emigration of workers to America where wages were higher but welfare did not exist<sup>400</sup>. Although Bismarck extended his policies to protect the domestic industries by high tariffs policies which protected profits and wages from American competition, there is no evidence to show the active involvement of the state in sharpening the productive aspect of man or supporting the required responsibilities of individuals.

Generally, the schemes of present-day welfare states concentrate more on the provision of both cash-welfare benefits (such as old-age pensions or unemployment benefits) and kind-welfare services (such as health, education or childcare services). Through these provisions, welfare states affect the distribution of wellbeing among their citizens, as well as influencing how their citizens consume and how they spend their time<sup>401</sup>. The emphasis on consumption in the welfare states stems from the notion of seeing the welfare schemes as a poverty relief strategy to cushion the effects of markets from 'cradle to grave' services from the state; and also to swing the interest of the working class away from socialism.

It has been argued elsewhere in this paper that both state and individuals are inseparable partners of the same body politic. They are two sides of the same coin. The rules of conduct of the state are to reflect the desired rules of the conduct of individuals that constitute the state and vice versa. Any unequal variation of the rules of conduct of or by either side will render both sides weak. The individuals who constitute the supreme authority or the sovereignty in the state have the powers to make rules of conduct to be executed on their behalf by the state and ensuring that such execution is binding on all. The state has the supervisory power to compel the individuals to conduct themselves within the confines of the rules of conduct set by individuals for the state to act upon. This is a working covenant between individuals and the state to provide a robust partnership for the benefit of one and all.

It must be emphasised that this partnership possesses a common will that must not fail to preserve the life and the welfare of each, and the whole, their unity and relationship, through

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<sup>400</sup> Megginson, William L.; Jeffry M. Netter (June 2001). "From State to Market: A Survey of Empirical Studies on Privatisation. *Journal of Economic Literature* 39 (2): 321-389.

<sup>401</sup> O'Hara, Phillip Anthony (editor). *Encyclopedia of political economy*. Routledge 1999. p. 1245; Esping-Andersen, Gøsta (1999). *Social Foundations of Postindustrial Economies*. Oxford: Oxford University Press.

reciprocal responsibilities and duties. Any separation of either from this vital relationship renders either weak or failed. State, through its reciprocal responsibilities and duties to the individual members, gives life and identity to the citizens. Individuals through their duties and responsibilities to the state also give life and identity to the state. Without the individuals there will be no society which by implication means, without the individuals there will be no state. State is, in essence the summation of all the societies recognisably occupying an organised geopolitical space with their members living and relating to each other, guided by some norms, values, legal and extra-legal rules and regulations maintained and supervised by the established institutions and authorities. These institutions and authorities derive their legitimacy from the duties and responsibilities of individuals as agreed upon by the individuals at the onset of the state. The fountain of life and legitimacy of the state are therefore derived from the legitimacy, duties and responsibilities of the various institutions and authorities created by the state with a legitimate authority derived from the sovereigns.

Before the state can deliver the required protections for its individual members, it must be alive. Its being alive requires some mandatory duties and responsibilities from the individual members which must not diminish. These required responsibilities are classified in this paper as political, economic, social, cultural and biological responsibilities. They are not by choice but required for the energy and life of the state for it to provide the protective duties and responsibilities. This is the basis for the partnership between individuals and the state.

The absence of these mandatory responsibilities underlies the alienation of individuals from the state in other models. For example, in socialism, state is the sole employer of labour. The state through the profits acquired from the employees, provides some forms of social protection to all. Both state and individuals are not partners but maintain employer-employee relationship with the state having a commanding say. In capitalism, the state provides enabling environment for the individual to pursue his/her legitimate interests with no concern for social protection for the people. In a mixed economy, individuals are permitted to own business while state uses policies to redistribute profits accrued from such businesses to areas perceived by the state as crucial for the sustenance of capital. The state in capitalist or mixed economy collects fees from the individual members in form of taxes for the services rendered. Tax evasion or tax underpayment is considered by the state as a serious fraud meant to incapacitate state, therefore attracts serious penalty from the state. In socialism, workers pay the state for the protective

services rendered to them through their labour and taxes.

In speconomy, political responsibility does not require every individual to be a member of a political group, but voting at state elections to determine the legitimacy of the state's institutions and authority is a mandatory responsibility of all. It is mandatory for every voting-age individual to be on the electoral register. In the same vein, economic responsibility, allows voluntariness in the decision to be an employer or employee but the idea of an individual member not working at all without any disability becomes an attempt at diminishing the energy and life of the state. Work is therefore a required responsibility of every individual member of the state.

Biologically, an individual may choose not have a family of procreation, but once he or she has chosen to have one there are associating responsibilities that must be accepted. No member of the family could be subjected to condition that may lead to termination of life, just as an individual cannot decide to take his or her own life because such life is part of the life of the state.

The socialisation and integration of a child into the society is a required parental responsibility. The required responsibilities of the parents towards the child include provision of parental care, clothing, feeding, supporting the child to access the educational, health, and other social facilities provided by the state for the child development. The state still has the responsibility of taking care of genuinely sick and honest job seekers. Job seeker's support in speconomy is not restricted to jobseeker's cash allowance but also includes the encouragement of voluntary self development towards self-employment. However where the job seeker opted for employee status, such beneficiary is made to do community service or voluntary work around job searching and interviews for a specific period.

Dereliction of any of the required responsibilities by an individual becomes an attempt at taking the life of the state and which of course the state must protect as part of its responsibilities and duties to itself and others.

Though the state has a responsibility of providing minimum provision of good life to those who could not avail themselves with the opportunities for the equitable distribution of wealth due to some disabilities but its responsibility to those who try to take its life by

abandoning their required responsibilities is to firstly protect such life from being taken away so that it will be able attend to those that preserve the life for it. For instance, the idea of the Universal Child Benefit<sup>402</sup> – a scheme that gives benefits to parents, encouraging people to have children and supporting them to feed and support the family may encourage the abandonment of required economic responsibility by the freeloaders in the state if not applied with some conditions. Child benefit in speconomy will only be adopted when there is need for 'baby boom' or in a situation of multiple births by an individual. In either situation, it will be for a limited period and not necessarily monetary allowance in all cases.

The goal of speconomy is to produce a welfare economy that uses welfare policies as developmental strategies to develop the productive aspect of man rather than restricting such policies to the improvement of the consumption aspect only. It encourages the development of what Spencer<sup>403</sup> refers to as 'voluntary self improvement' which is the basis of the productive aspect in every individual. It is the neglect of this aspect that in the first instance opens the welfare schemes to abuse and harsh criticisms from critics like Herbert Spencer who opined that coddling the poor and unfit would simply allow them to reproduce and delay social progress.

The extent to which an economic model affects poverty depends upon many factors, but particularly on its structure and policies. The underbelly of speconomy's emphasis on productive aspect of man is that productive growth is more likely to lead directly to a reduction in poverty when the economic assets of the state are distributed relatively equally or when based on the intensive employment of abundant factors of production, which for most countries is labour. For example, in largely rural economies based on small-scale farming, as in many African countries, most of the poor are engaged in agriculture. When such a country grows through agricultural exports, or when growth in manufacturing increases the demand for food and materials supplied by the rural sector, growth benefits both poor farmers and the even poorer labourers they employ. In land-poor but labour-abundant economies, such as those of East Asia, rapid growth of manufactured or service exports creates a large pool of new jobs,

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<sup>402</sup>Universal benefits paid to rich and poor such as child benefit were particularly beneficial after the Second World War when the birth rate was low. Universal Child Benefit may have helped drive the baby boom.

<sup>403</sup> Herbert Spencer in his *'The Man versus the State'* (1884), attacked the Liberal Party for not defending personal property but promoting paternalist social legislation that provides compulsory education, laws to regulate safety at work, prohibition and temperance laws, tax funded libraries, and welfare reforms. His main objections were threefold: the use of the coercive powers of the government, the discouragement given to voluntary self-improvement, and the disregard of the "laws of life." The reforms, he said, were tantamount to "socialism", which he said was about the same as "slavery" in terms of limiting human freedom.

absorbs the supply of low-productivity workers, and eventually causes a rise in real wages that further reduces poverty.

Speconomy as a unique welfare model modifies the 'need right' to include the productive aspect which enables individuals and the state to engage in economic partnership for the protection and benefit of both. The essence of organising the welfare state using the required economic responsibilities of both the state and the individuals to stimulate growth through socialised partnership is to sharpen the productive aspect of man, boost the productive base of the state, create more employment opportunities, provide another way of organising the state to tackle the effects of the market on the citizenry, and reduce the incidence of poverty within the state.

### Dynamics of Speconomy in the Global Economy

Europe like other continents are grappling with the new dilemmas of openness to trade and capital flows inherent in the global trade economy. As queried by Dani Rodrik<sup>404</sup>, what role if any, remains for the state in promoting industrialization? Does openness worsen inequality, and if so, what can be done about it? What is the best way to handle turbulence from the world economy, especially the fickleness of international capital flows? In wrestling with these posers, Rodrik argues that successful integration into the world economy requires a complementary set of policies and institutions at home<sup>405</sup>. States must reinforce their external strategy of liberalization with an appropriate internal strategy that gives the state substantial responsibility in building physical and human capital and mediating social conflicts.

There is abundant evidence of the importance of openness for economic growth. A necessary condition to participate in and benefit from the opportunities available in the global environment is a policy framework that facilitates domestic investment.

The UK Government's White Paper on International Development<sup>406</sup> provides a particularly

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<sup>404</sup>Rodrik, Dani, *The Global Governance of Trade as if Development Really Mattered* United Nations Development Program, 2001

<sup>405</sup> Ibid, p.1

<sup>406</sup> Secretary of State for International Development 2000 *Eliminating World Poverty: Making Globalisation Work for the Poor* (White Paper on International Development) London: Her Majesty's Stationery Office



useful and balanced view of the role market-opening and other developmental policies in the promotion of development. While recognizing the importance of a wide variety of governance, and human, physical and natural capital investment policies, it recognizes the central role of trade policies in harnessing the forces of globalization for the benefit of the poor.

Everywhere it is clear that openness is a necessary – though not sufficient – condition for national prosperity. No developed country is closed. The initially poor countries that have been most successful in catching up in recent decades – the newly industrialising east Asian countries and China – seized the opportunity offered by more open world markets to build strong export sectors and to attract inward investment. This contributed, along with massive investment in education, to the largest reduction in abject poverty that the world has ever seen<sup>407</sup>.

One of the most vexing questions facing such work is why, if global trade economy is so good for development, why have so many countries fallen further behind during the final decades of the 20<sup>th</sup> century, during the height of the recent globalization experience? A large part of the answer lies in domestic development strategies of these countries which depend more on foreign investments and extractive business.

Outsourced production is a form of consumption and also a disintegration of domestic production growth. The corporate organisations move out of high production cost to low product cost zones where they utilise more of production factors to maximise profits. The corporate organisations derive excess profits from the host state due to cheap production costs. The host state provides free trade zones, tax reliefs and other infrastructural instruments to aid free flow of capitals and profits. No doubt the industry provides employment opportunities to the locales but it hardly contributes to the domestic production growth of the state. It in addition appropriates surplus labour<sup>408</sup>. Though the products are not essentially meant for the local markets due to their weak currencies, they are to be repatriated to the countries of origins of the corporate organisations and other developed countries where there are higher values of currencies. This repatriation expands the need-based consumption of the populace while the

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<sup>407</sup> Op cit 78 p.17

<sup>408</sup> Surplus labour is a concept used by Karl Marx in his critique of political economy. It means labour performed in excess of necessary labour to produce the means of livelihood of the worker. It is usually an "unpaid labour" which Marxian economics regards as the ultimate source of capitalist profits. The historical emergence of surplus labour is, according to Marx, closely associated with the growth of trade, that is, the economic exchange of goods and services; and with the emergence of a society divided into social classes where the strong after defeating the weak can live off the labour of the weak.

domestic investments diminish due to the outsourcing policy. With the fall in the domestic investments, fewer jobs will be available for the people in the manufacturing sector and which invariably means less income tax for the state. Loss of jobs also means reduction in the prospective buyers of the repatriated goods. Supply of goods will increase while the demand diminishes. This leads to further job loss in the trade industry and also further loss of revenues by the state. The loss of revenues by the state automatically affects the state in performing its social responsibilities towards the citizens and of which the state must fill the gaps created by the revenue loss. The effects are more pronounced in welfare states due to their welfare subsidies and support policies which increase domestic consumption while investments nose dive.

For the state to fill the gaps it employs series of austerity measures to prevent dwindling revenues and conserve funds. These always include reduction in public spending, withdrawal of subsidies, total withdrawal or partial provision of some social services, 'right sizing' of labour, increment in service fees or product prices, expanding the scope of taxable incomes, high tariffs on foreign goods, monetisation of some benefits and privileges, adjustment of pension schemes and retiring ages etc. All these measures are taken by the state in order to ensure that banks – the driving force of corporate organisations stay afloat. How and why? Banks are sustained by deposits from the state, corporate organisations and individuals. Loss of jobs means fewer deposits for the banks through less deposit from the state, corporate organisations and individuals and more expenditure for the welfare states in form of unemployment support. With fewer deposits, banks are unable to provide financial support for the corporate organisations and this will on the long run affects the production scales in the 'comfort zones' with deeper consequences for the home countries in terms of mass unemployment. There is what is generally referred to as recession<sup>409</sup>. Recession is characterised by contraction<sup>410</sup> in the GDP for a maximum period of six months to one year, high unemployment, stagnant wages and fall in retail sales. Any contraction more than one year becomes a depression.

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<sup>409</sup> A recession generally does not last longer than one year and is much milder than a slump or depression. Some economists consider recession as a normal part of the capitalist economy but its causes is still subject to debates among the economists

<sup>410</sup> Contraction is the lowest point in an economic cycle characterised by reduced purchasing power, mass unemployment, excess of supply over demand, falling prices or prices rising slower than usual, falling wages or wages rising than usual and general lack of confidence in the future. This becomes a slump or depression if it lasted more than one year and causes a major drop in all economic activity

## Conclusion

As asserted in 1848 by the anarchist thinker Proudhon that 'political economy is not the science of society, but contains, in itself, the materials of that science, in the same way that chaos before the creation contained the elements of the universe'<sup>411</sup> and by the means of self-instruction and the acquisition of ideas, man finally acquires the idea of science, - that is, of a system of knowledge in harmony with the reality of things, and inferred from observation . . .<sup>412</sup>. Speconomy is on the same page with Proudhon as no political economy could set itself above social reality; it is a part of the society which it inhabits. The economy was and is still, socially embedded. Speconomy takes into account many of the technological and scientific advances of our time.

The role of the state in this process includes stimulating the creation of domestic enterprises, especially on cooperative basis, to guarantee markets for the goods produced by them, and to develop energy sources and infrastructure to foster these enterprises. Because the domestic enterprises which mostly at their cottage levels may not have the capacity to administer the nation's strategic resources, in these cases and in these cases only will state enterprises be created but in partnership with the regions, towns and communities hosting such enterprises. Revenues from these enterprises will contribute to the society's welfare. The state provides the technology the business owner(s) could not afford as part of production costs to the business in addition to providing training of specialised professionals through educational policies. These skilled professionals will in turn be providing innovative technology required for business growth. The state takes charge of planning the equitable empowerment of domestic enterprises through socialised partnerships and tax policies while it continues to guarantee the nation's security, its monetary policy and, basically, will be in charge of consolidating all productive forces oriented toward national integration.

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<sup>411</sup> Proudhon P J, *Solution to the Social Problem*, ed. H. Cohen (New York: Vanguard Press, 1927 p. 58)

<sup>412</sup> *ibid*

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## USE OF LOCAL POTENTIALS FOR SUSTAINABLE SPATIAL DEVELOPMENT OF VOJVODINA REGION

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Dejan Popović

**Abstract:** Author observe complex socio-economic and environmental situation of the Vojvodina region from a long period of time. He use multidisciplinary approach to highlight main disparities between potentials that region offers, and exploitation of those potentials. Study reflects specific bad state of economy and environmental problems in the region doe to tree main waves of regional de-growth, connected to the historical background of the region. At the end of the study we provide practical recommendations for sustainable development of the Vojvodina region shown in one specific case study of typical municipality in Vojvodina.

**Keywords:** Autonomous Province of Vojvodina, Ada municipality, Sustainable Development

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### Introduction

Main problems of today were mostly caused by poor understanding of synergetic connections between economy, politics and ecology in the past times. Those bad decisions were mostly done during socialist regime by receiving act of collectivization and adopting program for intensification of agricultural production. Those measures represented direct attack on free farmers that were representing successful landowners and rich capitalists, more or less economically independent on state economy. Not only economic damage was done, but also

there was huge impact on environment due to many kinds of pollution caused by intensive agricultural production, that was performed instead of permaculture agriculture practice of farmers in the pre-communist era. Result of authoritative and unilateral adaptation of regional development model, natural resources exploitation management and land use practices, led one perspective and rich region to long term de-growth and decline in general. Those unilaterally adopted repressive measures were made without constructive dialogue based on collective decision making process, in which all interested sides was involved. Unsustainable and ineffective decisions that were made in process of planning of centralized economy, led to creation of repressive politics that radically changed existing socio-economic structure and worst of all harmed environmental equilibrium between nature and man built environment. Another wave of recession presented by author came out as tension in political, social and economic situation in the late eighties. Collapse of communist regime result to further and much deeper socio-economic decline, mostly caused by process of violent disintegration of former Federal Republic of Yugoslavia, that Vojvodina region was part of. This process led to the well-known civil war that was raging in the last decade of the past century and contributes on destruction of country in all ways. Third stage of recession finally came in post-war years that were in a spirit of democratization of society, followed by resurrection of traditional capitalist system and European integration. Instead of prosperity and economic growth, the Vojvodina region faced further recession and socio-economic decline. Once strong and competitively, agricultural and industrial base was finally destroyed by ineffective processes of privatization of former national corporations done by politicians and oligarchs, unfair land restitution and one more important external factor, as a global economic crisis that came in the end of the first decade in 21.st century.

## I. Project description, Localization of the region, Geographical situation and Historical background of the region

Project is oriented on rural renewal of the municipalities in Vojvodina. Study focuses on issues of sustainable use of natural resources, ecology and local energy supplying opportunities. The first part of the study, an actual socio-economic and ecology situation of the region is

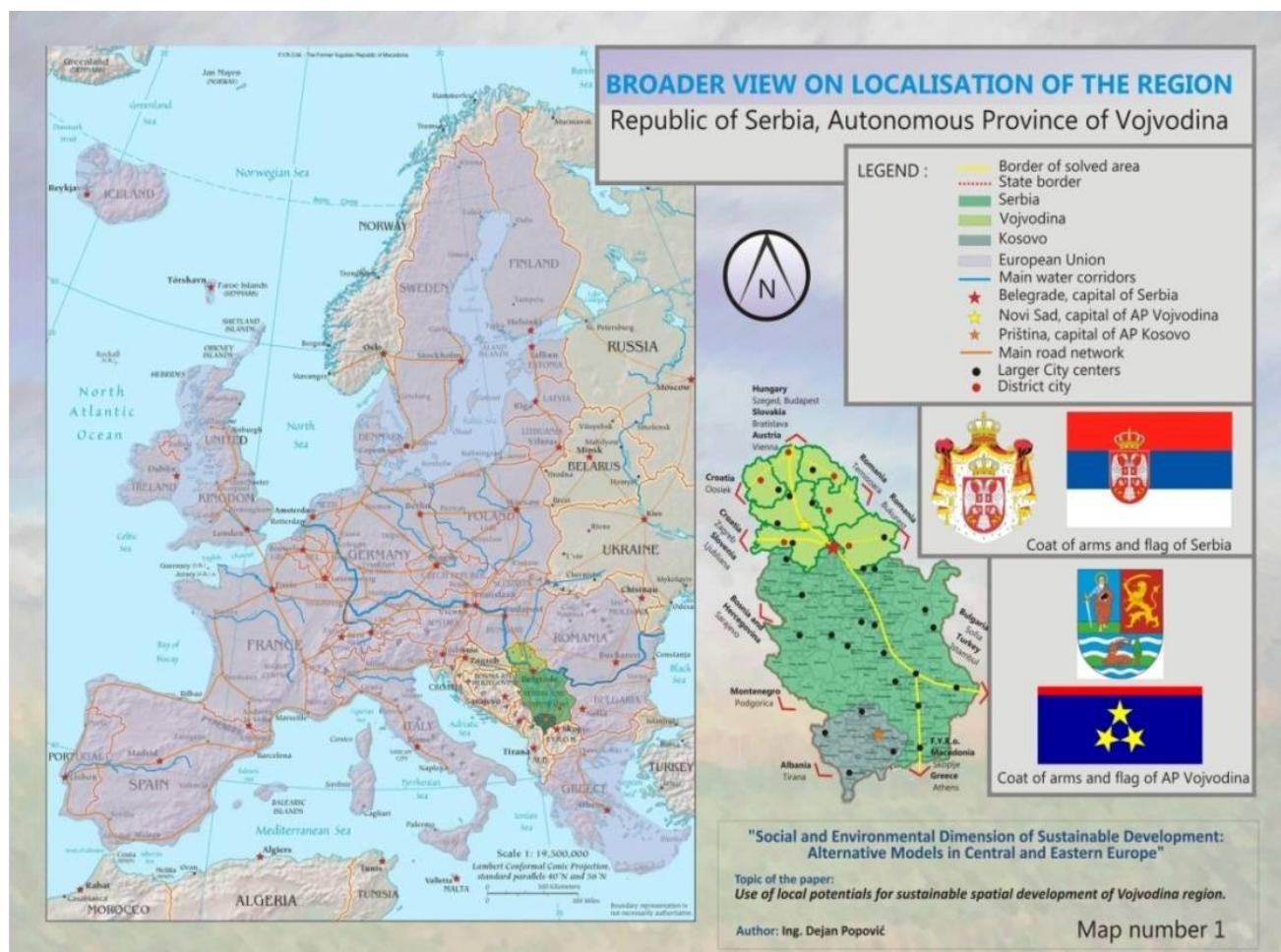
highlighted. In the second phase, a clear vision of future sustainable development of region is provided and explained on simplified case study of typical municipality in Vojvodina and connected with the existing project.

**Research Hypothesis:** *It is possible to achieve sustainable development of Vojvodina province, in the way that ecological threats of today are being transformed into economic opportunities of tomorrow.*

Methodology of the research and structure of the paper that author adopted are combined and consist of few parts that differ by investigation approach. In the first stage author provides evidences about current status of the observed area, gathered by desk research and field-work. Second stage is reserved for strategic analyses of the quantitative and qualitative data synthesized with knowledge gathered in the field. Last stage constitutes of a presentation of the outcomes of the study in form of practical recommendations for sustainable development of the Vojvodina region shown in one specific case study of typical municipality in Vojvodina and project PARES, that is a good example of sustainable development of the rural areas in Vojvodina region. Studied area lays on northern border of Balkan Peninsula, at the one of the world's most important crossroads of trading and cultural pathways. Region of Vojvodina is located in northern part of Serbia and is recognized as region with certain economic, political and administration autonomy. The reason is that it has a specific geographical and socio-economic situation. It's authentic cultural and historical background defines Vojvodina as a poly-cultural and social mixed region. Around 85% of arable land in Vojvodina region contains the high quality soil chernozem. All these natural predispositions combined with man-built complex irrigation system based on three main rivers, i. e. Danube, Tisa and Sava, which is interconnected with dense system of channels, dams, reservoirs and water pump stations, predefines Vojvodina as a region with strong agricultural and industrial potential. However, despite to many potentials and opportunities that region offers, Vojvodina region is at the moment facing poverty, economical decline, social misbalance and ecological threats caused by unsustainable land use and natural resources exploitation in the past. Another weakness of region is presented as tension in political, social and economical situation. They are mostly caused by process of violent disintegration of former Federal Republic of Yugoslavia, which led to the well known civil war that was raging in the last decade of the past century. War years brought only misery and decline to all Yugoslav states and regions; same was destiny to the Vojvodina region.

Upcoming years were in a spirit of falling socialist regimes and democratization of society, followed by resurrection of traditional capitalist system. Instead of prosperity and economic growth, the Vojvodina region faced further recession and socio-economic decline. Once strong and competitively, agricultural and industrial base was finally destroyed by ineffective processes of privatization of former national corporations, unfair land restitution and one important external factor, as a global economy crisis.

Figure 1: Map of broader view of solved area.



Source: Base map is obtained from world-maps web site available on: <http://www.world-maps.co.uk/continent-map-of-europe.htm> coat of arms and flags were downloaded from Google, and all the other graphics were made by author



## II. Ecological situation of the region, Tragedy of the commons, Empirical indicators of regional de-growth

Main cause for actual ecological and economical state is observed as a tragedy of the commons<sup>413</sup>. Most of environmental problems and ecological threats of today were caused in the past times by the bad decision making of planners during communists era. Bad management of common pool resource, led to the depreciation of environment. Author is highlighting negative effects of well-known process of collectivization in agricultural production and land use organization. This unsustainable economy development program of the socialist regime attacked on free farmers that were representing successful landowners and rich capitalists, more or less economically independent on state economy. Not only economical damage was done, but also there was huge impact on environment due to many kinds of pollution. One of the most critical aspects of environmental pollution is ground and underground water pollution caused by overuse of herbicides and pesticides that intensive agriculture requires. Water pollution was also caused by absence of sewage and wastewater treatment plants in rural areas. Water management is mostly threatened by floods, caused by bad state of irrigation systems and facilities. Soil is mostly polluted by overuse of chemistry in agricultural production and existing illegal surface waste storages, while air pollution is mostly caused by emissions from industrial production and absence of vegetation in contact-zones of the cities and agricultural land, as a natural protection from dust in hot and dry summer period. Not only environmental pollution problems are subscribed by tragedy of commons. There are other issues with same background problem, as a using of irrigation system, hunting and fishing areas, road network, forestry, pastures, etc. An interesting situation is for instance the one with state of transportation system. According absence of railway maintenance founding, most of railroad lines collapsed, and needed to be closed. All heavy load transportation moved to road. Heavy weight agricultural products and mechanization is being transported by Lorries, mostly in summer period, when asphalt roads are melted by sun. That causes their regularly damaging each year, and produces further need for investments on their reparation. Instead of founding reparation of railroad

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<sup>413</sup> Amy R. Poteete, Marco A. Janssen, Elinor Ostrom, 2010, *Working Together: Collective Action, the Commons, and Multiple Methods in practice*.

transportation system, government keep spending finances on the road network maintenance.

### III. Socio-economic situation of the region, SWOT analysis - Illuminating main problems, disparities and potentials of regional growth

Border region of European Union, AP Vojvodina offers plenty of business and development opportunities. Situated on North Serbia, has perfect logistic position with administrative borders with Hungary from north, Romania on east and Croatia on West side. It is situated at crossroad between east – west, and north – south European axis. It has relatively low population density and rich demographic structure. It is famous by its multiculturalism cohabitation of many nationalities. According to last population census from year 2002, Vojvodina has 2 031 992 citizens. From that number more than the half are Serbs, and then followed by other nationalities as a Hungarians, Slovaks, Croatians, , Montenegrins, Romanians, Gypsies other nationalities Germans, Czechs, Russians, Ukraine, Albanians, etc. Many of them still define their selves as Yugoslavs. This coexistence of Vojvodina people is great example of social inclusion and international tolerance. There are many interesting historical issues about colonization of Vojvodina, many stories about its people and their common growth to the one successful multinational and poly-cultural community, Community, which is capable to co-operate and work together. The territory is also the highest producer of the Republic of Serbia. More than half of the GDP of Vojvodina is covered by the agricultural and industrial products. The territory produces around 29-30% of agricultural products and around 40% of the industrial products. According to the statistics presented by government of Vojvodina<sup>414</sup> macroeconomic movements are characterized by establishment of sustainable and stable economic development. There has been achieved liberalization of trade, restructuring of banking sector, privatization of companies and labor market reform. It is estimated that in Vojvodina, during the period from 2001 to 2005, gross domestic product (GDP) was increasing by the rate of 5%. In 2004, processing industry and agriculture participated in more than half of the GDP. Share of services is constantly growing. The following are the industries that were mostly represented in the

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<sup>414</sup> Source of information is provided by Government of Vojvodina on their official website. Available on: <http://www.vojvodina.gov.rs>

structure of Vojvodina's national income in 2005: processing industry - 27.1%, agriculture, hunting and forestry - 22.4 % and trade - 22.1 %. There are approximately 20 thousand companies in Vojvodina. Most of them are privately owned small enterprises. These productions have opportunity to increase the GNI or Gross National Income of the Serbia. The increase of investments in industrial, traffic and municipal infrastructures, new technologies and equipment represents the basic requirement for achievement of higher GDP growth, bigger competition and increase in export. Therefore, the activities of Vojvodina Capital Investment Fund and realization of the Program for design of plants that implement new technologies are directed towards achievement of the aforementioned objectives. With investments in infrastructure and innovations, agricultural and industrial productions of Vojvodina have opportunity to create an unbeatable position in the international market.

#### SWOT analysis of the Autonomy Province of Vojvodina

#### Strengths:

- Geographic location

*It is located in one of the most important transportation and logistics centers of Europe*

- High fertile soil

*Around 85% of soil has chernozem composition, first class of soil quality*

- Low population density

*According to last census, 91, 54 people on one square kilometer*

- Regulated water corridors and dense irrigation system

*DTD (Danube-Tisa-Danube) irrigation and transportation channel system*

- Oil and Natural gas fields

*Mostly in Eastern part of Vojvodina, strong petrochemical industries, two refineries in Novi Sad and Pančevo, big industrial center near capital of Belgrade. High capacity natural gas storage and distribution center in Banatsko Arandjelovo, and also existing network of oil pipeline and natural gas distribution lines. These facts are strengths not in ecological point of*

*view but as source of employment opportunity.*

- Geothermal, mineral water and mineral clay resources
- Rich on protected natural areas

*National park, natural reservations, protected wetlands, nature 2000, Ramsar areas.*

## SWOT analysis of the Autonomy Province of Vojvodina

## Weaknesses:

- Transportation network situation

*Primary transportation is by road, while many railroads are out of function.*

*Poor cycling infrastructure in the region.*

- Irrigation system potential is not fully exploited because it is peripherally ruined

*Irrigation system requires huge investments for its reparation. Same as Railroad reparation, requires huge investments*

- Existing environmental pollution

*State is mostly caused by using of agricultural chemistry and industrial pollution.*

- Bad waste management

*There is absence of recycling facilities, infrastructure for a waste selection and agricultural waste treatment.*

- Absence of sewage system

*It is typical for rural areas where each household have their own cesspool.*

- Lack of employment opportunities
- Social misbalance and poverty

- Migration of young population to cities and outland

Last three evidences of regional weakness are mostly caused by global economy crisis, ineffective privatizations of industrial facilities and agricultural land. Migration of population represents the state of a bad economic situation and legacy of war conflicts.

### SWOT analysis of the Autonomy Province of Vojvodina

### Opportunities:

- Building infrastructure to Increase railroad, shipping and cycling transportation
- Exploitation of renewable energy resources
- Food production and flower growing
- Building natural waste water cleaning facilities in rural areas
- Setting facilities for recycling and biofuel production
- Afforestation of water corridors and contact zones of city and landscape
- Only 7% of Vojvodina territory is under the forest vegetation
- Positive environment for industry development

### SWOT analysis of the Autonomy Province of Vojvodina

### Threats:

- Environmental pollution caused by weak industrial waste management
- Environmental pollution caused by NATO air strikes champagne in year 1999
- Negative demographic situation and lack of employment opportunities
- Political tensions caused by bad economic situation
- Negative effects of ineffective privatization process

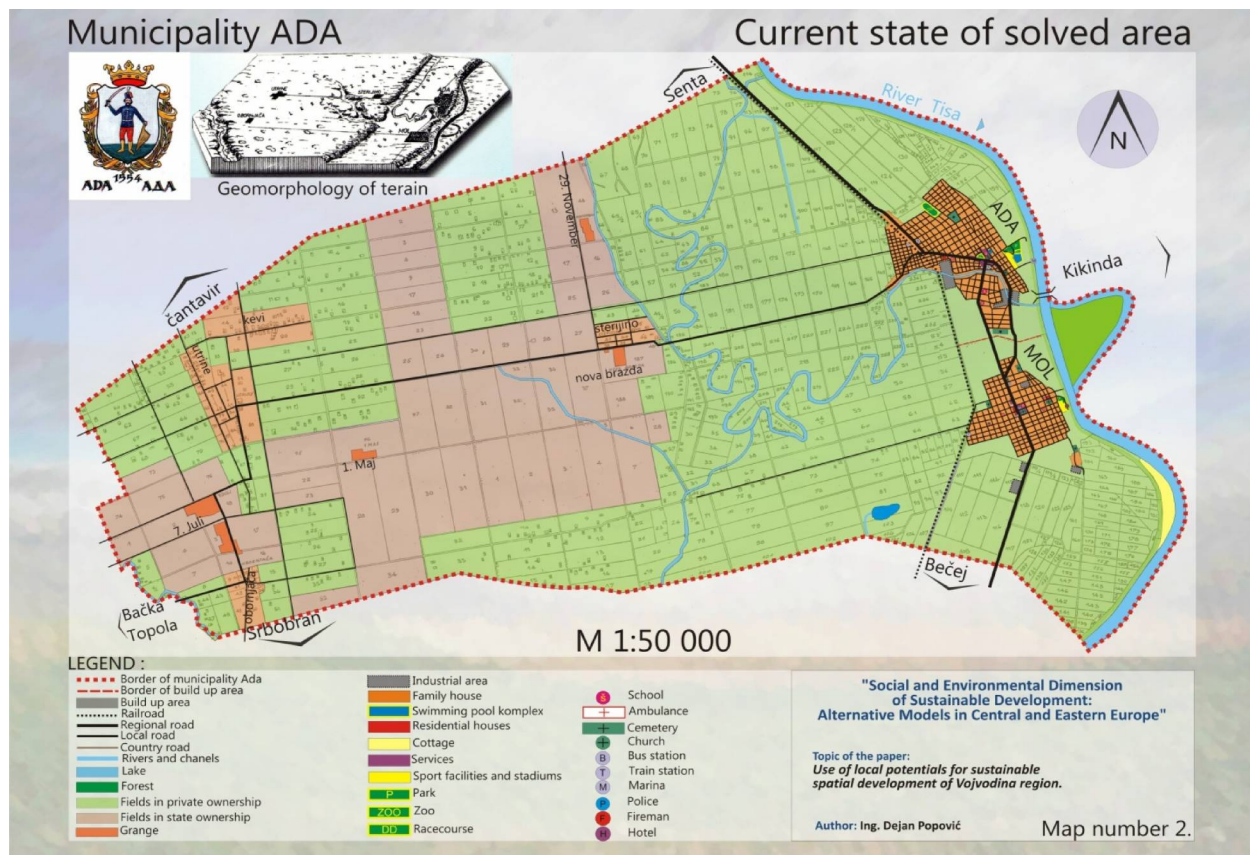
- Ineffective land management and energy efficiency

#### IV. Developing the Idea of sustainable development - ADA municipality case study - Introducing project PARES

Case study of spatial development of municipality Ada has one specific goal, to show philosophy of spatial development, and to offer motivation for use innovative elements in practical planning. Main idea was to rebuild past social and economical structure of region by using modern approaches and technologies. Main strongholds of Ada municipality spatial development are Sustainable energy supplying, low carbon industries and environmental friendly agriculture. Other main challenges lay in development of transportation systems and infrastructure. Ada municipality has large potential in tourism, recreation and services. Study aim for creation of urban and landscape structure in which the functions work, housing, recreation and nature are linked in one balanced system.

Important facilitating factor of rebuilding country side is property register, which classifying land as a building plot. That is important fact because it is possible to avoid processes of reclassification of high quality agricultural soil on building areas. Moreover, local legislation is a very long, complex and expensive process. We also need to consider opportunity for using a huge local renewable energy potential of the region for building decentralized energy supplying systems. This potential lies in exploitation of biomass from agricultural production and willow tree forests in the water flow corridors. Rivers and channels could be used for installation of many small power plants based on water flow energy use. There are many geothermal resources in the river Tisa and Danube basin that can be used for heating households and green house gardens. Plain terrain offers huge potential of use wind and solar energy resources. The main idea is that the future socio-economic growth of Vojvodina region lies in interconnecting decentralized agricultural production and independent energy supplying systems that are using local renewable energy potentials. All these proposals for spatial development of municipality are graphical visualized on maps that are additional part of a paper:

**Figure 2: Analysis of actual status of functional areas in municipality Ada**



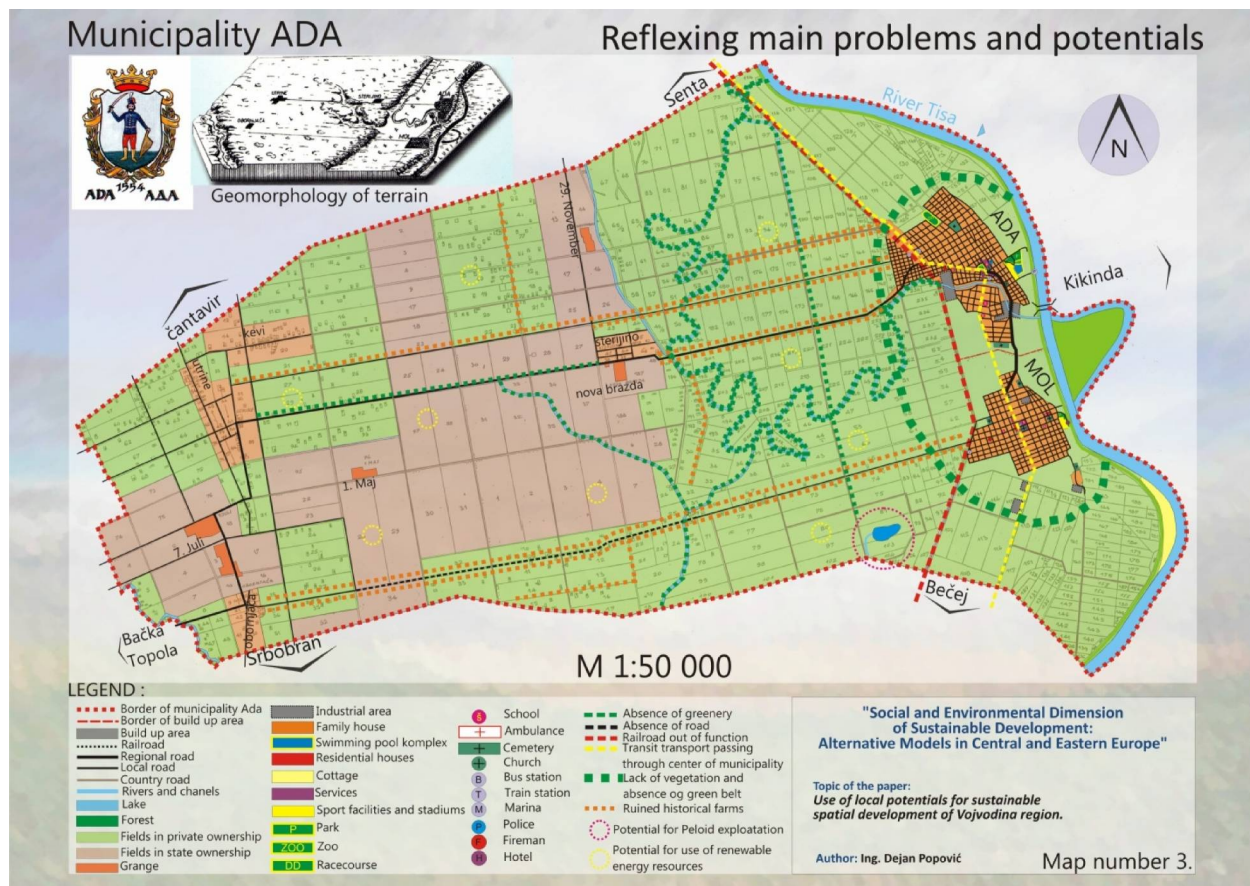
**Source:** Historical base map is obtained from Ada municipality cadastre office, coat of arms is obtained at the Ada municipality official website, available at: <http://www.ada.org.rs> , and other graphical parts are made by author.

Ada (Serbian: Ада, Ada, Hungarian: Ada) is a town and municipality in Serbia. It is situated near the river Tisa in Vojvodina province. Although the town is geographically located in Bačka, it is part of the North Banat District. The town has a population of 9,564, while Ada municipality has 16,991 inhabitants (2011 census). Inhabited places in Ada municipality includes the town of Ada, the nearby town of Mol (Hungarian: Mohol), and the following villages (Hungarian names are in italics): Utrine (Törökfalú), Obornjača (Völgypart-Nagyvölgy), Sterijino (Valkaisor) and Kevi. Ethnic groups According to the 2011 census the total population of the Ada municipality was 16,991, including: Hungarians = 12,750 (75.04%), Serbs = 2,956 (17.40%), Roma = 323 (1.90%)



and others and undeclared = 962 (5.66%). All local communities in the municipality have a Hungarian majority.

**Figure 3: Analysis of advantages and disadvantages for spatial development of Ada municipality**



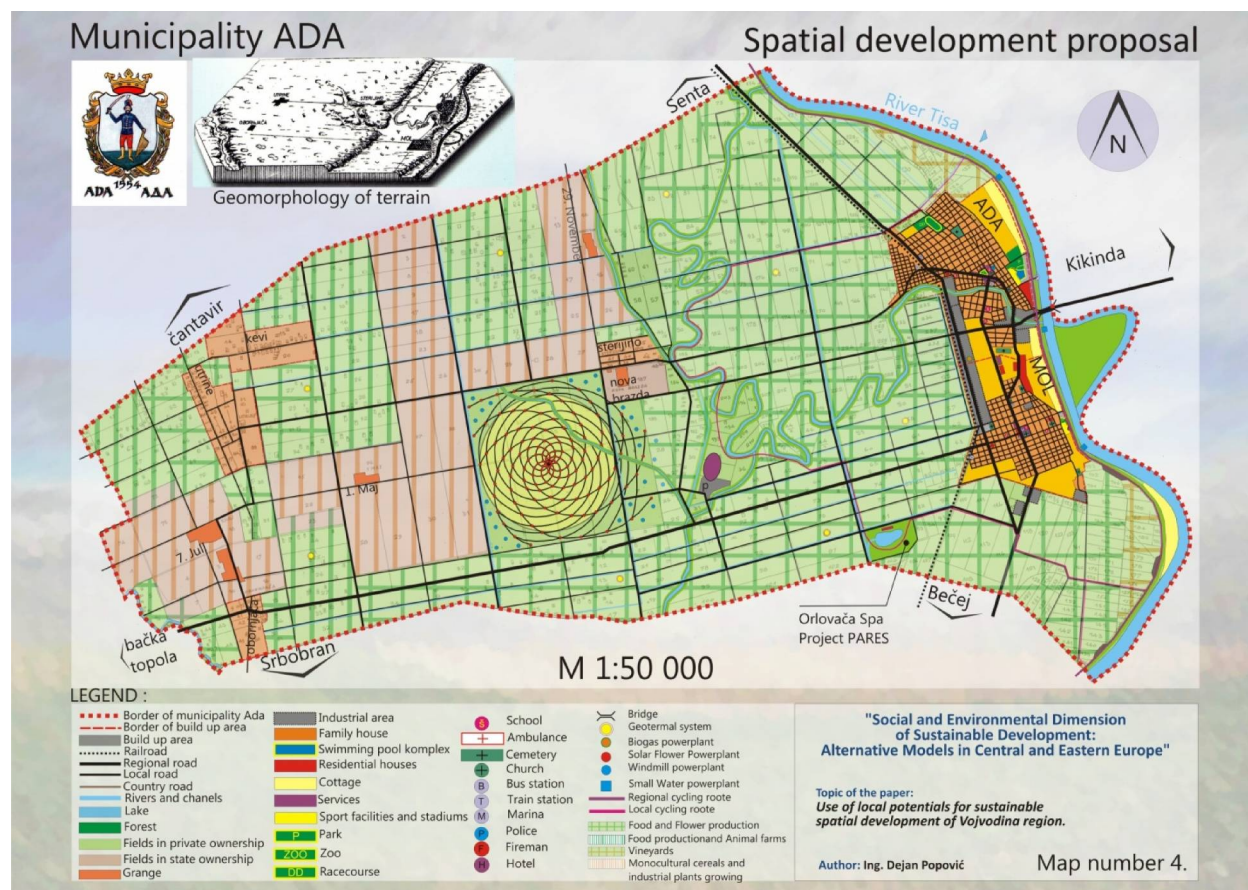
**Source:** Historical base map is obtained from cadastre office; Ada municipality coat of arms is obtained at the mayor's office, geomorphology of terrain picture is scanned from project PARES paper, other graphical parts are made by author.

Except all advantages and disadvantages in general that were mentioned before in swot analysis of Vojvodina region, Ada municipality meets most problems caused by unfinished transportation infrastructure constructing processes that will provide direct connection to the European highway network on corridor E-75. Also railroad network is collapsed and requires capital investments, same as compact sewage system, cycling routes, green infrastructure, etc. On the other side main potentials lay in environmental friendly agriculture and industries,



exploitation of many kinds of accessible renewable energy resources, transportation, and many kinds of tourism that Ada municipality environment offers.

**Figure 4: Urban design of physical structures and localization of functional areas included in sustainable development plan of Ada municipality**

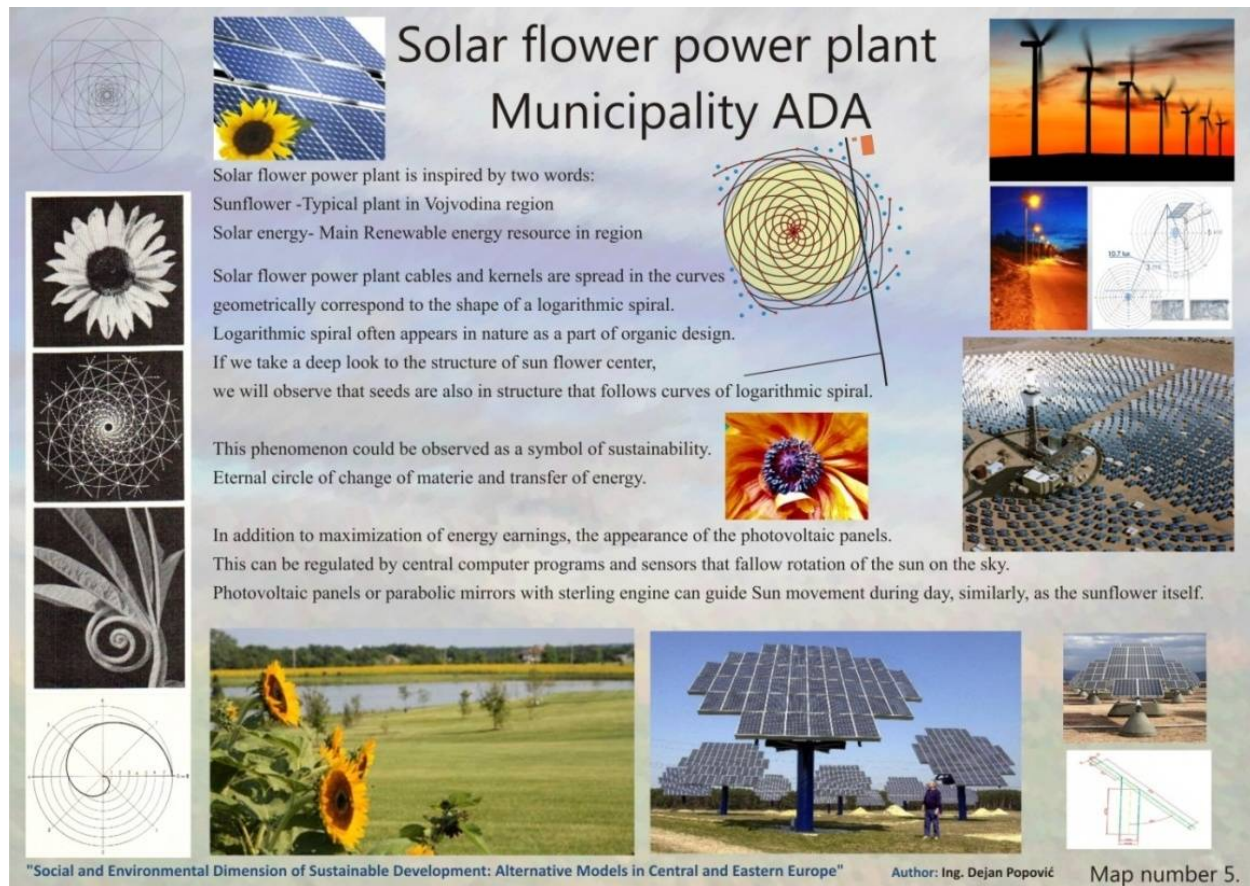


**Source:** Historical base map is obtained from cadastre office; Ada municipality coat of arms is obtained at the mayor's office, geomorphology of terrain picture is scanned from project PARES paper, other graphical parts are made by author.

This urban development proposal represents one complex spatial development plan, which includes all social, economical and environmental aspects appearing in municipality Ada. Its main goal is to ensure dynamic growth of local economy subjects, social inclusion and resolving ecological threats that appears in municipality and its contact zones. This platform should provide strong base for energy self-sufficiency by developing decentralized energy supply systems, healthy food production and economical growth by rebuilding eco farms and

infrastructure, in the same time with absolute respect of historical heritage, nature, and ecological principles of urban development.

**Figure 5: Promotion poster of Solarflower, Philosophy of sustainable power production**



Source: Text and graphic is made by author, pictures were taken from Google

## V. Introduction of project PARES - Possible application of concept in other contexts

Spa area, "Orlovača" is settled on the territory of municipality Ada in area of settlement Mol. It is positioned west from the highway Novi Sad Hungarian border, nearby the Tisa River. It is confirmed that in this area there are significant reserves of peloid (healing mud) and mineral



water which can be used for balneological purpose. There are several definitions of peloid (from Greek word pelos/[πηλος](#) - clay). According to Strasser and Godic: Peloids are geologically created product from non-organic and/or organic materials which could be used for healing by bathing or covering with them. So, peloid is nicely granulated, greasy and plastic natural product which applies nicely to body connects to water and has great warming capacity. Healing mud has an effect on body in several ways: thermally – by transmission of heat to organism, chemically – by resorbing of certain materials through healthy skin, and mechanically – by the effect of hydrostatic pressure.

**Figure 6: Ideal study of eco farm functional components disposition**



**Source: Graphical part of situation proposal and pictures were made by author.**

Therapy effect demonstrates in all tissues by expanding blood vessels and improving the circulation of blood and lymph. With this, elimination of harmful elements and regenerative

process in organism are accelerated. They are used for various diseases in the form of packaging (coating) and in the form of bathing: Degenerative rheumatism of peripheral joints and spine, chronic inflammation rheumatism, Fibrositis and cramps in muscles, post-traumatic conditions, neuralgic conditions, damage of peripheral joints etc. It is also successfully applied with thermo mineral waters. Local government and the management of municipality of Ada and local community of Mol in past years raised the question of use this natural resource and the restoration of the former spa. Opening such a complex has a special importance for the municipality of Ada and local community of Mol. The preconditions for the set goals are to perform complex geological research in "Orlovača". Peloid as basic application raw material should be analyzed as well as mineral waters which are going to be used for its preparation. In year 2009 a competition was opened in accordance to IPA Programme. The settlement near the border between Serbia and Hungary could take part in this competition. The local community of Mol in collaboration with hospital in Mako applied for this competition the project was approved and they were given 258 000 euros for research. The Government of the autonomous province and municipality of Ada also supported this project and financially helped. The aim of the project was to do a geological research on 5 ha of a former spa area "Orlovača". The goal is to confirm the reserves and quality of peloid regarding its use for medical purposes. Apart from peloid, the research should have included surface and ground mineral water. In the aim of realization of research work, the country of Mol, as the investor, signed a contract with "Technoproing" from Novi Sad in 2011. By the contract it was planned to perform wide range of research. The realization of the project has been done by "Technoproing" from Novi Sad, laboratories of NIS Novi Sad and "Geostim" from Belgrade. Primary analysis has been made by and there were excellent results<sup>415</sup>.

## Conclusions

At the end we would like to highlight that future regional development of Vojvodina region must focus on sustainability and more efficient using of natural resources. Author is

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<sup>415</sup> All information and data about project Pares are provided by materials and documents of working group, interviews and dialogue with members of the Pares project team.

clamping that spatial development of Vojvodina region must take place in several directions simultaneously. The main support points of sustainable spatial development are based in overcoming of socio-economic and ecological problems. In addition to address current urban problems connected with reduction of disparities between intensively cultivated agricultural land and human habitats environment, which is mostly situated in built-up areas. Specific buffer zones located in contact-zones of city and agricultural land in form of cities green belts. The aim is to create "green" strips of vegetation such as pad area which softens negative impact of intensive arable farming, such as for example, air pollution caused by dust, lack of shade places in summer period, conflicting picture of the country, increased need for using agricultural chemistry instead of traditional permacultural approach to the agricultural production. One of most reasonable proposal for resolving this environmental problem is to restore historical farms that were destroyed in communist era and forestification of water corridors. Good example was made in Sweden, by using willow tree for water and soil cleaning. In the same time there other benefits as a biomass and better quality of the environment. A test site was established in 1993 in the south-west of Sweden for studying a willow plantation as vegetation filter when irrigated with polluted agricultural drainage water. The soil was sand mixed with clay. The plantation was dense,  $2 \times 10^4$  plants per hectare. Five clones of *Salix viminalis* and *S. dasyclados* were planted. The plantation was cut back after the first year of establishment. In spring 1994 furrows with a depth of 20 cm were made between each second plant row. Water was pumped into these furrows and distributed within the stands during the growing period. The irrigation water used was drainage water from covered pipes which drained 700 hectares of intensively fertilized agricultural land. The nitrogen content of the irrigation water was about 10–17 mg/l of nitrate nitrogen. Ground water pipes were installed in the stands from which samples were taken for the analyses of groundwater nitrogen content. The plantation was irrigated from May to November with about 11 mm per day. The mean evapotranspiration from the plantation was 5 mm per day, on average. The excess of water percolated through the soil and the nitrogen was taken up by the well-established root system. The amount of nitrogen delivered during 1995 to the stands with the irrigation water was 185 kg N per hectare. The nitrogen content in the leaves varied from 25 to 47 mg N/g DM during the growing period. The stem wood production of two-year-old stools for the five clones was 19–22 tones DM/hectare. The high nitrogen content in the leaves and the biomass production during the first rotation period indicated that the willows were well supplied with nitrogen and that the stands function as a vegetation filter,

implying that the root system effectively took up and removed nitrogen from the irrigation water<sup>416</sup>. Other very useful solution for vegetation is poplar tree or cottonwood. There are few good commercial opportunities for use of cottonwood in process of Vojvodina forestification. For example it could be used as a natural business property border, pulpwood production, solid wood and biomass production, as a biofuel, for water cleaning and as a sludge disposal. Poplar trees have a single stem and a moderately spreading crown when open grown. They also grow more rapidly and are less susceptible to some diseases than the Lombardy poplar; the most commonly planted ornamental poplar. There are many residential and urban strong sides of poplar wood use as windbreaks, view shielding for privacy, fast shade growth, snow fences, and fast-growing landscapes. Of course there is important environmental aspect of using poplar and willow trees because of their nitrate uptake and deep rooting, hybrid poplars make good sense for buffer or "filter" planting along rivers and streams in agricultural areas, both in coastal and inland zones. Poplars are being used to clean contaminated soil and ground water from wide range of contaminants including petroleum hydrocarbons, chlorinated solvents, metals, pesticides, explosives and excessive nutrients. Specific environmental uses of poplars are topsoil erosion prevention, waste water treatment, river bank and stream restoration, wildlife habitat, riparian buffer strips. Sustainable spatial development of Vojvodina region must support low carbon industries, eco-farming based on supporting of rural tourism supporting local brands, such as healthy food, vine production, flower growing, spa and wellness centres. Regional development needs to support traditional activities as hunting & fishing, sports, hobbies and other free time activities that are promoting products and habits of local communities and their varied culture backgrounds. We need to transform ecological threats of today to economic opportunities of tomorrow by supporting local economic activities and innovations. We must think BIG and work HARD, in order to achieve social harmony and ensure economic prosperity, not only of the Vojvodina region, but for all other border regions.

...For better and brighter future of all of us...

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<sup>416</sup> Sune Elowson, *Willow as a vegetation filter for cleaning of polluted drainage water from agricultural land*, Swedish University of Agricultural Sciences, Department of Short Rotation Forestry, Uppsala, Sweden, 2012

*Special thanks: 'I want to thank my beloved family for constant support, deep understanding and sharing same visions.'*

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## SOCIAL ENTERPRISE MODELS FOR SUSTAINABLE DEVELOPMENT IN CENTRAL EASTERN EUROPE

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Cristina Sandu<sup>417</sup>

**Abstract:** *The aim of the paper is to identify the models of social enterprise in Central and Eastern Europe countries, as models for sustainable development. The expected result of the analysis is the possibility of shaping a model of social enterprise that could serve for analysing social enterprise through a sustainable development perspective. Research methodology: The sample of the research is represented by Central and Eastern Europe countries. By combining both qualitative and quantitative methods, the research is based on legislation analysis, data collection and statistical data interpretation.*

**Key words:** *social enterprises, sustainable development, Central and Eastern Europe*

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## Introduction

Many social sector institutions face financial and bureaucratic obstacles in satisfying the needs of citizens. Public, private and non-profit sectors try to find the optimal solutions in solving the problems related to social exclusion, poverty reduction, providing social services, unemployment, etc. By combining both social and economic objectives, social enterprise activity is based on producing and providing public services and goods and on the reinvestment of surpluses in this activity. Social enterprise involves a high degree of social responsibility and

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participation of the stakeholders.

## I. Shaping a common definition

The complexity of social enterprise derives from the variety of understandings and approaches of this concept. Literature presents different sides of social enterprise from “mythology” (Reid K., Griffith J., 2006) to consumer perspective (Allan B., 2005), business support (Hines F., 2005), capacity building (Todres M., Cornelius N., Janjuha-Jivraj S., Woods A., 2006), human resources management (Royce M., 2007) and sustainable development (Seelos C., Mair J., 2005).

Social enterprise faces a very difficult task, by combining both social and economic dimension within an organisation, by applying methods and mechanisms from business sector to social problems solving.

Good practices in the last years demonstrated that social enterprise can really “do it”. They are challenged to take up the business challenge and wear the enterprise “hat” and portray firstly, who and what they are (mission and marketing) and secondly, to demonstrate that they can do what they say they can (accountability and transparency)<sup>418</sup>.

But another great challenge for social enterprise is the one of multiple definitions that literature presents and all these definitions result from the complexity of understanding the meaning of social enterprise. In the light of these aspects, the aim of this section is to “mediate” on a common definition, offering the opportunity of shaping a “model” of social enterprise. In order to accomplish the aim, the analysis uses four definitions relevant in literature that make references to the main criteria of defining social enterprise.

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<sup>418</sup> Bull, M., 'Balance': *The Development of a Social Enterprise Business Performance Analysis Tool*, Social Enterprise Journal, 2007, Vol. no.3, Issue 1, p. 64

**Table 1: Definitions of analysis**

Author	Definition
1. OECD (OECD, 1999, <i>Social Enterprises</i> , OECD Publications, Paris, France, p. 9)	The positioning of social enterprises makes them an effective instrument for combating social exclusion, a vehicle for social cohesion and a place of socialization. In addition to their social purpose, they emphasize production of goods and services and participation in the life of the enterprise by all its stakeholders- volunteers, employees, managers, users, representatives of public and private bodies- which is by no mean an easy task
2. UK Department of Trade and Industry 2002 (Price, M., 2009, <i>Social Enterprise. What it is and why it matters</i> , Revised 2 <sup>nd</sup> Edition, FFLAN Ltd, Marea Britanie, p. 1)	Social enterprise are business wit primarily social objectives hose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners
3. John Pearce (Pearce, J., 2009, <i>Social Enterprise in Anytown</i> , Claouste Gulbenkian Foundation, UK Branch, Londra, p. 31)	There are six defining characteristics fundamental to social enterprise: 1) having a social purpose or purposes; 2) achieving the social purposes by, at least in part, engaging in trade in the marketplace; 3) not distributing profits to individuals; 4) holding assets and wealth in trust for community benefit; 5) democratically involving members of its constituency in the governance of the organisation; 6) being independent organisations accountable to a defined constituency and to the wider community
4. John Everett (Everett, J., 2009, <i>Developing and Supporting Social Enterprises in the Dublin Region. The Basis for a Comprehensive Strategy</i> , Smith Everett & Associates, Ltd, p. 3)	Social enterprise is “a financially sustainable organisation in the third sector that creates and/or distributes needed goods and services in order to benefit a stated community of geography or interest, either through the goods and services themselves or through the financial surpluses achieved. They engage in activities of a commercial nature in order to produce social and community gain.”

Source: author -adaptation by literature



## Analysis

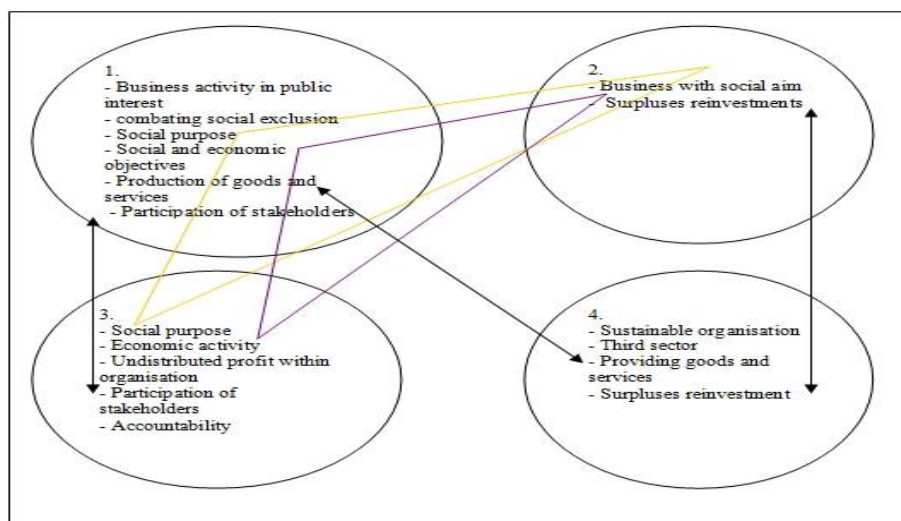
The methodology for achieving a unique definition of social enterprise concept is based on synthesizing and extraction of the essential elements from the presented definitions. By observing the main characteristics of social enterprise in each definition, Table 2 indicates the following common elements:

**Table 2: Common elements of definitions**

Definition	Main elements of SE
1. OECD	business activity in public interest; combating social exclusion; social purpose; social and economic objectives; production of goods and services; participation of stakeholders
2. UK Department of Trade and Industry	Business with social aim; surpluses reinvestments
3. John Pearce	social purpose; economic activity; undistributed profit within organisation; participation of stakeholders; accountability
4. John Everett	Sustainable organisation; third sector; providing goods and services; surpluses reinvestment

Source: author-adaptation by literature

**Figure 1: Identification of the common elements in the four definitions (triangle  represents social purpose triangle and triangle  represents economic purpose triangle)**



Source: author - adaptation by literature

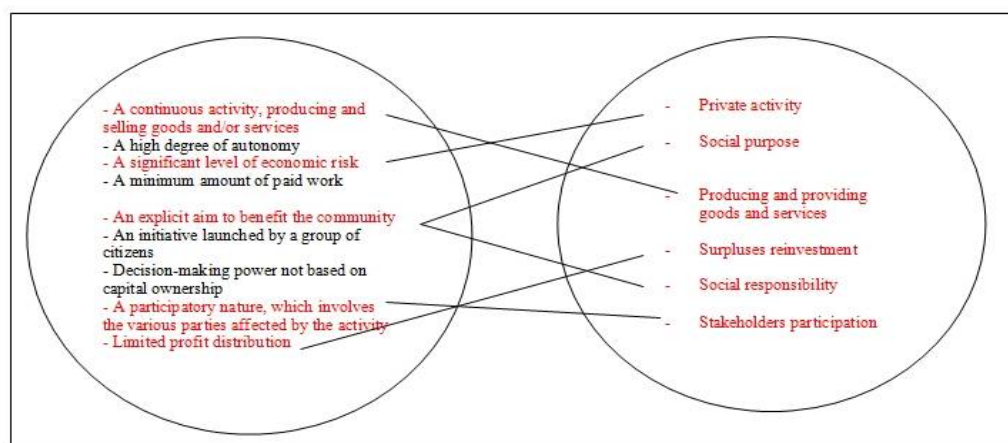
By identification and unification of the common elements, the analysis can provide a result-definition: social enterprise represents a type of business or private activity with social purpose based on producing and providing public goods and services and on the reinvestments of surpluses in this activity; it is characterized by a high level of social responsibility and a certain participation level of stakeholders.

### Validation of the result-definition

The result-definition can be compared with the EMES European Research Network definition, which characterises in M. Weber terms an “ideal-type” of social enterprise. The result-definition meets five criteria from the nine criteria of EMES definition, more precisely two economic criteria and three social criteria: an economic activity producing goods and/or selling services; a significant level of economic risk; an explicit aim to benefit the community or a specific group of people; a participatory nature, which involves the various parties affected by the activities; limited profit distribution.

Thus, in the result – definition social objectives are dominant on economic objectives, conferring to social enterprise more social features than economic features.

**Figure 2: Identification of common elements between EMES European Research Network definition and the result-definition**

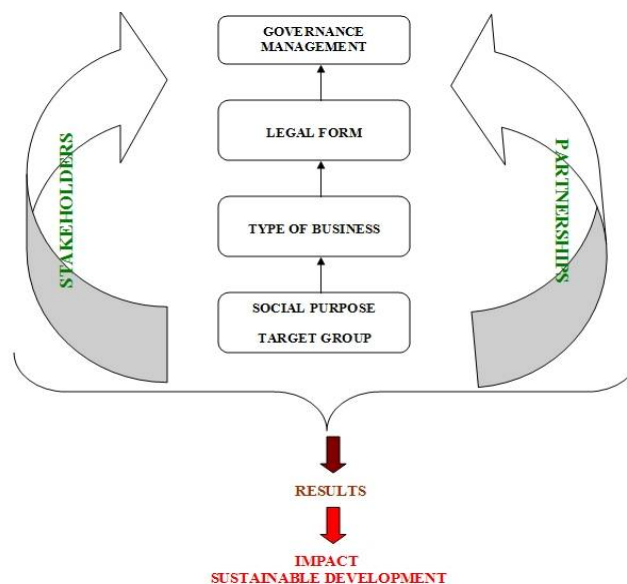


Source: author-adaptation by literature

## II. Shaping a social enterprise model

Based on previous analysis on obtaining a common definition, this section “dares” to shape a social enterprise model, using the result-definition elements. The aim of shaping a social enterprise model is to offer an overview of the main dimensions, especially for start-up social enterprise. This model represents an incipient stage of a “know-how” methodology of social enterprise (there will be future research on factorial analysis, risks analysis, etc.).

**Figure 3: Shaping a social enterprise model**



Source: author

### Comments

Figure 2 describes a possible model for social enterprise, which emphasis social, economic, legal and governance dimensions, but also stakeholders, partnerships, results and impact.

**Social dimension** has to be the main characteristic of social enterprise, by determining the social purpose of the activity, the social problem to be solved and the target/vulnerable group.

Social problems can be represented by social exclusion, unemployment, youth unemployment, disabled people, children with various problems (i.e. from single-parent families), elderly, minorities and ethnic problems, ex-convicts, homeless, victims of criminality, etc.<sup>419</sup>

**Economic dimension** is the second characteristic of social enterprise, by determining the type of business that will represent its activity. An analysis of the market segment is needed for identifying the risks, threats and the possibilities for investment and reinvestment of future surpluses.

The domains of activity can be education, culture, environment, social services, sports; by adapting a business plan to a social purpose.

**Legal dimension** is very important due the fact that it creates the legal framework and structure for each social enterprise. Social enterprises have various legal forms across the European countries (see next section), depending on each country profile.

There were identified social enterprise (Italy, Latvia, Finland, Lithuania), social finality company (Belgium), community interest company (UK), general interest cooperative (France), social initiative cooperative (Spain), social solidarity cooperative (Portugal), social cooperative (Poland), social cooperative of limited responsibility (Greece)<sup>420</sup>.

Regarding the **governance and management dimensions**, social enterprise as any other organisation needs a governing body and an efficient management of human, financial, infrastructure resources. The literature of social enterprises governance highlights two models that could be followed: stakeholder and stewardship theories<sup>421</sup>.

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<sup>419</sup> Matei, L., Sandu, C., *The Social Enterprise and Good Governance. A Comparative Analysis in Central-Eastern Europe*, the 20<sup>th</sup> NISPAcee Annual Conference, Ohrid, FYROM, 2012, p. 7

<sup>420</sup> Travaghini, C., Bandini, F., Mancinone, K., *Social Enterprise in Europe: Governance Models. An analysis of social enterprises governance models through a comparative study of the legislation of eleven countries*, 2<sup>nd</sup> EMES International Conference on Social Enterprise, Trento, Italy, 2009, pp. 22-25

<sup>421</sup> Borzaga and Solari, 2001; Dart, 2004; Low, 2006 in Doherty, B., Foster, G., Mason, C., Meehan, J., Meehan, K., Rotheroe, N., Royce, M., *Management for Social Enterprise*, SAGE Publications Ltd, London, UK, 2009, p. 218 in Matei, L., Sandu, C., *The Social Enterprise and Good Governance. A Comparative Analysis in Central-Eastern Europe*, the 20<sup>th</sup> NISPAcee Annual Conference, Ohrid, FYROM, 2012, p. 8

**Table 3: Governance models for social enterprise**

Aim	Ownership	Governance model	Perspective
For-profit	Shareholders have claim on assets	Stewardship	Shareholders
Non-profit	Assets locked in (sometimes cap on dividends)	Democratic	Stakeholders

Source: Low, 2006 in Travaglini, C., Bandini, F., Mancinone, K., *Social Enterprise in Europe: Governance Models. An Analysis of Social Enterprises Governance Models through a Comparative Study of the Legislations of eleven countries*, 2<sup>nd</sup> EMES International Conference on Social Enterprise, 2009, Trento, Italy, p. 10

### III. Social enterprise at national level. A comparative study

The comparative study focuses on four Central Eastern countries – Poland, Czech Republic, Romania, and Bulgaria, following the dimensions described in the model of social enterprise (Table 4). These four countries represent a big challenge due the fact that it is considered that in Central and Eastern Europe countries there are several obstacles that are slowing the growth of social enterprises, such as the dominance of the “transition myth”, which induced policies highly reliant on the creation of a free market and failing to appreciate the value of “alternative” organizations and enterprises as *bona fide* forces for local and national development (Borzaga and Galera, 2004).

#### 1. Legal dimension

In literature it is considered that most of social enterprises take the form of cooperatives or associations, but nothing can stop them from adopting other legal structures (Defourny, 2002: 18)

An overview of national legislations (Table 4) illustrates the fact that the most frequent

organizational forms of social enterprise in the target countries are associations, foundations, cooperatives, public benefit organization/corporation and some particular forms, such as protected units in Romania and housing and social cooperatives in Poland.

The legislative framework for social enterprise in the target countries is not a favourable one. In the last 10 years there was no new legal regulation, only amendments to the existing ones. The most recently adopted regulations are the Act on Social Cooperatives in *Poland* 2006, *Romania* the Law on Protecting and Promoting the rights of Disabled People 2006 and Law on Cooperatives, 2005.

This aspect can represent a threat to social enterprise development in Central-Eastern Europe countries, taking into consideration that in Western Europe countries there are specific legal regulation: Italy – Law on social cooperatives (1991), France – Law of the National Council of Work Integration Social Enterprise (1989), Finland – Act on Social Enterprise (2003), Lithuania – Law on Social Enterprises (2004).



**Table 4: Definitions in national legislation (Matei, L., Sandu, C., 2012)**

Type of organizational form	Poland	Czech Republic	Romania	Bulgaria
<b>Associations</b>	An association voluntary, self-governed and lasting non-profit union <sup>422</sup> (AP)	The citizens may establish associations, societies, unions, movements, clubs and other civic associations as well as trade unions (referred to as "associations") and unite in them. Associations shall be bodies corporate <sup>423</sup> (ACR)	An association is a subject of law constituted of three or more persons who, on the basis of an agreement, share, without being entitled to restitution, their material contribution, their knowledge and their lucrative activity, in order to accomplish activities of general interest, of community interest or, if such be the case, of their personal, non-patrimonial interest <sup>424</sup> (AR)	Associations shall be established by three or more persons united for pursuing non-profit activities <sup>425</sup> (AB)

<sup>422</sup> Law on Associations, 1989, art. 2(1)

<sup>423</sup> Citizens Civil Law Associations Act, 1990, 1993, Section 2 (1),(3)

<sup>424</sup> Government Ordinance on Associations and Foundations, 2000, 2003, 2005, 2008, 2011, art. 4

<sup>425</sup> Law on Non-Profit Legal Entities, 2000, art. 19 (1)

Type of organizational form	Poland	Czech Republic	Romania	Bulgaria
<b>Foundations</b>	A foundation may be established to pursue socially or economically useful objectives that are consonant with the basic interests of the Republic of Poland <sup>426</sup> (FP)	A foundation is a purposeful associations of assets established and originating in compliance of this act for the achievement of publicly beneficial goals <sup>427</sup> (FCR)	A foundation is a subject of law created by one or more persons who, on the basis of a legal act of will inter vivos or for cause of death, establish a patrimony designed permanently and irrevocably for achieving an objective of general interest or, if such be the case, of community interest <sup>428</sup> (FR)	Foundations shall be established in the lifetime or in the event of death by unilateral deed of establishment granting without compensation property for attainment of non-profit objective <sup>429</sup> (FB)

<sup>426</sup> Law on Foundations, 1984, art. 1

<sup>427</sup> Act on Foundations and Endowment Funds, 1997, Section 1 (1)

<sup>428</sup> Government Ordinance on Associations and Foundations, 2000, 2003, 2005, 2008, 2011, art. 15 (1)

<sup>429</sup> Law on Non-Profit Legal Entities, 2000, art. 33 (1)

Type of organizational form	Poland	Czech Republic	Romania	Bulgaria
<b>Cooperatives</b>	A cooperative shall be a voluntary association of an unlimited number of persons, of variable membership and variable share fund, which conducts joint economic activity in the interests of its members <sup>430</sup> (CP)	The cooperative is a community based non-restricted number of persons for the purpose of securing business or economic, social or other needs of its members <sup>431</sup> (CCR)	A cooperative society is an autonomous association of natural/legal persons, with the aim of promoting economic, social and cultural interests of its members, and being democratically governed by its members <sup>432</sup> (CR)	A cooperative shall be a voluntary organization of natural persons with variable capital and a variable number of members engaging in economic and other activity along the lines of mutual assistance and cooperation in order to meet their interests <sup>433</sup> (CB)

<sup>430</sup> Act on Cooperative Law, 1982, art. 1 (1)

<sup>431</sup> Commercial Code, 1991, Art 221 (1)

<sup>432</sup> Law on Cooperatives, 2005, art. 7 (1)

<sup>433</sup> Cooperatives Act, 1991, 1992, 1994, 1996, art. 1 (1)

Type of organizational form	Poland	Czech Republic	Romania	Bulgaria
Housing cooperatives	A housing cooperative is the cooperative that meets housing needs and other needs of members and their families, by providing members of the independent flats or houses and premises for other purposes <sup>434</sup>	no separate legal regulation (cooperatives legislation )	no separate legal regulation (cooperatives legislation )	no separate legal regulation (cooperatives legislation )

<sup>434</sup> Act on Housing Cooperative, 2000, 2007, 2009, art. 1 (1)

Type of organizational form	Poland	Czech Republic	Romania	Bulgaria
Social cooperatives	A social cooperative represents an activity of carrying out a joint venture based on the personal services of members <sup>435</sup>	no separate legal regulation (cooperatives legislation )	no separate legal regulation (cooperatives legislation )	no separate legal regulation (cooperatives legislation )

<sup>435</sup> Act on Social Cooperatives, 2006, 2009, art. 2

Type of organizational form	Poland	Czech Republic	Romania	Bulgaria
Public benefit organizations	Public benefit work shall mean work performed to the benefit of society by non-governmental organisations in the area of public tasks <sup>436</sup> (PBP)	The Public Benefit Corporation - legal entity which renders generally beneficial services to the general public and to all clients under identical terms and conditions and the profit of which may not be used for the benefit of its Founders, members of its bodies or employees and must serve to render the generally beneficial services for which it was established <sup>437</sup> (PCCR)	Associations and foundations can be recognized as being of public utility if specific conditions are met cumulatively <sup>438</sup> (PBR)	The non-profit legal entities defined as such pursuing activities for public benefit shall use their property for specific activities <sup>439</sup> . (PBB)

<sup>436</sup> Act on Public Benefit and Volunteer Work, 2003,2010, art. 3 (1)

<sup>437</sup> Act on Public Benefit Corporations, 1995, art. 2 (1)

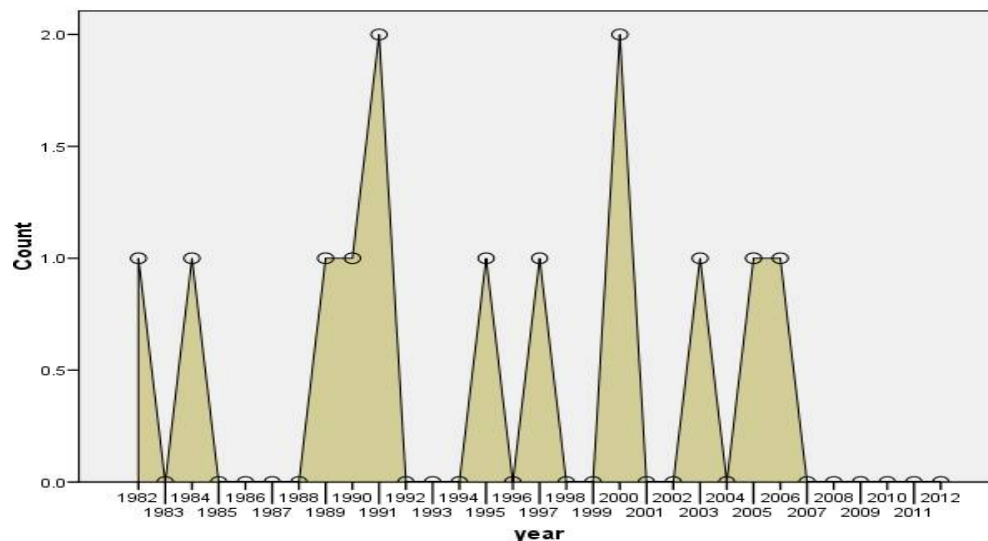
<sup>438</sup> Ordinance on Associations and Foundations, 2000, 2003, 2005, 2008, 2011, art. 38 (1)

<sup>439</sup> Law on Non-Profit Legal Entities, 2000, art. 38 (1)

Type of organizational form	Poland	Czech Republic	Romania	Bulgaria
Protected units	-	-	<p>The protected units may be established by any natural or legal person of public or private law hiring disabled persons.</p> <p>The protected units may be: with legal status/ devoid of legal status, with own administration, in the form of sections, workshops or other structures within economic operators, public institutions or within non-governmental organizations, and those organized by the disabled person authorized, as provided by law, to perform independent economic activities<sup>440</sup></p>	-

<sup>440</sup> Law on Protection and Promoting the Rights of Disabled People, 2006, art. 81, (1), (2)

**Figure 4: Intensity of regulations adoption 1982-2012 in target countries**



Source: author

### Common organizational forms

*Associations and foundations* in the four countries are organizations not-for-profit (non-profit), but the law stipulates the fact that they can carry out economic activities only related to achieving the purpose of the organizations and they shall not distribute the profit (Poland Law on Associations, 1989, art. 2(1), Law on Foundations, 1984, art. 1; Czech Republic - Citizens Civil Law Associations Act, 1990, 1993, Section 2 (1),(3) Act on Foundations and Endowment Funds, 1997, Section 1 (1); Romania - Ordinance on Associations and Foundations, art. 48; Bulgaria- Law on Non-Profit Legal Entities, art. 3).

M. Price (2009:21) describes *cooperatives* as a particular sort of social enterprise with a well-defined set of values and democratic principles, a long heritage based around the cooperative movement worldwide. The author characterizes a cooperative through its values: self-help, self-responsibility, democracy, equality, equity, solidarity.

When we analyze the legislative framework for cooperatives, there is a similarity with the associations and foundations legal provisions - the “newest” legal regulation on cooperatives is in Romania – Law on cooperatives 2005, which defines the cooperative society (different from



the other ones - cooperatives) (Poland -Law on Cooperatives, 2005, art. 7 (1), Czech Republic - Cooperatives Act, 1191, 1992, 1994, 1996, art. 1 (1), Bulgaria - Cooperatives Act, 1991).

*Public benefit organisations* are stipulated by specific laws in Poland and Czech Republic (in Czech Republic they are named public Benefit corporations) and in Romania and Bulgaria they are identified in the law for associations and foundations. The conditions for an association and foundation to become a public benefit organization are:

**Table 5: Conditions for association/foundation of becoming public benefit organizations in Romania and Bulgaria**

Romania	Bulgaria
<ul style="list-style-type: none"> <li>- its activity is carried out for general or community interest, as may be the case;</li> <li>- it has been operating for at least three years;</li> <li>it presents a report showing the development of significant prior activities, by carrying out programs or projects specific to its purpose, together with balance sheets and budgets of revenues and expenditures for the last three years prior to the date of submitting the request of recognizing the status of public utility;</li> <li>- the value of the patrimonial assets for each of the three years prior to the request is at least equal to the value of the initial patrimony</li> </ul>	<ul style="list-style-type: none"> <li>- development and strengthening of spiritual values, the civil society, health care, education, science, culture, engineering, technology or physical culture;</li> <li>- assistance to the socially disadvantaged, the disabled or the persons in need of care;</li> <li>- support of social integration and personal realization; protection of human rights or the environment;</li> <li>- other objectives such as may be determined by law</li> </ul>

Source: Matei, L., Sandu, C., 2012

## Specific organizational forms

*Protected units* are specific forms identified in the Romanian legislation (Law on protection and promoting the Rights of Disabled Persons, 2006).

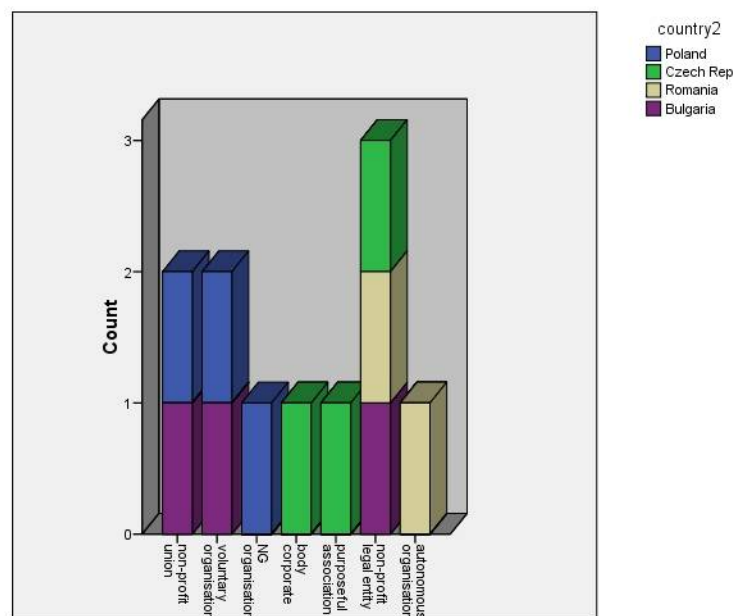
Protected units can be seen as WISE type, due the fact that it can be established by any natural or legal person of public or private law, hiring disabled people in economic activities.

*Housing and social cooperatives* are specific organisational forms in Polish legislation. They are stipulated by a specific legal framework, relatively recent adopted (2000, 2006).

Housing cooperatives refer for example to construction or acquisition of buildings for establishing a cooperative to members of the tenant rights contained in these residential buildings (Act on Housing Cooperative, 2000, 2007, 2009, art. 1 (2)).

Social cooperatives address in general social problems such as social and professional reintegration of its members or social, educational and culture businesse

**Figure 5: Distribution of organizational forms across the target countries**



Source: author

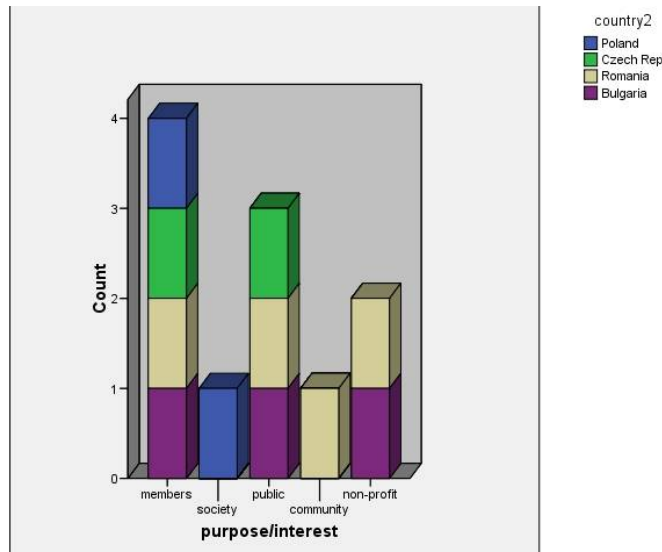
From the explanation in the law definition in each country, Figure 5 indicates that associations, foundations and cooperatives are in general non-profit union/legal entity or voluntary organisation (non-profit character on social enterprise).

## Social dimension

Social dimension in the definitions of the organisational forms is not clearly explained, they only refer to public/ community/ society/ members interest. This allows each social enterprise to establish by its particularities the social purpose and target group.

Analyzing the purpose/ interest of the organisational forms, Figure 6 Indicates the fact that social enterprise address in general to public interest (public interest<sup>441</sup> ≠ community interest<sup>442</sup> ≠ society interest<sup>443</sup>)

**Figure 6: Purpose/interest of organizational forms in the target countries**



Source: author

<sup>441</sup>the welfare or well-being of the general public-<http://dictionary.reference.com/browse/public+interest?s=t>, accesed at 10th September 2012

<sup>442</sup>a social group of any size whose members reside in a specific locality, share government, and often have a common cultural and historical heritage - <http://dictionary.reference.com/browse/community>, accesed at 10th September 2012

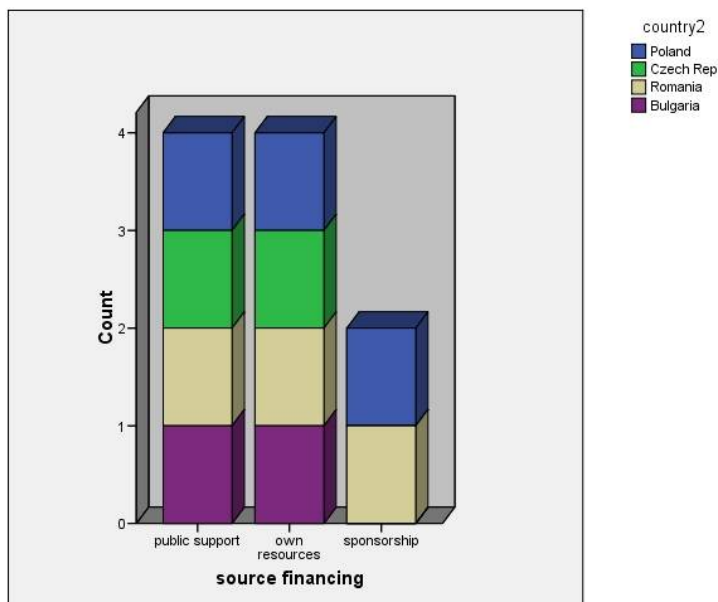
<sup>443</sup>an organized group of persons associated together for religious, benevolent, cultural, scientific, political, patriotic, or other purposes - <http://dictionary.reference.com/browse/society>, accesed at 10th September 2012

## Economic dimension

Economic dimension is characterised by various activities that the legal forms identified can carry out. The legislation in all four countries specifies the fact that they can perform economic activities, but only for achieving their social purpose.

Figure 7 indicates that in general the source of financing is represented by both own resources and public support, and in Romania and Poland they were identified also sponsorships (Polish Law on Associations art 3, Polish Act on Social Cooperatives art 15, Czech Act on Public Benefit Corporations art 18, Romanian Government Ordinance on Associations and Foundations art 46, Romanian Law on Cooperatives art 98, Bulgarian Law on Non-Profit Legal Entities art. 4, Bulgarian Cooperatives Act art. 2 and 32).

**Figure 7: Sources of financing in the target countries**



Source: author

## Results, impact and sustainable development

In literature there is a lack of case studies in Central Eastern European countries on results, impact and sustainable development of social enterprise.

In order to create a long term development strategy, social enterprise activity needs to be evaluated from the social, economic and environmental impacts perspective.

Although, from a legislative perspective (the activities specified in the legal provisions<sup>444</sup>), social enterprise forms identified in the four Central Eastern countries can be analysed through the light of sustainable development indicators.<sup>445</sup>

Following these indicators, the social enterprise form identified can perform activities for accomplishing the sustainable development indicators: real GDP per capita – through economic development, innovation, competitiveness and eco-efficiency, employment; resource productivity – resource use and waste; people at risk-of-poverty or social exclusion – monetary poverty and living conditions, access to labour market, education; employment rate of old workers; healthy life years and life

## IV. Limitations and future research

The research has its limitations, due the fact that the analysis was made on legislative framework at national level. The approaches of social enterprise in this research were in the light of legal provision, not including the practices at national level. Legislation does not provide information on results, impact and sustainable development within social enterprise.

Taking this limitation into consideration, a future research will focus on best practices as national level in the fourth Central-Eastern European countries: Poland, Czech Republic, Romania and Bulgaria.

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<sup>444</sup> Polish Law on Foundations art. 1, Polish Act on Cooperative art 1 (2), Polish Act on Housing Cooperatives art 1 (2), Polish Act on Public Benefit and Volunteer Work art. 4, Czech Act on Foundations and Endowment Funds Section 1 (1), Czech Act on Public Benefit Corporations art. 17 (1), Romanian Law on Cooperatives art. 4, Bulgarian Law on Non-profit Legal Entities art 38 (1), Bulgarian Cooperatives Act art. 63 (1)

<sup>445</sup> Eurostat <http://epp.eurostat.ec.europa.eu/portal/page/portal/sdi/indicators>, accessed at 11<sup>th</sup> September

## Conclusions

Shaping a common definition was necessary for shaping a model for social enterprise. Although there were used four (then five) definitions as references, the model could be shaped in order to analyse some legal forms identified in Central Eastern target countries (for a future research the analysis will include an increased number of definitions and countries – comparison by geographical position).

This model of social enterprise can be seen as “pilot model” in trans-national comparison, but it is limited in this stage of analysis to the legislative dimension (legislative texts).

The analysis conducted could provide some basic conclusions: in Central Eastern target countries there are legal forms of social enterprise- associations, foundations, cooperatives, public benefit organisation/ corporations- that can be functional forms from a sustainable development perspective; social enterprise can respond to the sustainable development strategy through its type of activities and socio-economic purpose; but there is a great need of research on impact and sustainable development of social enterprise at both European and national level.

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## DEVELOPMENT OR SECURITY?

# THOUGHTS ON THE FUTURE OF EUROPEAN LABOUR LAW THROUGH THE EXAMPLE OF HUNGARY

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Peter Sipka

***Abstract:** On 22 November 2006, the European Commission presented its Green Paper: Modernising labour law to meet the challenges of the 21st century.<sup>446</sup> The new vision clears that the original purpose and traditional model of labour law is no longer appropriate. On the other hand this way of developing competitiveness also means in many cases that the rights of the employee is cut. To avoid these kinds of withdrawal of the employee's rights the EU has to develop a legal framework containing EU minimum-standards to establish a "core of rights", which is the biggest challenge in the near future.*

***Keywords:** European labour law, Green paper, flexicurity*

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## Introduction – the peculiar character of European labour law

The cumulative body of European Union law, the *Acquis Communautaire* is made up of all acquisitions of the European Union, comprising founding treaties as well as regulations, decisions, directives issued by the European Union and judgments laid down by the European

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<sup>446</sup> COMMISSION OF THE EUROPEAN COMMUNITIES: GREEN PAPER: Modernising labour law to meet the challenges of the 21st century, Brussels, 22.11.2006, COM(2006) 708 final

Court of Justice. The primary objective of these sources of EU law is to create all conditions and legal framework necessary for the accomplishment of the EU's objectives, mostly economic in nature.<sup>447</sup> The EU is, however, more than a purely economic international organization, given the social aspect that was present from the beginning and has become more and more prominent over time. One of the first, but all the more pronounced manifestations of that is an early judgment by the European Court of Justice, the famous *Defrenne* case<sup>448</sup> in which the Court laid down the foundation of gender equality as a social standpoint, emphasizing at the same time that ameliorating the social standing of employees is an important objective of the Communities.

As a parallel tendency to that, member states have, from the Treaty of Rome on, always intended to expand the “social dimension” of the Community, which has been accomplished partly through the implementation of founding treaties, partly via concrete action programmes (e.g.: the Social Action Programme of 1974) and partly through issuing legal regulations that member states are also bound by. The social aspect evolved into two distinct branches. Thus appeared those rules that are pertinent to employment policy and those that deal with labour law in a narrow sense.

As a result, a significant part of current legal regime is made up of rules dealing with employment policy and labour law. Those two areas are meant to promote employment, to reduce unemployment and – as a result of the legal development of the past 30 years – to provide job quality, according to higher and higher standards, and to provide suitable working conditions. Norms related to labour law are peculiar in that regulation is carried out with the help of different legal means that are not equal in severity.

“Hard”, that is to say compulsory, means are used to regulate matters of labour law (work health and working conditions, working hours etc.), while “soft” (non-compulsory) propositions and political documents are used to influence areas such as social affairs, social dialogue, support to handicapped people etc.<sup>449</sup>

Legal rules exist on different levels, one parallel to the other, since certain questions are regulated by the member states, while others by the institutions of the EU. This is closely related

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<sup>447</sup>Bercusson B.: European Labour Law, second edition, Cambridge University Press, 2009, p.5.

<sup>448</sup>Case 43/75 *Defrenne v. Sabena* (No. 2.) (1976)

<sup>449</sup>See for example: Gyulavári T.: The history of the social dimension of EU In: The social dimension of EU, 2003, Miskolc



to the principle of direct effect which was established by the European Court of Justice in the *Van Gend en Loos* case. Therefore: *“European Economic Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only the member states but also their nationals.”*<sup>450</sup>

In order to minimize parallel legislation, the principle of subsidiarity was formulated.<sup>451</sup> According to that, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level..<sup>452</sup>

Another particularity of this field of law is its continuous contact with economy and other fields of legal regulation, since a number of individual changes (e.g.: free movement of workers, recognition of the equivalence of qualifications, acknowledgement of employment) demand a modification in labour regulation too.

At the same time, the appearance of EU-level regulation also provides the member states with a framework, according to what was formulated in an early judgment of the European Court of Justice: *“by contrast with ordinary international treaties, the eec treaty has created its own legal system which, on the entry into force of the treaty, became an integral part of the legal systems of the member states and which their courts are bound to apply ...the integration into the laws of each member state of provisions which derive from the community and more generally the terms and the spirit of the treaty, make it impossible for the states, as a corollary, to accord precedence to a unilateral and subsequent measure over a legal system accepted by them on a basis of reciprocity . such a measure cannot therefore be inconsistent with that legal system.”*<sup>453</sup>

As a consequence of all that, the EU's system of labour regulation is not a nominated EU policy in the conventional sense of the word, but a collection of partly “auxiliary” rules that are

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<sup>450</sup>Case 26-62., *NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration*

<sup>451</sup>Bercusson B.: *European Labour Law*, second edition, Cambridge University Press, 2009, 18. p.

<sup>452</sup>Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, Article 1., art. (3b)

<sup>453</sup>Case 6-64., *Flaminio Costa v E.N.E.L.*

primarily meant to lay emphasis on national employment policy, national rules of labour law, but, in certain cases (e.g.: working hours, temporary agency work), also manifest themselves as rules that bind member states.

In the present article, I intend to examine what kind of transformation the economic changes of recent years have resulted in, and to what extent the legal answers given to the economic crisis influence the situation of employees in both the short and the long term. My hypothesis is that as a consequence of the economic crisis, results associated to the “welfare society” acquired in the last couple of decades are going partly to be lost and partly to be transformed, and that the transformation in question, seen from the present, has a slim chance of later being restored

## I. Results obtained so far

Looking over EU documents on labour law from the past 30 years, we can remark that this field of EU law is continuously developing and widening itself, although the Treaty of Rome already contains provisions of a social kind and promoting employment.

At the same time, employment policy started really forcing its way forward in the middle of the 80s<sup>454</sup>, and member states endeavoured to closely co-operate in this field on summit meetings and by means of founding treaties. Parallel to that, the European Court of Justice contributed gradually to the reinforcement of employees' social security by its legislative interpretations.<sup>455</sup> The strengthening of the legislation procedure cannot be considered accidental, given the fact that this was the period when attempts were made to continuously expand the framework provided by classical institutions of labour law. That is to say, this was the period when non-standard (“atypical”) types of employment that had before been unknown

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<sup>454</sup>N. Bíró: Development of the EU regulation on employment policy, European and Hungarian Social Law, Debrecen, 2011, University Press, p. 19

<sup>455</sup>Società italiana petroli SpA (IP) kontra Borsana Srl., Case C-2/97., stb

and unfamiliar to the classical work organization or working time<sup>456</sup> started to appear and to be acknowledged.

The changes were largely provoked by a gradual transformation in the macro-economic conditions of economy. The price of energy sources started rising considerably, new technologies appeared, the development of information technology and communication gained extreme speed, which made it necessary to expand the framework of labour law,<sup>457</sup> not to mention changes in consumption habits that generated a demand for new kinds of services.<sup>458</sup>

We can see that all through this, in accordance with purposes and objectives declared by the European Union, the main objective was to elaborate measures with regards to the employees' rights and interests<sup>459</sup>, together with a highly-developed network of social criteria<sup>460</sup>, completed and assisted by legal regulations that are directly<sup>461</sup> or indirectly<sup>462</sup> aimed at the protection of the rights of employees.

This process seems to have been changing since the last third of the first decade of the 21st century the time when the emerging economic and credit crises narrows down the job and employment market of certain, mostly Eastern European member states to the point when governments of those member states were obliged to initiate such changes in legal regulation that were in fact a step backwards, compared to social protection norms accepted earlier, and were meant to promote flexible employment.

Naturally, all this did not mean that employees were simply “deprived of” certain rights, but that new legal frameworks were formulated in a way that, all in all, put employees in a worse situation, and the possibility to exercise some of the rights they had previously acquired decreased or ceased to exist.

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<sup>456</sup>Kiss Gy.: The chance of renewing the Hungarian labour law in connection with the labour policy of EU, Labour Law Announcement of Pécs, 1-2008. p. 9.

<sup>457</sup>Firlei K.: Flucht aus dem Arbeitsrecht, Das Recht der Arbeit, 1987/4-5, 271-289, 411-422

<sup>458</sup>Green Paper, 5. p.

<sup>459</sup>e.g. Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time

<sup>460</sup>e.g., Charter Of Fundamental Rights Of The European Union (2007/C 303/01)

<sup>461</sup>Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

<sup>462</sup>Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

The European Union took notice of the process, and took measures to ensure results previously obtained and to ameliorate economic competitiveness. It is clear that the legal security of employment can only be understood in terms of competitiveness (and flexibility), since the main task is to find the point where both principles can be applied on the highest level possible.

## II. Efforts to bring labour law up to date

At the beginning of the 21st century as an answer to new challenges of globalisation, it was put down in the so-called Lisbon declaration that *“The European Union is confronted with a quantum shift resulting from globalisation and the challenges of a new knowledge-driven economy. These changes are affecting every aspect of people's lives and require a radical transformation of the European economy. The Union must shape these changes in a manner consistent with its values and concepts of society and also with a view to the forthcoming enlargement.”*

The declaration draws an inventory of the strong and the weak points of the European Union in the field of employment. According to the strong points *“The Union is experiencing its best macro-economic outlook for a generation. As a result of stability-oriented monetary policy supported by sound fiscal policies in a context of wage moderation, inflation and interest rates are low, public sector deficits have been reduced remarkably and the EU's balance of payments is healthy. The euro has been successfully introduced and is delivering the expected benefits for the European economy. The internal market is largely complete and is yielding tangible benefits for consumers and businesses alike. The forthcoming enlargement will create new opportunities for growth and employment. The Union possesses a generally well-educated workforce as well as social protection systems able to provide, beyond their intrinsic value, the stable framework required for managing the structural changes involved in moving towards a knowledge-based society. Growth and job creation have resumed.”*

Among the weak points, the document highlights that *“the employment rate is too low and is characterised by insufficient participation in the labour market by women and older workers. Long-term structural unemployment and marked regional unemployment imbalances remain endemic in*

*parts of the Union. The services sector is underdeveloped, particularly in the areas of telecommunications and the Internet. There is a widening skills gap, especially in information technology where increasing numbers of jobs remain unfilled. With the current improved economic situation, the time is right to undertake both economic and social reforms as part of a positive strategy which combines competitiveness and social cohesion."*

The *Green Paper* ("Modernising labour law to meet the challenges of the 21st century") of the European Commission was published as a response to the Lisbon strategy, with the idea of initiating a public consultation within the EU on how labour law could evolve in order to support the aims of the Lisbon strategy, that is, to attain sustainable growth by creating more and better job opportunities. This included the intention of letting the objectives of both the EU and the member states prevail, such as realizing full employment, increasing workforce productivity and implementing social cohesion.

The greatest challenge within the process is to find how European labour markets could blend bigger flexibility with the biggest security that is possible to attain. That is a real issue, since aspiring to flexibility results in the appearance of various non-standard types of employment on the labour market, which on the one hand increases the rate of employment, but may, on the other hand, mean a step backwards from standard types of employment in connection the predictable income as well as the living and working conditions of employees.

The above-mentioned "Green Paper" summarizes topics demanding common thinking in six points:

1. employment transition

(between employment statuses in the most flexible way)

2. legal uncertainty

(examining and declaring boundaries and gaps between the area of civil and labour law)

3. temporary agency work

(legal relationship that insert a third party (agency) between employer and employee)

4. working time

(establishing minimal requirements necessary in connection with working time)

5. the mobility of workers

(assuring the consistent treatment of employees anywhere within the European Union)

6. undeclared work

(fight against undeclared work and propositions to resolve this problem by means of preventive measures as well as penalties)

The Commission intended – as it declared – to point out what the fundamental challenges are in harmonizing exigences of labour law and those of the labour market, and how to establish the legal structure that could best “serve” present-day economy.

This originates from accelerated changes in technology and modified macro-economic conditions of in the second half of the 80s, which made participants of the market “run away from” labour law, attempting to find legal constructions that would best suit their new possibilities. This process was accelerated by the economic crisis that obliged a number of countries, Hungary among them, to effectuate drastic changes in legal regulation of labour, which meant on the one hand considerable flexibility, but also restricting the rights of employees, justified by the necessity of that flexibility. By this latter phenomenon, I mean that in Hungary, for example, the necessity of the re-codification of labour law emerged, according to the legislative body, with the wish to better suit economic circumstances, but at the same time, a number of legal institutions that have no actual and direct impact on competitiveness were also modified.

In the rest of my paper, I wish to examine how the above-described processes actually took place in Hungary and what direct impact they had on employees.

### III. Changes in the legal regulation of labour in Hungary

Looking over the last couple of decades of labour law in Hungary, we can observe that prior to the “regime change” in 1989, the characteristics of socialist labour law prevailed. The state stood on one side as employer with the employee on the other one, but due to the economic set-up, no real competition could evolve within the country.

According to the socialist conception of labour relation, the economic-social content of that relation is essentially different, since employees ally their manpower to production tools owned by the state and the community, that is to say, production tools owned partly by themselves. This system did provide employees with a limited right to choose their workplace, but work was not merely an option for them; it was an obligation.

This regulation, however, made way to a very favourable legislation with regards to working hours, to overtime maximum, to compulsory breaks and rest periods, to responsibility and liability and to prohibitions of dismissal. Being competitive and effective was not a priority.

After the regime change economic reform proceeded quickly with an independent central bank forming, and considerable foreign capital flowing into the country.<sup>463</sup> Hungary was scheduled to become an associate member of the European Economic Community in 1992.

The new labour code (Act XXII of 1992 on the Labour Code) was adopted at this time, meant to disrupt earlier regulation at two important points. One of them is the recognition of market economy with regards to the labour market, the other one is to restrict legislation to the level of the so-called minimal standards in order to let the parties involved make decisions about specific parts of the labour contract themselves.

At the same time one of the main legal concepts of the Labour Code which significantly protects the employees rights was the so called “unilateral cogency” employment rule. This provision provides that the parties to a labour contract may agree on terms different from the statutory provisions of the Labour Code only in certain matters and only if such terms are more favourable for the employee than the statutory provisions.<sup>464</sup>

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<sup>463</sup> Bierman L., The New Hungarian Labor Law: A Model for Modern Dispute Resolution, American University International Law Review, Volume 7, Issue 3 Article 6, p. 453.

<sup>464</sup> Martonyi és Kajtár Baker & McKenzie Law Office: Breaking New Ground in Hungary: Summary of Selected Provisions of the Hungarian Labour Legislation, 1-1-2006, Cornell University ILR School DigitalCommons@ILR, p.1.

This regulation, valid in force for 20 years, ceased to be the primary source of labour law on the 1<sup>st</sup> of July 2012 when Law I of 2012, the new Labour Code tendered into force. The new regulation emphasized that the system in operation throughout the past 20 years failed to fulfil the expectations, and the contractual legal source system of labour law did not evolve in Hungary, although it is a specificity of European labour law. Therefore the legislative body intends to promote the institution of collective agreement on the one hand and to live up to the employers' expectations that stem from global competition. According to the theses for the regulation concept, this competition, propelled by globalisation, subjects all the components of employer operation, including the engagement of labour to the requisite of efficiency.<sup>465</sup> Businesses frame their structure and operations to adapt, as much as possible, to changes enforced by economic competition, and this clearly affects employment as well. Therefore the new Labour law may not be confined to the traditional labour law framework and the static definitions of labour law were replaced by teleological definitions linked to objectives.

In the explanation of the draft bill, a clear reference is made to the Green Paper as theoretical source, and, at the same time, a number of legal institutions that are remotely connected to the objectives designated by the Green Paper have been re-regulated by the new Code. One of the high-priority legislative objectives of the new Labour Code was to set out in which cases and to what extent it is required and reasonable to maintain traditional labour-regulated regulation. On the other hand during the process of legislation it was a central point not to weaken employment guarantees in general, all the less because there are great numbers of employees working for traditional large firms as well.<sup>466</sup>

As a result, the new Code has given rise to a number of “new” legal institutions, mostly in the field of atypical types of employment that result in a considerably more flexible employment, thus providing employers with what is necessary for flexible employment. According to the commentary of the Code atypical work refers to employment relationships not conforming to the standard or ‘typical’ model of full-time, regular, open-ended employment with a single employer over a long time span. Such forms are employment by more than one

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<sup>465</sup> Berke Gy. - Kiss Gy. - Lőrincz Gy. - Pál L. - Pethő R. - Horváth I.: Theses for the regulation concept of the new Labour Code, Labour Law Announcement of Pécs, 3-2009, p.162

<sup>466</sup> Berke Gy. - Kiss Gy. - Lőrincz Gy. - Pál L. - Pethő R. - Horváth I.: Theses for the regulation concept of the new Labour Code, Labour Law Announcement of Pécs, 3-2009, p.163



employer, division of a field of work, specification of the rules of agency, call on work, revision of rules on working and hours and breaks and rest periods, regulation of simplified employment, home-worker legal relationship etc.

At this point it must be mentioned that EU law clearly prohibits all kind of discrimination in the sphere of employment and industrial relations as well. (Discrimination may be defined as different treatment of individuals or groups /workers/ based on arbitrary ascriptive or acquired criteria such as sex, race, religion, age, marital or parental status, disability, sexual orientation, political opinions, socio-economic background, and trade union membership and activities.) It requires equal treatment of workers, regardless of working hours, duration of employment, place of work or the nature of the employment relationship. These concepts were of vital importance in the directives on part-time work and on fixed-term work. The other, rather positive, aspect of this modification of the Act is that the Hungarian regulation made an effort to approximate EU expectations, also considering judgments on each legal institution, decided by the European Court of Justice.

It is exemplary that, although the system of requirements concerning equal treatment has not changed, when establishing what “work of equal value” is, the legislative body does not disregard the state of the labour market. As a consequence, differentiation in payment in the case of employees working in different parts of the country does not violate the requirement of equal treatment.

This, in point of view, is highly problematic, since it is contrary to the above mentioned European approach. According to the new regulation, the compulsory minimal monthly wages and the guaranteed minimal monthly wages are determined – following a consultation in the National Economic and Social Council – by the Government.

The Government is entitled to designate different amounts as “smallest” for the compulsory wages of different groups of employees. The Government is also entitled by the new Labour Code, in order to conserve purchasing power, to adopt – following a consultation in the National Economic and Social Council – a decree that determines the expected degree of wage-rise and the amount up to which other benefits can be taken into calculation; all that to preserve

the purchasing power of those wages that do not reach the level determined by the rule on labour relation.

This regulation may be contrary to the *principle of equal treatment* which requires that all people, and in the context of the workplace all workers, have the right to receive the same treatment, and will not be discriminated against on the basis of criteria such as age, disability, nationality, race and religion.

The new Labour Code generally adopted the point of view of civil law, declaring that the parties, unless prohibited by law, can depart from the legal regulation in a separate agreement, which does not in all cases mean that the interests of the employee are taken into consideration. The problematic character of the civil law based approach is that when establishing the framework of labour relation and actual working, employer and employee are not in the same position. Employees are considerably defenceless, since in most cases, it is their and not the employer's interest to establish a labour contract, thus permitting employers to abuse their position. Thus it must be established in each case whether civil law or labour law elements are predominant, and the appropriate classification must be determined<sup>467</sup>.

It must be admitted, it is hard to find the good balance between the two aspects: civil law based approach can be more flexibility for the parties, and the principles of labour law can provide more security and lower competitiveness.

At the same time, the new Labour Code re-regulates the institution of dismissal in a way that is more favourable for the employer, and reduces legal consequences of an eventual unlawful termination of labour relation.

Another important change, disadvantageous for the employee, is the modification of the legal institution of compensation for liability. For the employer, it means that his earlier responsibility for damage caused in his "field of operation" was reduced to responsibility for damages in his "field of control" which is a smaller range. The reason for that was, according to the legislative body, that courts had a tendency to interpret this concept too broadly.

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<sup>467</sup> J. Hajdú: Labour Law in Hungary, Kluwer Law International, p. 47.

The new regulation introduces the concept of “foreseeability” when determining the amount of compensation. It means that the employer is not obliged to recompense for any damage the occurrence of which was, provably, not foreseeable at the moment in question. Judiciary practice will interpret this rule, especially in the light of the fact that this solution, adopted from civil law, cannot, at least in my opinion, be applied to employment relations.

Similar changes have affected the liability of employees, where the previous system of liability based on the principle of “culpability” has been replaced by the notion of “imputability”, borrowed from civil law. The basis of liability is that “the employee is obliged to recompense for damages caused by him infringing obligations related to his labour relation if he did not proceed as it could generally be expected in the given situation.”

At the same time, when determining the amount of compensation, the level of negligence is also an important factor. It can be settled that the transformation of the employment structure is conducive to a review of the original objectives of labour legislation because the predominance of the services sector partly involves different demands and different types of protection.

The re-regulation of certain rules was, according to the legislative body, carried out with respect to those of the Green Paper, the legislative body trying to recreate the regulatory environment established in the text published by the European Commission or can be deduced as its spirit. The new Labour Code, however, also effectuates modifications at points where their competition-inspiring nature is doubtful.

## Summary

We can see that some rules of the Green Paper appear in certain Eastern European member states already as part of legal regulation, which, on the one hand, is expected to provoke a long-term increase in employment (there is no information at my disposal at the moment of writing the present article), but also, necessarily, to put certain groups of employees in a disadvantageous situation, and that is a step back, compared to earlier legislation. The danger of this regulation also manifests itself in the extent to which these rules become part of the

economy, that is to say, if it will be “automatic” to return to the level of earlier welfare and protection after the economic crisis, during the expected era of economic development or if these rules mark a disadvantageous turn for the employees in the long term.

It is to be feared that reforms and unified regulation introduced in labour law as a reaction to the crisis will be embedded into the world of labour in a way that later becomes normative even after its justifiability becomes doubtful.

Modifications in labour law were carried out with reference to competitiveness, but the legislative body put no emphasis on their “temporary” character, that is to say, we cannot find any rule where a “return” to a regulation that is not disadvantageous for the employee would be formulated as an objective or purpose. (Unlike in Poland where “crisis” laws were made, modifying legal regulation only for a limited period of time.)

Therefore it is a serious task of European labour law to determine the necessity and designate the proportion of eventual directives that would mark the way for the member states with regard to this regulation.

The complexity of the question is partly due to the fact that weaker situation of employees can go together with higher competitiveness, since in those member states where employees are entitled to less benefits, shorter breaks and rest periods, less holiday, and where employers are bound by moderate rules in case of an eventual indemnification procedure, conditions are more suitable for investments and enterprises than in member states that are on a “higher level of protection”.

In addition to what I have described, I think, extending unified labour law regulations to most legal institutes possible can be justified, as it creates a unified framework for employers and contributes to the promotion of equality within the European Union.

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## COMPARISON OF VALUE ATTITUDES SLOVENIAN, HUNGARIAN AND CROATIAN CITIZENS ON SUSTAINABILITY USING VISUAL TRANSFORMATION OF THE RIVER LANDSCAPE

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Dina Stober

**Abstract:** *This paper deals with attitudes of national and cultural groups that share common river borders along the Drava and Mura Rivers. To assess people's perception of the visual attractiveness of different scenarios of river corridors' spatial development, a cross-cultural survey of Slovenian, Hungarian and Croatian students was conducted using photographic simulations and frame structured questionnaire.*

**Keywords:** *cross-border river area, visual transformation, Mura and Drava River area*

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## Introduction

Natural conditions extend over borders while political, governmental and some of the cultural influences track the national, territorial border. Despite the fact that the European continent is going through the process of political unification, Western and Eastern Europe still exist in a semantic, symbolic, political and cultural sense. Palang emphasizes that “the 20th century history left its imprint on the landscape of Eastern Europe”<sup>468</sup> and we can assume that differences arise from governances’ mechanisms that Penker defined as “markets, hierarchy, hybrid forms and networks”<sup>469</sup>. The lack of market and its hybrid forms (public-private partnership) in Eastern European countries, strong institutional hierarchy and centralism influenced the landscape differently than in the West. Eastern European culture values change through pre transitional, transitional and post transitional developmental phases. The changes in this part of Europe did not happen simultaneously, but dissonantly and in different intensity. How does this reflect on border landscape? How do its residents perceive it, through which values? Social values shape the frame we use to evaluate the environment, but also create the image of the landscape in the process of evaluation. Reasons for the lack of a greater number of studies of values and landscapes is in the complexity of researching the general value system linked only to an isolated element of landscape<sup>470</sup>. Possibility of an indirect research of these links can be studied through *value orientations, behaviour, preferences and attitudes*. “»Attitude« is defined by mental stance, while »preference« means liking one area of land or landscape better than another. »Perception« includes sensual responses to landscapes and attached meaning and value to it”<sup>471</sup>.

In line with this, the proposed research model asked for the variety of attitudes and values of different nationalities on common river landscape that is shared by these nationalities. The focal spatial area is the cross-border area of Slovenia, Hungary and Croatia with the Rivers Mura and Drava (Picture 1).

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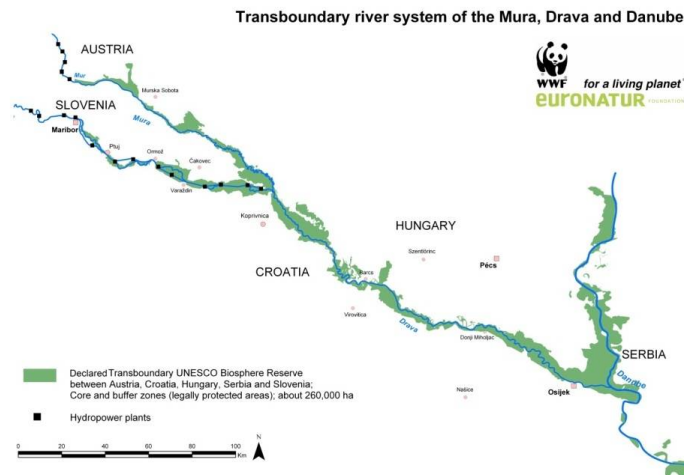
<sup>468</sup> Palang, H., et al.: The forgotten rural landscapes of Central and Eastern Europe. *Landscape Ecology*, 2006, no.21, pp.347–357.

<sup>469</sup> Penker, M.: Landscape governance for or by the local population? A property rights analysis in Austria. *Use Policy*, 2009, vol.26, no.4, pp. 947–953.

<sup>470</sup> Hunziker, M., Buchecker, M. and Hartig, T.: Space and Place—two aspects of the human–landscape relationship. In: Kienast, F., S. Ghosh, and O. Wildi. (ed.), *A Changing World—Challenges for Landscape Research*. (pp. 47–62), Landscape Series. Dordrecht, The Netherlands Springer. 2007

<sup>471</sup> Swanwick, C.: Society's attitudes to and preferences for land and landscape. *Land Use Policy*, 2009, vol.26, no.1, pp. 62–75.

**Picture 1: Danube-Drava-Mura Map UNESCO Biosphere Reserve to protect their shared nature and wildlife along the Mura, Drava and Danube rivers<sup>472</sup>**



A part of the Regional Park Drava-Mura Rivers is currently noted in the Declaration of the UNESCO Biosphere Reserve Mura-Drava-Danube Rivers, which is recently<sup>473</sup> signed by Austria, Slovenia, Hungary, Serbia and Croatia. Multiple levels of protection indicate the relevance and the character of the area. In the recent period some conflicts have appeared on different platforms. The conflicts can be classified as cross-border and inner national ones, reasons being the future hydroelectric power plants on the Drava and the Mura Rivers, the hydro technical design of the riverbank and different flood protection visions. Opposing attitudes have appeared between Slovenia and Croatia (the Mura River hydro plants); between Croatia and Hungary (the Drava River hydro plants), between Croatia and Hungary and the Croatian public opinion (the Drava River regulation) and some inner national conflicts have arisen between non-governmental environmental organisations and institutions. In order to plan the trans-boundary river projects efficiently, it is important to know if trans-boundary attitudes differ or overlap and what affects these attitudes.

<sup>472</sup> <http://wwf.panda.org/> (accessed on 20.03.2012).

<sup>473</sup> The International Coordinating Council of UNESCO's Man and the Biosphere Programme (MAB), meeting in Paris from 9 to 13 July, has added 20 new sites, including two transboundary, to the World Network of Biosphere Reserves (WNBR). <http://www.unesco.org/new/en/>

In this article we explore potential associations between environmental attitudes and river landscape preferences on a regional cross-border scale with an emphasis on the future development of the river area. The research questions are:

- Do cultural/national attitudes on border water resource differ in terms of aesthetic preference for different scenarios?
- What are the differences in values regarding visual river transformation?

## I. METHOD AND DATA

Nassauers' research findings on wetland landscape confirmed the hypothesis that "...cultural concepts of nature are different from scientific concepts of ecological function."<sup>474</sup> We shape landscape according to the political system we live in, the economic management of land and our aesthetic preferences, social conventions and all that is comprised under the label of culture, but that culture at the same time filters the perception of landscape<sup>475</sup>.

The aims of this study include the identification of different visions of future in a common transnational river area. Since the research was conducted on a convenience sample, generalisation on a national sample was not possible but national groups have been observed as different cultural groups according to cross-cultural literature overview<sup>476</sup>. Considering the expressed differences in higher order values between Hungarians, Slovenians and Croatians in world cross-cultural surveys<sup>477</sup> the results were expected to show that the differences are transferred to environmental values as well in attitudes toward river planning authorities.

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<sup>474</sup> Nassauer, J.I.: Monitoring the success of metropolitan wetland restorations: Cultural sustainability and ecological function, *Wetlands*, 2004, vol.24, no.4, pp.756-765

<sup>475</sup> Nassauer, J.I.: Monitoring the success of metropolitan wetland restorations: Cultural sustainability and ecological function, *Wetlands*, 2004., vol.24, no.4, pp.756-765

<sup>476</sup> Schwartz, S. H.: Value orientations: Measurement, antecedents and consequences across nations. In R. Jowell, C. Roberts, R. Fitzgerald, and G. Eva (Eds.), *Measuring attitudes cross-nationally - lessons from the European Social Survey*. London: Sage; 2006. Hofstede, G.: *Culture's Consequences: International Differences in Work-related values* Sage, Beverley Hills, California; 1984. Inglehart, R F., and Welzel. C.: *Modernization, cultural change, and democracy: the human development sequence*. New York, Cambridge University Press. 2005.

<sup>477</sup> World Value Survey 2010.; [http://www.worldvaluessurvey.org/wvs/articles/folder\\_published/article\\_base\\_54](http://www.worldvaluessurvey.org/wvs/articles/folder_published/article_base_54) (05-20-2011)



The methodology is basically quantitative (sampling, data analysis and data inference), but it also involves a qualitative data collection (the coding of respondents' open questions, graphic and written comments). The scenario technique and stakeholders participation are proposed as a convenient method for the study's aim to compare attitudes of different nations. Photorealistic visualisation proved to be a valuable instrument to collect stakeholders' opinion and an effective way to raise their willingness to participate as was shown by Tress and Tress<sup>478</sup>, Sheppard and Meitner<sup>479</sup>, Pettit et al.<sup>480</sup>. Most of the results are outside of the scope of this paper whose aim was to highlight frame differences among cultures. The original Croatian survey was translated into Slovenian and Hungarian language.

## II. SURVEY INSTRUMENT AND PROCEDURE

The questionnaire consisted of two distinctive parts. The first part consisted of the six sets of the original river landscape photographs and four photo montages of the planned scenarios, with a total of 30 scenes. The respondents ranked the images in the questionnaire. The printed dimension of the images was 6,00 x 8,00 cm in resolution 320 dpi as it had been shown as adequate in earlier studies<sup>481</sup>. A six pages long second part of the questionnaire was developed in order to measure the environmental attitudes and demographics. The responses were arranged on a 5 point Likert scale ranging from *strongly agree* to *strongly disagree* with added *don't know*, *don't want to answer* opinion. There were also open questions that were coded into clusters and linked to attitudes. According to Buijs<sup>482</sup> cited Gray, "a frame combines multiple functions: (i) Frames define issues; (ii) Frames shape actions and influence preferences for how a dispute should be resolved; (iii) Frames are used to justify our actions and (iv) frames are used to mobilize

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<sup>478</sup> Tress, B. and Tress, G.: Scenario visualisation for participatory landscape planning—a study from Denmark. *Landscape and Urban Planning*, 2003, vol.64, no.3, pp.161–178.

<sup>479</sup> Sheppard, S.R.J. and Meitner, M.: Using Multi-Criteria Analysis and visualisation for Sustainable Forest Management planning with stakeholder groups. *Forest Ecology and Management*, 2005, vol.207, no.1-2, pp.171-187.

<sup>480</sup> Pettit, C. J., Raymond, C. M., Bryan, B.A., Lewis, H.: Identifying strengths and weaknesses of landscape visualisation for effective communication of future alternatives. *Landscape and Urban Planning*, 2011, 100(3):231–241.

<sup>481</sup> Junker, B. and Buchecker, M.: Aesthetic preferences versus ecological objectives in river restorations. *Landscape and Urban Planning*, 2008, vol.85, no.3–4, pp.141–154

<sup>482</sup> Buijs, A. E., Arts, B. J.M., Elands, B. H.M.: Lengkeek, J. Beyond environmental frames: The social representation and cultural resonance of nature in conflicts over a Dutch woodland. *Geoforum*, 2011, vol. 42, no.3, pp.329-341.

others". In order to frame the interpretation of the results of the survey, questions were grouped in thematic clusters as shown in Table 1.

**Table 1: Number of items in survey frames**

Frame	No of items or questions in survey
Environment value orientations	8
Resources for planning riverscape and flood risk management	26
Attachment to the river	10
Policy preferences and authorities	16
Intrinsic and Extrinsic motivational orientations	8

### III. INTERNATIONAL SAMPLE

Slovenian, Hungarian and Croatian cultures are assumed to be three different cultures as they have not „a common dominant language, doesn't share mass media and national symbols“<sup>483</sup>. Nowadays all three nations have a democratic political system but they have had different political ways of achieving them. Once being a part of the common Austro-Hungarian state (until 1918) all three countries had a common political frame. In the period afterwards, Slovenia and Croatia retained a common political history during the second part of 20th century as being a part of the state of Yugoslavia. Slovenia became an independent country (1991) by secession whereas Croatia went to war (1992-1995) in order to achieve territorial sovereignty. Hungary was under a silent Russian occupation during the mid-20th century. In 2004 Slovenia and Hungary joined European Union and Croatia is in the period of accession. Schwartz compared the within and between-country cultural distances across various nations. He finds that the cultural distance between samples from different countries is greater than the distance

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<sup>483</sup> Schwartz, S. H.: Are there universal aspects in the content and structure of values? Journal of Social Issues, 1994, vol.50, pp.19-45.

between samples from the same country, suggesting a similarity of cultural value orientations within a nation that could be used as meaningful cultural units.

Therefore, an anonymous questionnaire was administered to students of different nationality. A total of 410 students (262 female and 148 male students) were involved, from three Universities – University of Ljubljana, Slovenia; Kaposvar University, Hungary, and University of J.J. Strossmayer in Osijek, Croatia. All three university cities are located on the river, Ljubljana on the Ljubljanica, Kaposvar on the Kapos and Osijek on the Drava River. The number of students from different countries was balanced, 122 from Slovenia, 139 from Hungary and 149 students from Croatia participated. The participants represent the young population, 82,1% of them aged 20-25; 12,3% from 16 to 19; 2,4% from 26 to 30; 1,7% from 31 to 35 and just 0,9% respondents are older than 35. The questionnaire gathered data on respondents' place of birth, classified as a large town, suburbs, a small town, a village and houses in the countryside. The answers represent the population almost equally distributed in large towns (26,7%), small towns (25,2%) and villages (31,4%) as it is relevant to attitudes toward the environmental protection according to Buijs et al.<sup>484</sup> and Sevenant and Antrop<sup>485</sup>. According to the fact that the sampled universities are situated in the cities with rivers nearby, all respondents had an equal opportunity to visit and stay in the river area, but different river-town relationship of the respondents' locations was taken into account when discussing the influence of experience.

#### IV. DATA ANALYSIS

The methodology is basically quantitative (sampling, data analysis and data inference), but it also involves a qualitative data collection, like the coding of the respondents' drawing interventions and open questions, but most of them are outside of the scope of this paper. The data collected in the survey were analysed by using the methods of descriptive and inferential statistics. In order to establish the correlation between the denoted variables, a bivariate correlation was used. In the case of ordinal variables the Spearman correlation coefficient was

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<sup>484</sup> Buijs, A. E.: Lay People's Images of Nature: Comprehensive Frameworks of Values, Beliefs, and Value Orientations. *Society and Natural Resources*, 2009, vol.22, pp.417–432

<sup>485</sup> Sevenant, M., Antrop, M.: The use of latent classes to identify individual differences in the importance of landscape dimensions for aesthetic preference. *Land Use Policy*, 2010, vol.27, no.3, pp.827–842.

calculated, and with the interval ones the Pearson correlation coefficient. In order to establish the latent structures among individual variables, factor analysis was used. Factor analysis used the method of principal components with a varimax rotation, and in extracting the number of factors the Guttman-Kaiser criterion was applied with the extraction limit for the eigenvalue of 1. As a criterion for factorial saturation, a value .40 was applied. In grouping the respondents according to the concepts the K-means, cluster analysis was used. The results of the factor analysis were used as input variables for the cluster analysis. Factor points for the identified three factors were calculated, so that in the cluster analysis it was suggested to group the respondents in three clusters.

For testing the differences in choosing the worst/best scenes a  $\chi^2$ -test was used (the selection was transformed into a dichotomous variable). In testing the differences in ranking the scenes, since we dealt with ordinal variables, a non-parametric test was used. Since the independent samples were involved, a Kruskal-Wallis H test was used. In all other situations the ANOVA test was used.

## V. DISTRIBUTION OF CULTURAL CLUSTERS IN RESEARCH FRAMES

The research was undertaken with a hypothesis that a large number of respondents, in accordance with their age, would confirm the proecological position of the younger population as confirmed on a global (Dunlap et al.<sup>486</sup>) and regional level (Šundalić and Pavić<sup>487</sup>; Cifrić<sup>488</sup>; Kantar et al.<sup>489</sup>). The total sample was divided by a factor analysis in three clusters defined as ecocentric, anthropocentric-egoistic and anthropocentric-altruistic and was tested for six items derived from the attitude research on the representative sample of Croatia by Cifrić (2008) and

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<sup>486</sup> Dunlap, R. E., Van Liere, K. D., Mertig, A. G. and Jones, R. E.: New Trends in Measuring Environmental Attitudes: Measuring Endorsement of the New Ecological Paradigm: A Revised NEP Scale. *Journal of Social Issues*, 2000, vol. 56:425–442

<sup>487</sup> Šundalić, A., Pavić, Ž.: Ekološka svijest mladih: između održivog razvoja i tehnocentrizma. *Socijalna ekologija*, 2007, vol.16, no.4, pp.279 – 296.

<sup>488</sup> Cifrić, I.: Socijalnoekološke orijentacije kao obilježja identiteta. In: I. Cifrić (ed.), *Relacijski identiteti: prilozi istraživanju identiteta hrvatskog društva*. (pp.185-216), Zagreb, Hrvatsko sociološko društvo, Zavod za sociologiju Filozofskog fakulteta., 2008.),

<sup>489</sup> Kantar S., Razum, O., Svržnjak, K.: Zaštita okoliša u stavovima i ponašanju studenata koprivničko-križevačke županije, *Socijalna ekologija*, 2009, vol.18no.2, pp.169-188.

the added items researched in the pilot study. In general, the results confirm the hypothesis ecocentric orientation of the young population at the level of environmental attitudes (Table 2).

**Table 2: Distribution of cultural/national groups in clusters according to environmental orientations**

			Cultural/National Cluster			Total
			HU	HR	SLO	
Environmental orientation	Ecocentric	N	75	30	33	138
		within Cluster	54,3	21,7	23,9	100,0
		within Total Sample	59,1	19,2	30,0	35,1
	Anthropocentric egoistic	N	41	35	37	113
		within Cluster	36,3	31,0	32,7	100,0
		within Total Sample	32,3	22,4	33,6	28,8
	Anthropocentric altruistic	N	11	91	40	142
		within Cluster	7,7	64,1	28,2	100,0
		within Total Sample	8,6	58,3	36,4	36,1
Total		N	127	156	110	393
		within Cluster	32,3	39,7	28,0	100,0
		within Total Sample	100,0	100,0	100,0	100,0

The shift of the Hungarian respondents toward the ecocentric environmental orientation negates the hypothesis of the more expressed proecological attitudes of the Slovenian respondents regarding the position on the map of expressive values conducted by fifth Vave of WVS<sup>490</sup>. It may be supposed that other variables influenced such distribution of the respondents in environmental orientations. Since Hungary has been promoting a negative hydropower policy which has over the years influenced the refusal of the Croatian and the critique of the Slovenian intentions to build the plants on the Drava and the Mura Rivers, it is assumed that the long-standing and consequential political position influenced the forming of

<sup>490</sup> <http://www.worldvaluessurvey.org/>

such cultural values. Besides the cultural accumulation, attention should be given to a possible interpretation through a kind of the “image of the nature”<sup>491</sup> and the transaction of images within different experience clusters.

Swanwick<sup>492</sup> and Kaur et al.<sup>493</sup> mention the importance of familiarity with the space in line with preferences. Ryan<sup>494</sup> found the correlation with land use and length of residence: “Length of residence had a strong, significant influence on how much value participants placed on the natural areas along the river, such as woods, wildlife, and quiet location. Newer residents felt that these characteristics of riverfront land were much more valuable than did long-time residents. This supports the notion that long-time residents may appreciate developed areas equally as much as natural areas, while newcomers are more biased towards natural areas”. Within the *attachment to the river* frame, a group of Croatian students and anthropocentric-altruistic oriented respondents stand out as those who spend their time in the river area most frequently, as well as the Hungarian respondents who spend their time in the river area least frequently (Table 3).

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<sup>491</sup> Buijs, A.E., Pedroli, B. and Luginbühl, Y.: From Hiking Through Farmland to Farming in a Leisure Landscape: Changing Social Perceptions of the European Landscape. *Landscape Ecology*, 2006, vol.21, no. 3, pp.375-389;  
Van der Windt H. J., Swart, A.A., Keulartz, J. Nature and landscape planning: Exploring the dynamics of valuation, the case of the Netherlands. *Landscape and Urban Planning*, 2007, vol.79, pp.218-228.

<sup>492</sup> Swanwick, C.: Society's attitudes to and preferences for land and landscape. *Land Use Policy*, 2009, vol.26, no.1, pp.62-75

<sup>493</sup> Kaur, E., Palang, H. and Sooväli, H.: Landscapes in Change – Opposing Understandings and Valuations, *Landscape and Urban Planning*, 2004, vol. 67, no.1-4, pp.109-120.

<sup>494</sup> Ryan, R. L.: Local perceptions and values for a midwestern river corridor. *Landscape and Urban Planning*, 1998, vol.42, pp.225-237

**Table 3: Frequency of visiting river area respondents different nations and environmental orientations**

Frequency of visits	Population by nationality			Population within typical clusters		
	HR	HU	SLO	Ecocentric	Anthropo egoistic	Anthropo altruistic
frequently, daily or several times a week	72,8	19,7	57,1	43,2	42,5	69,4
rarely, several times a year	23,5	65,0	37,0	46,8	49,6	24,3
very rarely, once every few years	2,5	13,1	4,2	8,6	5,3	4,9
never	0,0	1,5	0,8	0,7	1,8	0,0

As has been hypothesized according to the results from previous studies, young population expressed their unique position that intrinsic values are more valued than the extrinsic ones, so that the framework was not relevant as a frame which could identify clusters of interests.

## VI. FRAME POLICY PREFERENCES IN RIVER MANAGEMENT AND AUTHORITIES

Within policy preferences there were four questions asked, and the respondents answered to 16 items.

The first question defines the respondents' *confidence about the managing and decision-making institutions at different levels*. The levels are defined as: national, regional and local levels. The institutions at those levels are optionally combined with interested subjects in decision-

making participation: non-governmental organisations, scientists and experts, population by the river and owners of land by the river.

The second question defines the respondent's attitude on *the relation of the national wealth and the responsibility for the ecological problems*. It is assumed that respondents from Hungary and Croatia, as countries with a lower GDP, would expect greater aid and responsibility from the countries with a higher GDP.

The third and the fourth question asked for the respondent's attitude on whether *the border river area should be regulated by international agreements and put the question on the topic of common agreements*. We expected positive attitudes that had been already existing, long-standing transboundary cooperation. The cooperation between Austria and Slovenia on the Drava and Mura Rivers dates back to 1954 (Slovenia was then within the state of Yugoslavia) and covers all issues that might have a negative effect on the rivers. There is a permanent Austrian – Slovenian Commission dealing with all related issues. A Croatian - Hungarian Water Management Commission has been created under the Agreement on Water Management Relations signed by the two countries in 1994. Sub commissions have been set up among others for Drava and Danube water management. The 1996 agreement between Slovenia and Croatia also covers water resources in the Drava and Mura basins (ECE/MP.WAT/2009/8). A project has been developed by Croatia for the preparation of an Integrated River Basin Management Plan for the Drava River.

## VII. RESULTS OF THE FRAME POLICY PREFERENCES IN RIVER MANAGEMENT AND AUTHORITIES

The results shown below in Table 4 clearly show weakest support for the *civil services at the national level* as authorities responsible for river planning and management which are ranked with lowest scores ( $M=2,45$ ;  $SD=1,015$ ;  $N=402$ ) in total sample as in all cultural clusters.



**Table 4: The general statistical results of the students' opinion on the subjects of international agreement**

River area is managed by different institutions and groups at different levels – national, regional and local. In your opinion, who understands the best the problems of the river?				
		M	SD	N
1.	civil services at the national level	2,45	1,015	402
2.	civil services at the regional level	2,93	1,003	406
3.	civil services at the local level	3,41	1,038	406
4.	non-governmental organizations for environment protection	4,05	0,894	411
5.	scientists and experts	4,13	0,882	415
6.	population by the river	3,76	1,015	417
7.	owners of the land by the river	3,28	1,130	414

**M-mean score, SD-standard deviation; N –number of respondents**

Results distribution is asymmetric for all items except for the item of the civil service at the regional level, where there is a high percentage of the undecided (32,5%) whereas other respondents in the same percentage of 31,6% neither agree or disagree with the statement that the enlisted stakeholders understand the problems of the river area. The results indicate that there is agreement for the following subjects: civil services at the local level, non-governmental organizations for environment protection, scientists and experts, population by the river, owners of the land by the river. The greatest difference among cultural groups can be found in the attitudes to the subject of *population along the river* as planning authorities ( $F=34,911$ ;  $p=0,000$ ); Hungarian and Croatian students thus find as most acceptable *scientists and experts* as planning authorities, whereas Slovenian respondents gave the highest mean score to the *population along the river*. Awareness of the importance of population's participation is highly shown among Slovenian students.

The attitude on managing cross-border rivers with common international bodies is homogenous and positive for all respondents ( $M=4,13$ ;  $SD=0,901$ ;  $N=412$ ). There is a statistically

significant differences ( $F=4,042$ ;  $p=0,018$ ) that points out Hungarian respondents more positive attitudes than Croatian and Slovenian respondents.

The attitude on managing cross-border rivers by international agreements weakly correlates positively ( $\rho=0,298$ ,  $p<0.01$ ) with the attitude that institutions at local levels should be responsible for the problems of rivers at the level of the total sample. Similarly, there is a weak positive correlation ( $\rho<0,2$ ;  $p<0.01$ ) with all suggested topics of international agreements (building hydropower plants, reservations, ecological problems, nature parks and residential areas) except for freeways and tourist zones. None of the correlations was established for the framework *attachment to the river*.

The result distribution on question on *relation between the economic status of the county and responsibilities* decidedly symmetric (Table 5) for the total sample pointed to a question of which respondents support the attitude and which do not.

**Table 5: The general statistical results of the students' opinion on international agreements and obligations with respect to the economy**

4. Rivers flow through several countries and so transfer the influence downstream and into the wider area. To what degree do you agree with the following statements?									
		1	2	3	4	5	M	SD	N
1.	Border rivers should be managed by common international bodies.	1,7	3,8	12,7	41,5	37,5	4,13	0,901	412
2.	Wealthier countries through which the river flows should take more care about the ecological problems than the less developed countries.	19,1	18,2	16,7	24,1	20,5	3,09	1,426	418

1-do not agree at all; 2- do not agree; 3- neither agree nor disagree; 4- do agree; 5- totally agree;  
M-mean score, SD-standard deviation; N -number of respondents

Among the respondent groups there is a statistically significant difference between the groups of Hungarian, Slovenian and Croatian respondents ( $F=4,042$ ;  $p=0,018$ ). Hungarian respondents show the strongest support to this claim. Slovenian respondents ranked that attitude with a lower mean score. As hypothesized earlier, the difference in Gross domestic product per capita may serve as an interpretation for this result.

The next research topic was what respondents supported as *topics of international agreements which proposed seven themes (Hydropower plants, Reservations, Environmental problems, Waterways, Touristic zones, Nature parks and Residence zone)*. The results show statistically significant differences among national clusters for all topics except for the topic of *reservations and ecological problems*. Result frequency indicates that the highest difference was expressed for *nature parks* ( $F=11,294$ ;  $p=0,000$ ;) that has highest support from Hungarian students ( $M=4,49$ ) while Croatian ( $M=4,05$ ) and Slovenian ( $M=3,98$ ) also show positive but slightly weaker support.

## VIII. DISCUSSION

The situation on the Drava and the Mura River multiple borderlands is a complex upstream-downstream Austrian-Slovenian-Croatian historical puzzle, including the conflict of the two common banks (Slovene-Hungarian and Hungarian-Croatian). The Austrian experience of the consequences of building hydroelectric power plants on the Drava and the Mura resulted in a series of revitalization projects. At the same time they provide the building of a new one, the „Gossendorf“ hydroelectric power plant at the Mura in 2012. The Hungarians proclaimed their pro-environmental position in 1996, when they founded the Danube-Drava National Park, and five years later prevented the Croatian energy experts to construct the Novo Virje hydroelectric power plant on the Drava. Within the Croatian territory itself there are high tensions between non-governmental ecological organizations linked to the area of the Drava and Mura rivers and the state level that both suggested and withdrew the project. The regional level represented the environmental interests and protested against the Slovenian plan of eight hydropower plants on the Mura, appealing against it to the Hungarian county of Zala.

The first research question asked at the beginning of the paper was: *Do national/cultural attitudes differ on border water resource in terms of aesthetic preference for different scenarios?* The established differences in attitudes confirmed the cultural/national influence most highlighted in the frame on policy preferences. Since the research was conducted on a convenience sample, the results were not interpreted by generalising on a cultural/national level. The distribution of respondents observed as cultural/national clusters into environmental orientations and attitudes related to the planning and managing the river area indicate that there is heterogeneity within the cultural/national position in evaluating space. The general attitude of all respondents is proecological and they prefer the river landscape in a context of total landscape. Hungarian students were the most consequential in confirming their proecological attitudes toward river area transformation. The Slovenian and Croatian respondents were quite equally distributed in all three environmental orientations. The results offer an impression contrary to the expectations in reference to the position of Hungarian society on a WVS map so that it was supposed that it would advocate less the post-modern values of environment protection. It must be mentioned that there were limitations of the mono functional scenarios. Such results guided the attention toward the frame *attachment to the river* where the greatest differences is shown among cultural/national groups. Considering the different character of experience of the river area shown by the respondents across the three nations, it may be assumed that the different “images of the nature”<sup>495</sup> at the level of the river landscape, familiarity and emotion at the level of the river area influenced the varied evaluation of the respondent groups.

## Conclusion

A single dominant language, an educational and political system, shared mass media, markets, services and national symbols can produce substantial sharing of culture in nations that have existed for some time. The research confirmed that there are cultural and national differentiation in respondents' attitudes, students from the universities in Ljubljana, Kaposvar and Osijek. All young participants prefer river areas more than other natural landscapes and

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<sup>495</sup> Buijs, A.E., Pedroli, B. and Luginbühl, Y.: From Hiking Through Farmland to Farming in a Leisure Landscape: Changing Social Perceptions of the European Landscape. *Landscape Ecology*, 2006, vol. 21, no.3, pp.375-389;  
Van der Windt H. J., Swart, A.A., Keulartz, J. Nature and landscape planning: Exploring the dynamics of valuation, the case of the Netherlands. *Landscape and Urban Planning*, 2007, vol.79, pp.218-228.

show pro-environmental position toward the transformation of river landscapes. We can assume that regional environmental attitude toward river transformation is a common one, depending on experiences of nature.

A global consensus on the need for renewable sources is in conflict with the level at which that necessity is realised, e.g. while locating a hydroelectric power plant. The decisions on infrastructure projects typically defined on national or regional levels induced by a macro-economic gain or by current needs related to energy demands and climate changes, while the effects are local and mostly affect people and groups directly related to the infrastructure project location. Added to this, the downstream-upstream and trans-river bank conflict may be spotted in cultural/national differences. The conflict can occur at the level of value and trust on shared responsibilities between the sides involved. Finding the frame based on common values is finding direction towards the solution.

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## METHODS OF IMPLEMENTING LOCATION-BASED SERVICES TO STRATEGIC DOCUMENTS IN MICROREGIONAL LEVEL

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Jakub Trojan

**Abstract:** *The paper combines new approaches in computer science and technology with their application in sustainable regional development. The main objective is to present methods of advising an active form of development strategy using the example of a model microregion based on the principles of location-based services (LBS) and augmented reality (AR). The emphasis is put on the methodological basis and practical formation of dynamization of strategy elements with a relation to other available context-specific services whose use depends on the user's position. The paper is trying to bring advances of new technologies to everyday life with respect to open innovation policy in regional development.*

**Keywords:** *location based services, development strategy, augmented reality, sustainability, South Moravia Region*

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### Introduction

The spatial application of information and communication technologies in regional science lies mainly in the visualization of material space (environment) in geographic

information systems<sup>496,497</sup>. This could be considered a reason why map compositions often stand for static parts of conceptual documents such as strategies or programs of development forming elementary examples of applied regional policy. Presentations of development strategies to people living in the regions often come only through websites with no further interactive form. The goal of the paper is to show how this kind of information could be delivered to their consumers using location based services as a specific support with no extra knowledge of technical framework. This way of informing population would draw people into the process of forming the space where they live.

The problem of delivering important data to users, living their everyday lives, has been addressed in many publications. Inhabitants (for example in the case of microregions) are simply consumers of geodata. They do not need to know how geographic information systems (GIS) work or what spatial data are. The key goal of disseminating the regional development strategies is to inform people (and other stakeholders) through easy, clear and effective ways. Therefore the transdisciplinary study in this paper follows a previously developed concept by M. Egenhofer and D. Mark<sup>498</sup>, the so-called naive geography, which was based solely on an intuitive user behaviour and consumption of geographical (geoinformatic) outputs in the form of routine activities. While the visualization of data using geographic information systems needs at least a minimum quota of knowledge regarding these systems (taking into account the necessary demand for qualified work with GIS), the data visualization in the form of augmented reality and location-based services (LBS) information will represent an appropriate way of distributing data and spatial information; for digital natives<sup>499</sup> it is even a natural characteristic.

For public administration it is easiest to use non-sophisticated approaches like freely available tools of augmented reality. Thus the information can be delivered to the strategy users (readers), depending on their position, based on a pre-selected range of data. Furthermore, the users are linked to additional services of interactive character – making an active participation of users possible, even enhancing it. In this way, there are also context-available online services,

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<sup>496</sup> Mikulík, O., Voženilek, V., Vaishar, A: *Studium rozvoje regionu založené na vizualizaci geoinformačních databází*. (Study of development of the region based on the visualization of geo-information databases). Olomouc : Univerzita Palackého, 2008. 181 s.

<sup>497</sup> Slocum, T: *Thematic cartography and geographic visualization*. 2nd ed. Upper Saddle River, N.J. : Pearson Prentice Hall, 2005. x, 518 p.

<sup>498</sup> Egenhofer, M., Mark, D: Naive geography. In Frank, A. U. and Kuhn, W. (eds), *Spatial Information Theory: A Theoretical Basis for GIS*, Berlin : Springer-Verlag, Lecture Notes in Computer Sciences No. 988, 1998, pp. 1-15.

<sup>499</sup> Prensky, M: *Digital Natives, Digital Immigrants*. On the Horizon. 2002, 9 (5). In digital form:

<http://www.marcprensky.com/writing/Prensky%20-%20Digital%20Natives,%20Digi-tal%20Immigrants%20-%20Part1.pdf>

that is location based services, that use the augmented reality (with respect to the passive elements of the material world) to create a dynamized view of the area with a selective use of information stored in cyberspace<sup>500</sup>.

A cooperation among public administration and users (consumers) must be carried out building on the academic and also industrial perspective according to recent paradigms expressed by the theory of triple helix<sup>501,502</sup>. The approach described by this paper combines academic perspectives with public-private partnership on the microregional level. To encourage the innovation potential, the model in our case study uses open innovation policy in the regional development context as the antithesis of the traditional vertical integration model, where research and development (R&D) activities lead to internally developed products that are distributed later on<sup>503,504</sup>.

This paper tries to solve the problem of delivering spatial data to users using commonly known augmented reality services under the concept of naive geography<sup>505</sup> with respect to triple helix and open innovation on the microregional scale. The model microregion is the Pernštejn microregion in South Moravia region, Czech Republic. The author discusses the potential link between computer science and regional development tools for use with LBS. A standard microregional development strategy is divided into selected elements (like parts of action plan) which are dynamized into the applications based on augmented reality. The implementation of the development strategy prototype through LBS is meaningful with regard to the growing penetration of appropriate decoding devices (mostly mobile phones), all this in connection with the growth of information (and computer) literacy and the general availability of these new technologies / services.

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<sup>500</sup> Kitchin, R., Dodge, M: The emerging geographies of cyberspace. In Johnston, R. J. et al. (eds): *Geographies of global change: remapping the world*. 2nd edition. Blackwell Publishing, Malden, 2002, p. 340-354.

<sup>501</sup> Leydesdorff, L., Etzkowitz, H: Emergence of a Triple Helix of University-Industry-Government Relations. In *Science and Public Policy* 23, 1996, p. 279-86

<sup>502</sup> Cook, P., Leydesdorff, L: Regional Development in the Knowledge-Based Economy: The Construction of Advantage. In *The Journal of Technology Transfer*, Vol. 31, No 1, 2006, p. 5-15. Springer Netherlands

<sup>503</sup> Chesbrough, H: *Open Innovation: The new imperative for creating and profiting from technology*. Boston: Harvard Business School Press, 2003, 272 p.

<sup>504</sup> Chesbrough, H., Vanhaverbeke, W., West, J. (eds.): *Open Innovation: Researching a New Paradigm*. Oxford: Oxford University Press, 2006, 392 p.

<sup>505</sup> Egenhofer, M., Mark, D: Naive geography. In Frank, A. U. and Kuhn, W. (eds): *Spatial Information Theory: A Theoretical Basis for GIS*, Berlin : Springer-Verlag, Lecture Notes in Computer Sciences No. 988, 1998, pp. 1-15.



## I. Literature overview and essential framework

The essential and core literature was mentioned in the introduction section. This chapter should be connected to research in human geography and regional science. Approaches to regionally-defined geographic research in understanding of human geography are described by P. Cloke et al.<sup>506,507</sup>. Cloke is focusing on the conceptualization of human (socio-economic) geography such as discussions with the possibility of using tools and methods typical for human geography. Cloke, complementing previously published outline of the new philosophical concept in regional geography by P. Claval and I. Thompson<sup>508</sup>, gives also a methodological basis for more recent publications focused on the economic geography<sup>509,510</sup>, which mainly reflect the dynamics of flow in which the current institutions are located.

When we talk about visualization of spatial data with regard to the views of socio-economic phenomena within a broader regional development research, it is necessary to use geographic information systems (GIS). Interdisciplinary publications on the use of GIS in regional science in the scale of central European microregions are rather exceptional and are usually shared between cartographers and co-authors affiliate in any other (geo) science<sup>511,512</sup>. Use of GIS in regional science has a significant potential, as evidenced by Fielding with Cisneros-Puebla<sup>513</sup>. Numerous examples of the use of geoinformation technologies in regional and social sciences was also demonstrated nine years ago by M. Goodchild et al.<sup>514</sup>, who sees space technology as a possible integration tool of social sciences and not only for regional spatial planning associated with land and urban development. The technologies in economic geography, and in particular their importance for the formation on places and regions are discussed in one of the chapters by

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<sup>506</sup> Cloke, P., Cook, I., Crang, P., Goodwin, M., Painter, J., Philo, C: *Practising Human Geography*. London: Sage Publications. 2002, 416 p.

<sup>507</sup> Cloke, P., Crang, P., Goodwin, M: *Introducing human geographies*. 2nd ed. London : Hodder Arnold, 2005. 653 p.

<sup>508</sup> Claval, P., Thompson, I: *An introduction to regional geography*. 1st pub. Oxford : Black-well Publishers, 1998, 299 p.

<sup>509</sup> Coe, N. M., Kelly, P. F., Yeung, H. W. CH: *Economic geography. A contemporary introduction*. Blackwell Publishing. 2007, 426 p.

<sup>510</sup> Wood, A., Roberts, S: *Economic geography. Places, networks and flows*. New York : Routledge, 2011, 179 p.

<sup>511</sup> Mikulík, O., Voženílek, V., Vaishar, A: *Studium rozvoje regionu založené na vizualizaci geoinformačních databází*. (Study of development of the region based on the visualization of geo-information databases). Olomouc : Univerzita Palackého, 2008. 181 s.

<sup>512</sup> Trojan, J., Trávníček, J: *Spatiality of functional units in rural landscape in the greater Brno area: Lipůvka-Lažany-Újezd*. In *GeoScape*, Vol. 5, Iss. 2, 2010. Ústí nad Labem : Jan Evange-lista Purkyne University.

<sup>513</sup> Fielding, N., Cisneros-Puebla, C: *CAQDAS-GIS Convergence: Toward a New Integrated Mixed Method Research Practice?* In *Journal of Mixed Methods Research* October 2009, Vol. 3, p. 349-370

<sup>514</sup> Goodchild, M., Anselin, L., Appelbaum, R., Harthorn, B: *Toward Spatially Integrated Social Science*. In *International Regional Science Review*, April 2000 Vol. 23, p. 139-159

Coe et al.<sup>515</sup> as well. One of the few papers dealing with a possible connection between public management and LBS brings Ahas and Ülar with a focus on mobile connectivity<sup>516</sup>.

Kitchin<sup>517</sup>, later Kitchin and Dodge<sup>518</sup> discuss the role of information and communication technologies (ICT) in shaping the so-called cyberspace, which creates a whole new world of transforming user's relationship to space as users. Cyberspace, which currently affects the social, economic and political levels, virtually all geographic scales, could play an important role in the design concepts of the development of interoperable region. The technology represented by the advanced features of ICT to share (and shape) information with added value could have a significant impact on the implementation (and creation) of conceptual documents such as strategies and programs of regional development. Advanced ICT represented by location-based services and augmented reality allows to combining elements of the real material world with elements of virtual space<sup>519</sup>. A great number of applications have been published in form of complex books in the Lecture Notes in Geoinformation and Cartography<sup>520,521</sup> as well as the fundamentals of LBS itself<sup>522</sup>. The importance of augmented reality together with the growing use of mobile technology is also being adopted by commercial sector<sup>523</sup>. Implementation in the mobile environment has been a continuing trend that was previously identified with the gaming industry<sup>524</sup>.

## II. Methodology

The methodological chapter is divided into three parts (SW and HW prerequisites, methods of creating worlds, methods of strategy dynamization). Their aim is to show the way

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<sup>515</sup> Coe, N. M., Kelly, P. F., Yeung, H. W. CH: *Economic geography. A contemporary introduction*. Blackwell Publishing, 2007, 426 p.

<sup>516</sup> Ahas, R., Ülar, M: Location based services – new challenges for planning and public administration? In *Futures*, 37, 6 p., 2005 547-561

<sup>517</sup> Kitchin, R: Towards geographies of cyberspace. In *Progress in Human Geography*. London : 1998. Vol. 22, Iss. 3; p. 385.

<sup>518</sup> Kitchin, R., Dodge, M: The emerging geographies of cyberspace. In Johnston, R. J. et al. (eds): *Geographies of global change: remapping the world*. 2nd edition. Blackwell Publishing, Malden, 2002, p. 340-354.

<sup>519</sup> Maad, S: *Augmented Reality*. InTech : 2010. 230 p.

<sup>520</sup> Gartner, G., Cartwright, W., Peterson, M: *Location Based Services and Tele-Cartography*. Springer, Heidelberg, 2007, 605 p.

<sup>521</sup> Gartner, G., Ortag, F. (eds.): *Advances in Location-Based Services*. 8th International Symposium on Location-Based Services, Vienna 2011. Springer, 350 p.

<sup>522</sup> Küpper, A: *Location-based services: fundamentals and operation*. John Wiley and Sons, 2005, 365 p.

<sup>523</sup> Antikainen H., J., Rusanen, S., Vartiainen, M. et al: *Location-based Services as a Tool for Developing Tourism in Marginal Regions*. Nordia Geographical Publications 35, 2, p. 39-50. NGP Yearbook 2006.

<sup>524</sup> Klein, G: *Visual tracking for augmented reality*. Dissertation thesis. University of Cambridge, 2006. 192 p.

we could use AR (LBS) as a specific support for regional conceptual documents (strategies and programs of development). The purpose of the documents dynamization (dynamization in the meaning of making things more active and productive) is to bring spatial data information related to regional development to people and local stakeholders.

The research was conducted since spring 2011 to spring 2012 with terrain data mining, collecting spatial data and image documentation with data geotagging. The Pernštejn microregion consists of 8 municipalities with overall 3500 inhabitants. It covers an area of 61 square kilometres and its municipalities are parts of the South Moravia Region and The Vysočina Region, NUTS II South-East, Czech Republic (a detailed map could be slightly seen in the deliberately transparent background in the Fig. 2).

### SW a HW prerequisites

If we discuss the use of LBS in development strategies, we expect the behaviour of an active user who will use LBS on his/her own initiative (without having a deeper knowledge of the theoretical concept of LBS operation). Such behaviour requires minimal user awareness of the technology's existence and, in particular, the existence of services that the technology allows. In this context, the user must meet the following conditions. Firstly, the user should be able to use the application and operating in LBS, of course, with a compatible mobile device that supports LBS applications. Secondly, the user should be informed about the offer of locally available context services. Thirdly, the user's device should have a signal for locating the user, or/and should be connected to the Internet.

The prototype of dynamized strategy of microregional development should meet the basic criteria which could be considered as interoperability and availability. Due to the requirements for maximum interoperability, which arise from the vision to ensure availability of services to the greatest number of users, three most common SW applications (according to AppStore and Google Play statistics) have been chosen. All the applications are ported to the most common operating systems on mobile devices, i.e. Android, Symbian and iOS and operate on identical principles (adding contextual worlds / layers as a service based on the user's location).

The chosen applications are Layar, Wikitude and Junaio software (available free for all mentioned platforms).

## Methods of creating worlds

A key element of the dynamization of the microregional strategy is the use of augmented reality for mobile devices (phones, tablets). Applications are based on loading layers (worlds) as contextual services. To dynamize and interactively present development strategy in this way, it is necessary to create the appropriate layer (i.e. a world in common AR terminology). When designing the prototype we used three ways of the world creation:

- Third-party applications (commercial firms and academic institutions engaged in the creation of the worlds "on demand" for public management) to meet the principles of open innovation and triple helix.
- Freely available on-line services (e.g. Hoppala, also Hoppala Augmentation<sup>525</sup>), creating the worlds in an intuitive web-based environment. Web interface of the software development tools (Layar and Wikitude support the creation of the world online).
- XML file (Wikitude allows the reading of the world as a KML file format or in special defined ARML). For example, see the output in Listing 1.

**Listing 1:** Example of ARML code created for Wikitude worlds (layers). <Placemark id="n"> stands for an unique POI with further data. Compare to common KML (other XML) format. Source: authors

```
<?xml version="1.0" encoding="UTF-8"?>  
  
<kml xmlns="http://www.opengis.net/kml/2.2"  
  
  xmlns:ar="http://www.openarml.org/arml/1.0"
```

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<sup>525</sup> Hoppala Augmentation [online]. Hoppala, Möglingen. Available online at <<http://www.hoppala-agency.com>> and <<http://augmentation.hoppala.eu/>>

```
xmlns:wikitude="http://www.openarm1.org/wikitude/1.0">
```

```
<Document>
```

```
<ar:provider id="Pernstejnsko.cz">
```

```
<ar:name>Mikroregion Pernštejn</ar:name>
```

```
<ar:description>Municipal authorities of Pernštejn microregion; describing projects by individual municipalities provided / intended to implement</ar:description>
```

```
<wikitude:providerUrl>http://www.pernstejnsko.cz </wikitude:providerUrl>
```

```
<wikitude:tags>Pernštejn, microregion, strategy of development, augmented reality, LBS</wikitude:tags>
```

```
<wikitude:logo>http://dl.dropbox.com/u/32540672/Logo_96.png </wikitude:logo>
```

```
<wikitude:icon>http://dl.dropbox.com/u/32540672/Logo_32.png </wikitude:icon>
```

```
</ar:provider>
```

```
<Placemark id="1">
```

```
<ar:provider>Pernstejnsko.cz</ar:provider>
```

```
<name>Township Nedvědice – town hall</name>
```

```
<description>The Nedvědice township is a centre of microregion Pernštejn. There is also a tourist information centre of microregion and other administrative facilities. Projects that are currently being implemented are published online on http://www.pernstejnsko.cz</description>
```

```
<wikitude:info>
```

```
<wikitude:thumbnail>http://dl.dropbox.com/u/32540672/radnice_Nedvedice.png</wikitude:thumbnail>
```

```
<wikitude:phone>511119173</wikitude:phone>

<wikitude:url      name="Official      presentation      of      the      Pernštejn
microregion">http://www.pernstejnsko.cz </wikitude:url>

<wikitude:email>info@pernstejnsko.cz</wikitude:email>

<wikitude:address>Ing.      Pavel      Vejrosta,      Nedvědice      42,      592      62
Nedvědice</wikitude:address>

<wikitude:attachment      name="Strategy      of      development      of      the      microregion"
type="application/pdf">http://www.pernstejnsko.cz/obrazky2/Strategie_rozvoje%20Pernstejn
_FINAL.pdf </wikitude:attachment>

</wikitude:info>

<Point>

<coordinates>16.33455,49.45720277777778,326 </coordinates>

</Point>

</Placemark>

</Document>

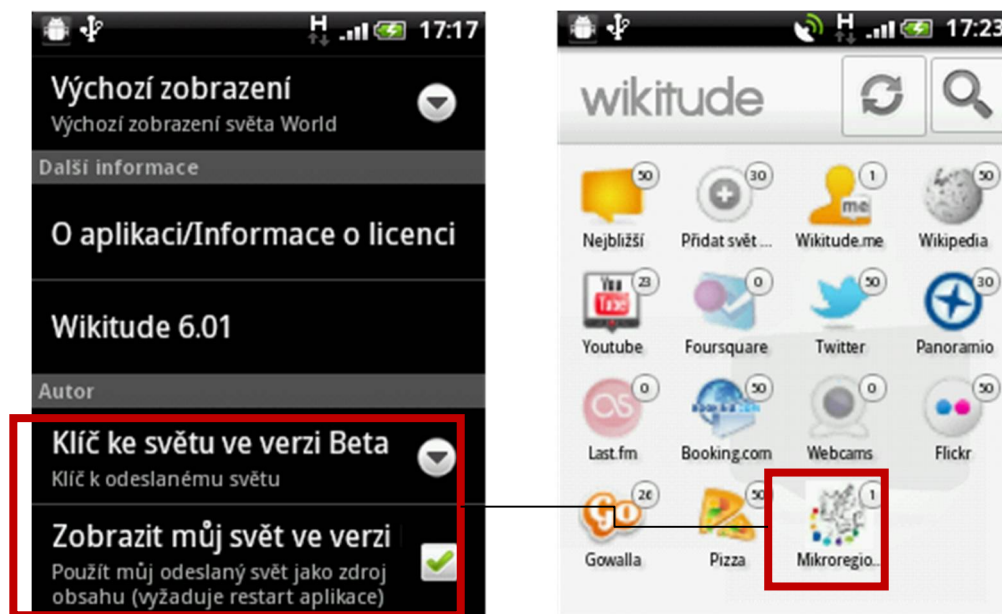
</kml>
```

While third-party applications have been chosen for Junaio SW (on iOS platform in tablet), on-line available services have been selected for creating world in Layar (on Android platform on smartphone) and both KML and ARML files have been tested for use with Wikitude (on Android platform on smartphone).

If there is a world (layer) created in one of the formats listed above or if the world is ready for a remote server and is accessible, it can be made accessible to users and get published in

applications. The advantage is the "testing" mode for publication / users access to the world after entering a special code. Due to the fact that LBS aimed at developing microregional strategies is strongly regionally oriented (in contrast to the LBS looking for the nearest pizza promotions, or a petrol station, a service providing information on weather, etc.), it could be the proper solution (Fig. 1).

**Fig. 1: Activation of "beta" worlds after entering the code (left, last two lines) and activated world (right, last icon) in the localised version of Wikitude.**



Source: author

## Methods of strategy dynamization

There are several methods of strategy dynamization. We could start at analogue level of QR coding the information and linking among other sources. But for the prototype of dynamized strategy in the Pernštejn microregion we have chosen AR applications and their worlds. The strategy of development generally contains analytical and proposal parts supplemented by an

action plan with schedule of projects proposed in the strategy (and others<sup>526</sup>). Whereas analytical parts could be easily transformed into interactive maps (web-based cartography knows numerous methods to publish these data), the core challenge for AR lies in interpreting and visualizing the action plan and proposal part of the development strategy.

Our research deals with creating two types of dynamized strategies. Firstly, it is transformation of proposals from action plan into affected localities / subjects / actors. For example a project concerning innovation of local school educational program is rooted in the AR world as interactive information which appears to users in the school surrounding. It holds data about financial framework, project schedule, direct contact to project manager coded in QR sign, current photos of project realization and link to project website. Furthermore, it holds transformation of municipalities' data and priorities planned in the proposal parts of development strategy. Each municipality of the Pernštejn microregion has assigned proposals with contacts to responsible participants. The implementation of these kinds of dynamized strategy has been done through created worlds described in the previous subchapter.

### III. Results

The strategy dynamization of development is the key result of the conducted research. Using worlds prepared for the three major intuitive applications for augmented reality, selected parts of strategy were transformed to bring spatial data and information to people, local inhabitants. Data are important also for potential investors, stakeholders and other actors. According to principles of naive geography<sup>527</sup>, users do not need any extra know-how. They just launch their application, add the relevant world and consume the information. A scheme of the idea implemented in the Pernštejn microregion is shown in Fig. 2.

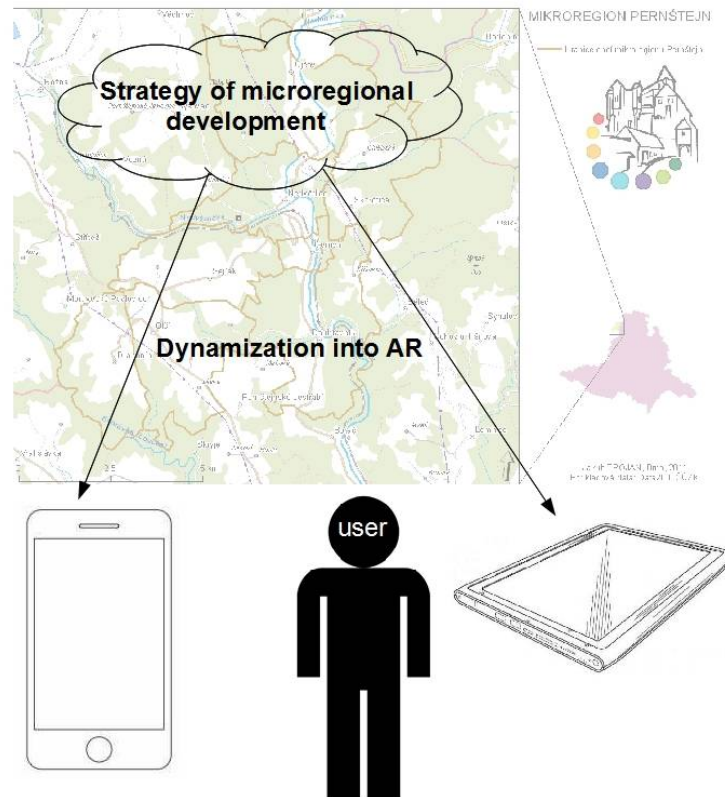
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<sup>526</sup> Leimgruber, W., Majoral, R. Lee, CH-W: *Policies and strategies in marginal regions : summary and evaluations*. Aldershot : Ashgate, 2003. 384 p.

<sup>527</sup> Egenhofer, M., Mark, D: Naive geography. In Frank, A. U. and Kuhn, W. (eds), *Spatial Information Theory: A Theoretical Basis for GIS*, Berlin : Springer-Verlag, Lecture Notes in Computer Sciences No. 988, 1998, pp. 1-15.



**Fig. 2: Principles of distribution regionally oriented development data from conceptual documents, case study The Pernštejn microregion**



Source: author

Worlds were subsequently tested among users and public administration in three applications. Applications in smart devices contain, according to the methodology listed above, two kinds of worlds – projects overview from the action plan of the development strategy and information about priorities and projects assigned to municipalities from the microregion. Worlds / layers from Layar and Junaio are available instantly after the search for key word “Pernštejn” or “mikroregion Pernštejn”. There is also an option to directly open the world in Junaio after scanning the QR code (Fig. 3). Worlds in Wikitude are available after entering the secret code shown in Table 1.

**Fig. 3: Scanning the code left will directly open the proper world in Junaio application.**



Source: author

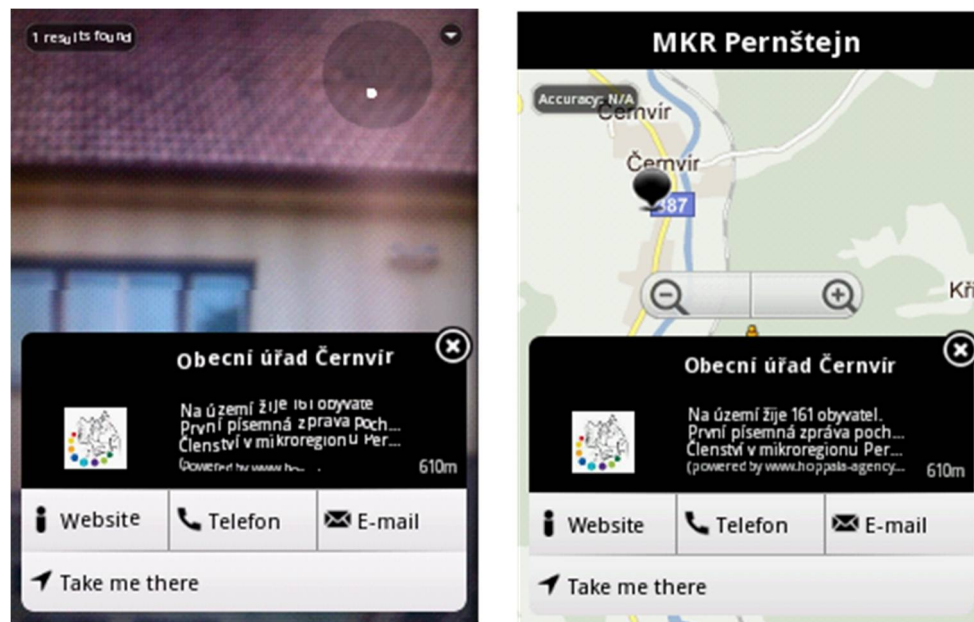
**Table 1: Codes for opening the prepared world in Wikitude SW.**

Short description	Developer key
The Pernštejn microregion (important buildings and POI assigned to the municipal authorities with the assignment of the measurable outputs from the implementing the activities described in the strategy of development)	vxqiolo
The Pernštejn microregion (Localized municipal buildings, offices and contacts for government actors with further information about fulfilling the strategy)	fimhpfu

Source: author

Dynamized strategy is not prepared for offline usage yet. Within the ubiquitous Wi-Fi hotspots and UMTS/LTE widespread availability and the use of free online services we do not expect its turning into offline mode. Conversion into offline usage means the need of installing new (probably third-party) application and download larger amount of data. A cloud-based solution built upon commonly used services is available to broader audience.

**Fig. 4: Worlds loaded into Layar application and the environment of location-based context services in front of one municipal building with additional spatial information coming from dynamized strategy of development.**



Source: author

The environments of worlds loaded into AR applications are similar. To compare their functions see differences in Fig. 1, 3 and 4. All applications support common functions like moving to the relevant web pages where users would find the complete text of development strategy, e-mail / call to responsible authorities, navigation functionalities to POI and other important data.

## IV. Discussion

The presented way of dynamizing conceptual documents in the example of the strategy of development of the Pernštejn microregion showed a prototype of interactive regional policy stimulated through location-based services, especially augmented reality. This research under the context of open innovation and triple helix framework used cooperation among academic institutions, industry, public management and final users (local inhabitants). Ideas of extending

the worlds into tourism sector were suggested from the public management. These ideas are lucrative also from the commercial side of PPP project and brings the utilization of augmented reality back to proposals presented in numerous studies<sup>528,529</sup>.

Earlier proposals by representatives of government brought the requirement for use in tourism. This usage as a legitimate step toward commercialization of the entire service may be possible to rise funding of further development (the use of LBS in marginal areas, including business model implementations, were published e.g. by Antikainen et al.<sup>530</sup>). Through LBS can be located significant points - within the microregional sights, which will be assigned a description, or links to other services (with complementary technological features like near-field communication etc.). Linking the development strategy can be realized by reference, or implemented directly into the layer (the world) carrying information about the objects for tourists. This kind of synergistic use can be made with earlier localized other objects / points of interest (POI).

The potential is also in the deeper involvement of local corporations in the layers / worlds. Services may begin with a simple sharing of information and contacts to the opportunity to purchase non-contact services such as restaurant reservations, pay at hotels, ordering taxis etc.

A significant potential also lies in the services come from geosocial networks such as Foursquare. The functionality of these services is based on the user's occurrence of certain predefined location. As seems obvious, other use of dynamized strategy of development could be established with navigation services<sup>531</sup>. What is not so common is downloading spatial data from the world to the user desired services in a predefined standard format. The potential use of LBS in this paper deals with setting a position from the GNSS satellites. However, there already exists the possibility of locating through a mobile phone and its network. Tracing the movement of people and using mobile positioning and evaluating contextual menu of services is engaged in

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<sup>528</sup> Ahas, R., Aasa, A., Silm, S., Tiru, M: Mobile Positioning Data in Tourism Studies and Monitoring: Case Study in Tartu, Estonia. In *Information and Communication Technologies in Tourism 2007: Proceedings of the International Conference in Ljubljana, Slovenia, 2007*, p. 119-128

<sup>529</sup> Zipf, A., Malaka, R: Developing location based services for tourism - The service providers view. In *Information and Communication Technologies in Tourism*, 83-92. 8th International Congress on Tourism and Communications Technologies in Tourism, Montreal, Canada, 2001. Springer.

<sup>530</sup> Antikainen H., J., Rusanen, S., Vartiainen, M. et al: *Location-based Services as a Tool for Developing Tourism in Marginal Regions*. Nordia Geographical Publications 35, 2, p. 39-50. NGP Yearbook 2006.

<sup>531</sup> Hinch, S: *Outdoor navigation with GPS*. 2. ed. Berkeley, CA : Wilderness Press, 2007, 204 p.

Ahas' research team in the University of Tartu, Estonia (e.g. thematic chapter in the book by Büscher, Witchger and Urry<sup>532</sup>, or thematic project Positium LBS<sup>533</sup>). Mobile networks have the advantage of ubiquitous data availability without the need for an accurate calibration of satellite positioning and navigation systems need to connect to the Internet to use LBS, the disadvantage is the relative inaccuracy in an area with sparse presence of BTS. Use of mobile phones within the meaning of indirect interconnection to LBS may therefore be another way to establish the service.

## Conclusion

Results presented in this paper show the way, how to easily create platform for regional policy dissemination. We have dynamized static conceptual document into an active form through the example of strategy of development of microregion Pernštejn in South Moravia Region. Users do not need any additional SW or skills to be used with unknown applications. Commonly used tools served appropriately as an option for applying principles of naive geography<sup>534</sup> in the context of sustainability. Cooperation among other partners with respect to local communities and recent paradigms in regional development research and sustainable development (triple helix, open innovation) have established a functional prototype, which could further be developed by adding more features.

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<sup>532</sup> Büscher, M., Urry, J., Witchger K. (eds): *Mobile Methods*. Routledge; 1st ed., 2011, 224 p.

<sup>533</sup> Positium LBS [online], Positium LBS & University of Tartu, Tartu. Available online at <<http://www.positium.ee>>

<sup>534</sup> Egenhofer, M., Mark, D: Naive geography. In Frank, A. U. and Kuhn, W. (eds), *Spatial Information Theory: A Theoretical Basis for GIS*, Berlin : Springer-Verlag, Lecture Notes in Computer Sciences No. 988, 1998, pp. 1-15.

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## THE CONTRIBUTIONS OF CSR PRACTICES TO NATIONAL COMPETITIVENESS. A THEORETICAL MODEL FOR CENTRAL AND EASTERN EUROPE

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Mihaela Tucă<sup>535</sup>

**Abstract:** *For each and every country, competitiveness can be a means of sustainable growth and development. Corporate social responsibility, by involving the business partners, society and public sectors all over, does just that: pushes towards a new model of development in the spirit of sustainability. Having in mind the unique characteristics of each country and placing them in a regional context, the papers aims at analyzing current practices and place them in from of the countries profile of competitiveness and see in to what lengths can CSR participate and in what domains to help the country achieve competitiveness and thus sustainable development.*

**Keywords:** *Corporate social responsibility, competitiveness, Central and Eastern Europe*

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<sup>535</sup> Beneficiary of the „Doctoral Scholarships for a Sustainable Society” project , project co-financed by the European Union through the European Social Fund, Sectoral Operational Programme Human Resources and Development 2007-2013

## Introduction

Corporate Social Responsibility (CSR) is a concept related to the contribution that entities must have to the development of society. Over times, “responsible” initiatives have had a variety of themes: from simple corporate philanthropy, to contributions to social development and green growth<sup>536</sup>. The new public management teaches the import of good practices from the private sector to the public sector. Thus, taking “corporate” out of CSR we obtain the mission for the public sector, to promote social responsible practices to achieve an added value for the society as a whole<sup>537</sup>.

As globalization advances, social, cultural and economic borders between countries fade and national economies encounter international competition. Along with many opportunities, globalization can bring challenges. Every country is concerned about obtaining competitive advantage in the world economy and achieving sustainable development<sup>538</sup>.

From this perspective, CSR incorporation in social and environmental concerns in core operations can be a critical tool for obtaining economical advantages and sustainable growth. In contrast, a lack of CSR expertise can segregate the economy of a country from the global supply chain and reduce its sustainability<sup>539</sup>.

The World Economic Forum (WEF) defines competitiveness as a set of institutions, politics and factor that determine the level of productivity of a country. The level of productivity establishes the sustainable level of prosperity that can be obtained by an economy. In other words, more competitive economies have the tendency to produce higher levels of income for their citizens.

Keeping this in mind we will try to analyze the influence that CSR may have of the pillars of competitiveness defined by the WEF as a mean for contributing to sustainable growth and the tendencies that we can extract for the countries of Central and Eastern Europe. Finally

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<sup>536</sup> See Crane, A. /McWilliams, A. /Moon, J. /Siegel, D.S.: The Oxford handbook of corporate social responsibility. Oxford: Oxford University Press, 2008

<sup>537</sup> Matei, A., Tuca, M.: Appropriateness of the Transfer of CSR Practices in the Balkan Area. In National and European Values. Bucharest, Economica Publishing House, 2011, pp.251

<sup>538</sup> Grant, R. M.: Contemporary Strategy Analysis (7 ed.). Chichester: John Wiley & Sons Ltd, 2010

<sup>539</sup> Green Paper Promoting a European Framework for corporate social responsibility, European Commission, 2001



combining the countries profiles with the pillars of competitiveness that are most sensitive to CSR practices we will be able to construct of model, specifically for these countries, of CSR practices in support of sustainable development.

There are a variety of lessons though which there can be seen and categorised the engagement of the public sector in the CSR agenda, depending on the purpose of the analyses and the answer to the question „Why is it important to take into consideration the role of the public sector?“<sup>540</sup>.

Consumers in the global market increasingly seek products and services of companies they believe are doing the ‘right thing’ in terms of human rights and the environment.

Investors look for companies that understand and manage their risks, and pursue innovative strategies in identifying emerging business opportunities.

Employees prefer to work for companies whose values they share, and where they can make a contribution to society<sup>541</sup>.

## I. The 12 pillars of competitiveness (World Economic Forum)

The World Economic Forum defines competitiveness as a set of institutions, politics and factors that determine the level of productivity of a country. The level of productivity establishes the sustainable level of prosperity that can be obtained by an economy.<sup>542</sup> In other words, more competitive economies have the tendency to produce higher levels of income for their citizens. The level of productivity also determines the return rate obtained from investments (physical, human, technological) in an economy. Because the rate of return is a fundamental driver of growing rates of economies, a more competitive economy is more likely to grow on a medium to long term.

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<sup>540</sup> idem

<sup>541</sup> Tuca, M.: Corporate Social Responsibility – supporting policy framework in the EU, <http://egpaconference2011.org/seminar-for-phd-students-list-of-papers/>, pp.6

<sup>542</sup> World Economic Forum, Global Competitiveness Report 2011-2012, pp.4

The competitiveness concept involves static and dynamic components: even though the productivity of a country determines the ability to sustain a high level of income, is also a central determinant of investments return, which is also a key factor that explains the growth potential<sup>543</sup>.

Considering the complexity and dynamic of the factors behind productivity and competitiveness, in establishing the aggregated competitiveness of a state there are several key aspects that need to be considered. In the WEF view these aspects are grouped in the 12 pillars of competitiveness, and their weighted average gives the Global Competitiveness Index.

These pillars are: Institutions, Infrastructure, Macroeconomic environment, Primary education and health, High education and training, Goods market efficiency, Labor market efficiency, Financial market development, Technological readiness, Market size, Business sophistication, Innovation.

## II. National profiles: competitiveness, CSR potential and practices

In this next section we will analyze three countries of the European Union: Poland, Hungary and Romania. These states were chosen for their distinctive features to show the way in which competitiveness indicators can tell the CSR potential of countries. Afterwards we will see the national practices of CSR that the public sector has implemented to see if the analysis has valid conclusions.

For each country the analyses begins with the national profile of competitiveness, for each having the charts to illustrate the findings, in three sections.

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<sup>543</sup> idem

The first section presents a selection of key indicators:

- Population figures come from the United Nations Population Fund (UNFPA)'s *State of World Population 2009*.
- Gross domestic product (GDP) data come from the April 2010 edition of the International Monetary Fund (IMF)'s *World Economic Outlook Database*. Reported GDP and GDP per capita are valued at current prices.
- The chart displays the evolution of GDP per capita based on purchasing power parity (PPP), from 1980 through 2009 (or the period for which data are available) for the economy under review (blue line). The black line plots the GDP-weighted average of GDP per capita of the group of economies to which the economy under review belongs.

### Global Competitiveness Index

This section details the economy's performance on the various components of the Global Competitiveness Index (GCI). The first column shows the country's rank among the 144 economies, while the second column presents the score. Another chart shows the country's performance in the 12 pillars of the GCI (blue line) measured against the average scores across all the economies in the same stage of development (black line).

#### The most problematic factors for doing business

This chart summarizes those factors seen by business executives as the most problematic for doing business in their economy. The information is drawn from the 2011 edition of the World Economic Forum's Executive Opinion Survey. From a list of 15 factors, respondents were asked to select the five most problematic and to rank those from 1 (most problematic) to 5. The results were then tabulated and weighted according to the ranking assigned by respondents.

After the analyses of the country competitiveness profiles, the analyses will focus on the CSR potential of the country: from each pillar considered to be relevant of potential generators of CSR: either domains that can have CSR or drivers or negative influence factors for CSR practices.

In this matter I have considered relevant the selection of indicators as follows: pillar 1 Institutions, pillar 4 Primary education and health, pillar 5 Higher education and training, pillar 6, Goods market efficiency, pillar 7, Labor market efficiency, pillar 8, Financial market development, pillar 9 Technological readiness, pillar 11, Business sophistication and pillar 12 Innovation.

As practice will show the potential analyses is susceptible to offer a clear image of the possibilities to develop a CSR agenda in a national economy.

## 1. Hungary

### Country profile

With a flourishing economy, almost double as the average of Central and Eastern Europe, Hungary has felt the effects of the constriction the economy is under for the last 2 years. Its ranking has gone down 12 places since its ranking last year. As an economy in transition between efficiency driven and innovation driven, Hungary scores barely on the average of the group. The pillars relevant to CSR are on the average also with a small contraction in intuitions and business sophistication. The first three most problematic factors for doing business we mention policy instability, access to financing and taxes rates and regulations.



### The Global Competitiveness Index

	Rank (out of 144)	Score (1-7)
<b>GCI 2012-2013</b> .....	<b>60</b> .....	<b>4.3</b>
GCI 2011-2012 (out of 142).....	48.....	4.4
GCI 2010-2011 (out of 138).....	52.....	4.3
<b>Basic requirements (27.4%)</b> .....	<b>55</b> .....	<b>4.8</b>
Institutions.....	80.....	3.7
Infrastructure.....	50.....	4.4
Macroeconomic environment.....	44.....	5.2
Health and primary education.....	51.....	5.9
<b>Efficiency enhancers (50.0%)</b> .....	<b>52</b> .....	<b>4.3</b>
Higher education and training.....	49.....	4.7
Goods market efficiency.....	67.....	4.3
Labor market efficiency.....	79.....	4.3
Financial market development.....	72.....	4.0
Technological readiness.....	49.....	4.4
Market size.....	52.....	4.3
<b>Innovation and sophistication factors (22.6%)</b> .....	<b>58</b> .....	<b>3.7</b>
Business sophistication.....	86.....	3.7
Innovation.....	37.....	3.6

### Stage of development



Source: World Economic Forum, Global Competitiveness Report 2012-2013

### CSR practices

In Hungary – as in other Eastern European countries – there is only a short past of corporate social responsibility. The concept is not well known by the companies, mainly large corporations and subsidiaries of multinational companies adopt CSR policies, which are mainly concerned with their reputation and image. They believe that “socially responsible activities” are linked to complying with existing regulations and behaving ethically with the stakeholders. Most of the companies focus on the employee-protection and organize or finance education for them. Environmental protection programs also exist, and recycling programs are widespread as well. Many companies have codes of conduct, but there are no anti-corruption policies at all<sup>544</sup>.

Hungarian SMEs are not familiar with CSR philosophy at all. The majority of the entrepreneurs have never heard about even the expression of CSR. However in spite of this fact a growing number of SMEs occasionally carry out socially and environmentally responsible

<sup>544</sup> Hajnalka Csafor: Corporate Social Responsibility in Central and Eastern Europe, [www.csrwire.com](http://www.csrwire.com)

activities related to their business strategy, without knowing that is CSR. Mostly those CSR instruments are used among Hungarian SMEs, which do not cost anything for them and with which they are able to reduce their risks and costs, and are able to manage their reputation<sup>545</sup>.

Almost all the universities have business ethic courses, but the number of research projects on CSR is relatively low. Besides the adaptation of EU directives there are also Hungarian legislative initiatives and proposals in connection with corporate responsibility concerning the Hungarian Public Procurement Act<sup>546</sup>.

The role of the national government in developing CSR has been limited in Hungary, but recently, a growing number of companies recognize its importance in governmental decision-making to promote CSR, in giving rate and tax allowances, in labor law reform, in supporting national CSR research projects or in establishment of CSR-awards and reconcilements. The governmental emphasis is on providing incentives for responsible production and responsible business behavior without any interventions to preserve its voluntary nature.

In accordance with the European CSR policies, the Hungarian Government has the same European objectives transposed at national level: to promote the implementation of the economic, social and environmental dimensions of sustainable development and to create policies, economic and financial rules promoting voluntary CSR. The CSR concept is mainly driven by large companies, even though socially responsible practices exist in all types of enterprises, public and private, including SMEs and cooperatives<sup>547</sup>.

In the context of globalization and in particular of the Internal Market, companies are increasingly aware that CSR can be of direct economic value, and they want to cooperate with the state authorities.

The promotion of non-discriminatory measures features strongly on the agenda in Hungary. The Act on Equal Treatment and the Promotion of Equal Opportunities set the frame in Hungary from December 2000 for ensuring non-discriminatory principles, in conformity

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<sup>545</sup> Rhetoric and Realities: Analyzing Corporate Social Responsibility in Europe (RARE) research project funded within the Sixth Framework of the EU: Survey of SMEs 2005

<sup>546</sup> Dr. Feketéné Csáfor Hajnalka: Hungarian distinctiveness of CSR in comparison with EU practices, CORE Conference, 22-23. July 2006 Milano Italy

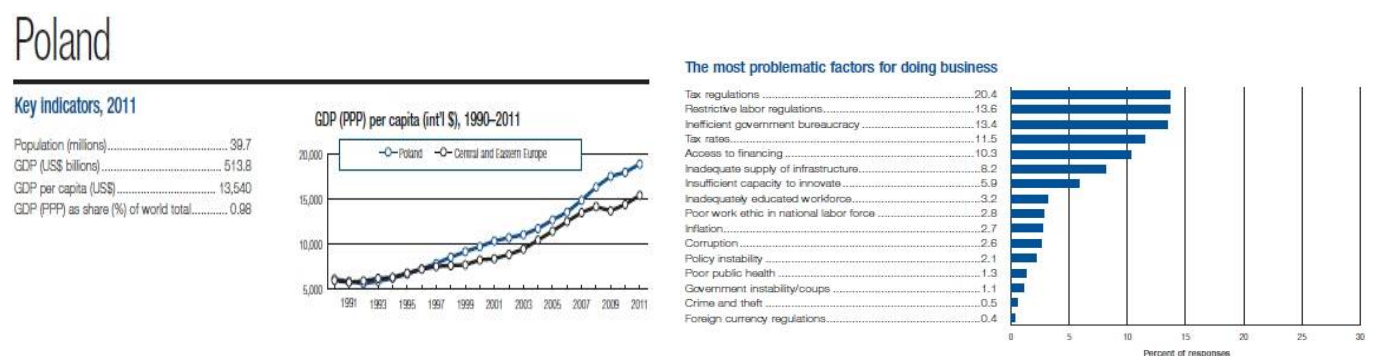
<sup>547</sup> Corporate social responsibility. National public policies in the European Union, European Commission, Brussels, 2004

with two EU directives, the Racial Equality Directive and the Employment Equality Directive, adopted by the EU Council in 2000. It is in the framework of the EU initiatives on equal treatment and non-discrimination that Hungary has also developed an anti-discriminatory strategy on measures to combat discrimination in acceding and candidate countries.

## 2. Poland

### Country profile

For this study, Poland is the biggest country analyzed. With an economy growth above the average of Central and Eastern Europe since 1997, Poland has kept this positive rhythm despite the economic crises. Poland has the best ranking of the three states, 41 and also an transition economy. From the pillars relevant to CSR we can see over the average ranking for higher education, financial market development and technological readiness. The first 3 most problematic factors for doing business we mention tax regulations, restrictive labor regulations and inefficient government bureaucracy.



Source: World Economic Forum, Global Competitiveness Report 2012-2013

### The Global Competitiveness Index

	Rank (out of 144)	Score (1–7)
<b>GCI 2012–2013</b> .....	<b>41</b> .....	<b>4.5</b>
GCI 2011–2012 (out of 142) .....	41 .....	4.5
GCI 2010–2011 (out of 139) .....	39 .....	4.5
<b>Basic requirements (28.7%)</b> .....	<b>61</b> .....	<b>4.7</b>
Institutions .....	55 .....	4.1
Infrastructure .....	73 .....	3.9
Macroeconomic environment .....	72 .....	4.6
Health and primary education .....	43 .....	6.0
<b>Efficiency enhancers (50.0%)</b> .....	<b>28</b> .....	<b>4.7</b>
Higher education and training .....	36 .....	4.9
Goods market efficiency .....	51 .....	4.4
Labor market efficiency .....	57 .....	4.5
Financial market development .....	37 .....	4.6
Technological readiness .....	42 .....	4.7
Market size .....	19 .....	5.1
<b>Innovation and sophistication factors (21.3%)</b> .....	<b>61</b> .....	<b>3.7</b>
Business sophistication .....	60 .....	4.1
Innovation .....	63 .....	3.3

### Stage of development



Source: World Economic Forum, Global Competitiveness Report 2012-2013

### CSR practices

Poland is a good example of how to change from state-directed economy to a privately owned market economy. Today the country has modern economy and globalized commercial activities.

Majority of Polish companies believes that corporate social responsibility means ethical and transparent business behavior mainly with the shareholders, customers and employees which are the most significant stakeholders for the Polish companies. Polish companies don't think that addressing stakeholder concerns, conducting public relations, and correcting social inequalities can be considered CSR. Polish companies consider complying with the legal framework and avoiding child labor the most important social roles of a company. A majority of Polish companies have codes of conduct, and anticorruption policies are also widespread<sup>548</sup>.

<sup>548</sup> Hajnalka Csafor: Corporate Social Responsibility in Central and Eastern Europe, [www.csrwire.com](http://www.csrwire.com)



There are only a few universities with research programs in the topic of CSR, and the Media doesn't report social responsible activities of the companies. The CSR and sustainable consultancy have no active market. NGOs are largely or wholly reliant on company or direct state financial support. The political environment is underdeveloped in Poland in connection with CSR there is no governmental department dealing with CSR issue. The Sustainable Development national strategy has been published and that is the main strength of this domain. The government doesn't build partnership relations with the private sector or NGOs in order to raise awareness and understanding the social and environmental problems and ethical issues.

Since 2004, representatives of the government administration have actively participated in the work of many European Union bodies, including the CSR-related activities. The administration has already commenced activities to increase awareness of the participants of the CSR concept implementation process. The reason being rather the urgent need to effectively transform social structures towards the civil society than the mere membership of Poland in the European Union. The Ministry of Labor and Social Policy is the leading body within the government administration as regards CSR<sup>549</sup>.

The Ministry of Labor and Social Policy initiated the preparation of a guidebook titled "CSR Implementation Guide. Nonlegislative Options for the Polish Government" to support the government administration in developing the basis for public policy on CSR. The initiative was joined by the World Bank, the Office of Competition and Consumer Protection (UOKiK) as well as the Ministry of Economy. The document is a good starting point for the Government to eventually formulate the basis for the social policy on CSR. On the initiative of the Dialogue and Social Partnership Department of the Ministry of Labor, training for government administration personnel was conducted by the World Bank in the IIIrd quarter of 2007. The training covered basic issues of CSR implementation<sup>550</sup>.

By means of its Institute of Labor and Social Studies, the Ministry of Labor and Social Policy organizes an annual competition "Human Resources Management Leader". In 2006 the Institute organized a conference "In Search of HRM Excellence" including the panel: "Corporate

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<sup>549</sup> Corporate social responsibility. National public policies in the European Union, European Commission, Brussels, 2004

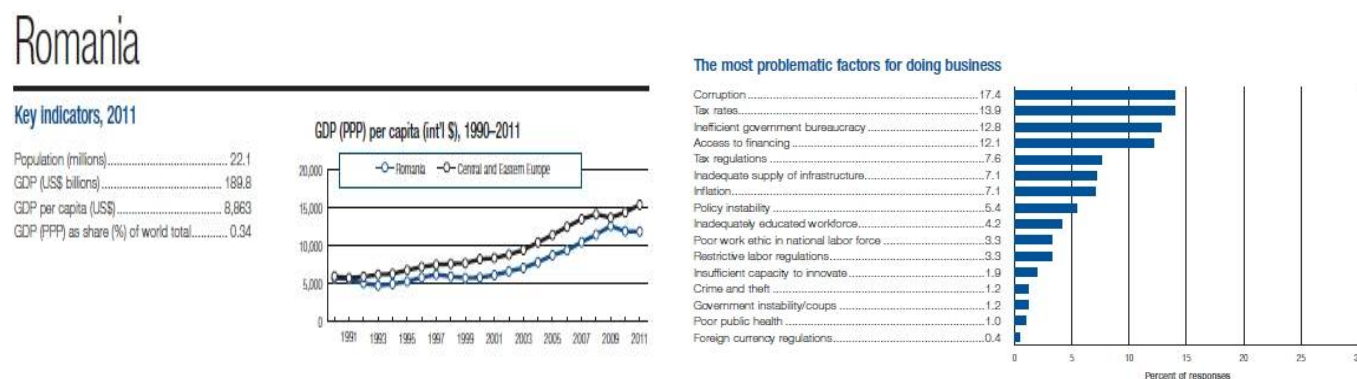
<sup>550</sup> [www.csrforum.com](http://www.csrforum.com)

Social Responsibility (CSR). Dilemmas of Development under the EU Policy”. The Ministry of Economy and the Ministry of Labor are currently trying to define and possibly include social considerations in public procurement – sustainable public procurement (SPP).

### 3. Romania

#### Country profile

Even though Romania had a constant small growth starting with 1992, this growth has been under the average of Central and Eastern Europe. In this matter the ranking of the country has gone only downwards, from 68 to 78. As an efficiency driven economy, the ranking of the pillars relevant to CSR is under average for institutions, goods market efficiency and business sophistication and over average only for higher education. From the first 3 most problematic factors for doing business the biggest one is corruption, followed by tax rates and inefficient government bureaucracy.



### The Global Competitiveness Index

	Rank (out of 144)	Score (1-7)
<b>GCI 2012-2013</b> .....	<b>78</b>	<b>4.1</b>
GCI 2011-2012 (out of 142) .....	77	4.1
GCI 2010-2011 (out of 139) .....	67	4.2
<b>Basic requirements (40.0%)</b> .....	<b>90</b>	<b>4.2</b>
Institutions .....	95	3.9
Infrastructure .....	97	3.2
Macroeconomic environment .....	58	4.8
Health and primary education .....	83	5.5
<b>Efficiency enhancers (50.0%)</b> .....	<b>64</b>	<b>4.1</b>
Higher education and training .....	59	4.4
Goods market efficiency .....	113	3.9
Labor market efficiency .....	104	4.0
Financial market development .....	77	4.0
Technological readiness .....	59	4.1
Market size .....	43	4.4
<b>Innovation and sophistication factors (10.0%)</b> .....	<b>106</b>	<b>3.2</b>
Business sophistication .....	110	3.5
Innovation .....	102	2.9

### Stage of development



Source: World Economic Forum, Global Competitiveness Report 2012-2013

### CSR practices

Companies – mainly multinationals – are more and more inclined to trying CSR programs, mostly corporate community investment programs. In Romania, the CSR concept was imported through international companies that operate locally. Multinationals have the capacity to generate community interest for community projects through large visible initiatives. Most of all corporate community initiatives are even-based in Romania. At local level CSR practice is defined by individual values of the decision makers, and the way they perceive the role of the company as social change factor<sup>551</sup>.

In Romania the most frequented fields of CSR are programs of social assistance, supporting relief agencies, corporate events, financing research projects in CSR, supporting disfavored persons, educational programs, programs for protecting environment and supporting

<sup>551</sup> Ioana Bresovan : Romania: Country Report about Romanian CSR, presented on conference „The Way It Works” 25-27th September 2007, Presov Slovakia

sport clubs and events. Target Groups are primarily children or persons with special needs, churches and monasteries, NGOs, employees and local communities as well<sup>552</sup>.

The communication of CSR practices depends on the internal motivation of the companies. Sustainable development – including the CSR concept – is mainly promoted by elites and NGOs with a weak feedback of the great majority of the society, whose goal is still to reach income level that would allow a more decent way of living.

NGOs are primarily beneficiaries of the companies, and perceive themselves as partners trying to transmit the needs to the decision makers. There are many visible national events related to CSR concept: conferences, Galas, PR-Awards, and thematic homepages, but the mass media reaction to the social initiatives is not positive and cooperative.

There are deficiencies in the interaction with public authorities, for example the national government has not yet named a governmental department leading on CSR issues, that make difficult spreading CSR in Romania<sup>553</sup>.

The government has an important role in promoting CSR in a country in the sense that it helped the harmonization process. Romania entered in a process of harmonization of laws and regulations according to the European ones. Major developments were made regarding environmental protection and ecology: in 1990 was established The National Programmed for Environment Protection and in 1995 was elaborated the Environmental Protection Frame- Law. Many other laws and regulation were issued to fight against corruption, bribery, working conditions, etc<sup>554</sup>.

In order to stimulate social responsible behavior of companies and to promote company's involvement in the communities, the government issued the sponsorship law. According to this a company can make sponsorships up to the amount of 3 per thousand from their turnover but no more than 20% from their profit tax. This law entitles companies to use up to 20% of their profit tax on community investments. But if we look at the limitations imposed by the law, we can conclude that only large companies with big turnovers and profits are allowed to large

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<sup>552</sup> idem

<sup>553</sup> Hajnalka Csafor: Corporate Social Responsibility in Central and Eastern Europe, [www.csrwire.com](http://www.csrwire.com)

<sup>554</sup> [www.responsabilitatesociala.ro](http://www.responsabilitatesociala.ro)

amounts of money on sponsorships, and the SME's are not encouraged to involve communities through sponsorships, even though most of Romanian companies are small ones. Another important aspect of legislation is represented by the 2% law. This law stimulates taxpayers to donate 2% of their taxes to charities, churches, federations and other nonprofit organizations<sup>555</sup>.

In 2007, within the Ministry of Labor, Family and Equal Opportunities was established the Corporate Social Responsibility Division under the supervision of a State Secretary. The main responsibility of the CSR division is to develop policies in the field of CSR in cooperation with the government, NGO's, civil society and to promote CSR concept at local level and towards companies. This Division does no longer exist, nor another to take charge of its programs.

## Conclusions

The principles of the new public management encourage the import of successful practices, tested in the private sector in the public sector. Furthermore then the import of shapes without content, governs have adopted what might have worked for the public sector.

Empirical research was secondary, analyzing the data of the World Economic Forum report on competitiveness. The original part of this research is the identification of indicators that can illustrate the potential of CSR.

The first question that rises at this point is: what is the connection between competitiveness and CSR in the public sector?

The new demands of global economies bring not only the producers in competition but also national economy as a hole.

Engaging in CSR as an instrument of cooperating and regional integrating facilitates social, political, cultural integration in the region. Enterprises socially and economical receptive will attract the consumers, investors and employees that they desire.

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<sup>555</sup> Matei, A., Tuca, M.: *Corporate Social Responsibility on the international area. Present development in Romania and Bulgaria*, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1802674](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1802674), 2011

Each country has different characteristics in national and cultural context, which they should take into the consideration in creating their national CSR strategy. Central and Eastern Europe is a specific area with significantly different economic, cultural, social, demographic and ethic characteristics. But there are also common factors which are similar in the three countries in connection with CSR, making it possible to give a list of common factors as overall recommendations for developing CSR:

- All of the countries have strong economic dependencies on different business sectors which are dominant. The development of CSR in these countries primarily depends on the contribution of these dominant companies.
- Corporations don't use the wide range of CSR practices, ad hoc philanthropic activities are typical.
- CSR practices are common among large corporations in almost all the countries. However SMEs play important role in the economy of these countries. They are the biggest employers, and the joint impact of their operation is also considerable.
- During the socialism in all of the countries there were generous social benefits. As a heritage of welfare economy there is funded by skepticism from the side of the business sector regarding the efficiency of public services as tax revenue allocation.
- Many of the corporations apply CSR only for marketing and PR purposes, and long-term thinking is missing from their CSR activity.
- NGOs don't use efficiently their capacity to play a role in social dialogue between society and the business sector.
- Only a few companies report their CSR activity, and the issued reports rarely are structured CSR reports.
- The national governments of the countries issued Sustainable Development Strategies, but the governmental decision making and the legal system of the countries don't give incentives to CSR actions.

Economies competitiveness can be influenced by the CSR practices of the public sector from a state. Thus 8 pillars have been identified from the 12 in which the public sector can intervene through CSR practices. CSR interventions can be thus concentrated to the sectorial framework of these domains.

The pillars and their potential have been identified as follows:

**Pillar 1:** Institutions, with its components public institutions, ethics and corruption, transparency of policy making, private institutions, corporate ethics, ethical behavior of firms and accountability.

- By analyzing this pillar we can identify the perception on public and private institutions, to later establish the lines of action: is there need to invest to sustain the private sector, does the public sector need new projects, in who do the citizens trust more?
- For this pillar social responsible initiatives can act in the sense of raising responsibility, transparency, ethics both in the public and private sector.

**Pillar 4:** Primary education and health

- Through CSR the public sector can act in the direction of diversifying the educational programs (technical education, post primary school for qualification of worker, etc).
- On the health part, CSR public-private partnership can identify the vulnerabilities or gaps of present situation and act accordingly.

**Pillar 5:** Higher education and training, with its components higher education and on-job-training.

- In regards to higher education strategic partnership aim at connecting the offer with demand, meaning connecting universities with companies (to avoid the unemployment of bachelors), internship programs, and requalification.

- On-the-job training refers to the actions that the public sector can undertake to retrain and constantly prepare its employees to keep the public sector at a level in line with the citizen's demand.

**Pillar 6:** Goods market efficiency, with its components competition and degree of customer orientations.

- In this matter social responsible actions can offer advantages for public goods and services where the private sector is a direct competitor. The CSR strategies can offer that "plus" that the customers look for.

**Pillar 7:** Labor market efficiency, with its component flexibility.

- Labor flexibility can be influenced by CSR engagements by the public sector through rewarding movements either by rewards or by retraining of workers.

**Pillar 8:** Financial market development, with its components trustworthiness and confidence.

- In this matter positive influence can be obtained in this period of financial crises" it is important for the public sector to rebuild the trust in the financial sector of a state to encourage investors"
- Even though the banking sector is the most effected, there is a maximum need to rebuild image because of the negative repercussions it has on the economy as a hole.

**Pillar 9:** Technological readiness, with its component ICT use.

- Promoting a better training for public servants to apply the newest and most efficient particles and technological innovations can be made using CSR.

**Pillar 11:** Business sophistication, with its components state of cluster and extent of marketing.

- State of cluster can be influenced with the support of the public sector by encouraging the partnership between stakeholders: the first step to this is discussion forums to identify the potential areas.

**Pillar 12:** Innovations



- R&D centers can be set up by partnering of public sector institutions with private companies. This would be mutual rewording: private companies are more willing to invest in business with the state and public institutions need the private funds and market orientation.

Considering that the three countries we looked at in the study are either efficiency driven or in transition from efficiency driven to innovation driven economies we can say that the focus for competitiveness should take these into consideration. The involvement of CSR practices can complete the 2 pillars of basic requirement, strengthen the efficiency enhancers and support the 2 pillars of innovation and sophistication factors.

Thus, engaging in social responsible practices by the public sector can positively influence most of the competitiveness pillars, so placing a national economy higher in the global scene.

The public sector contributes to this first of all though its role as a meditating partner to establish the legal framework and the by partnering, facilitating and endorsing to practices what it preaches.

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## THE ROLE OF INSTITUTIONS IN LOW CARBON TRANSITION: PUBLIC PERCEPTION IN FIVE EU COUNTRIES<sup>556</sup>

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Jan Vávra

**Abstract:** *The paper focuses on the perception of the role of institutions in the low carbon transition. We surveyed about 2500 respondents in the UK (Scotland), the Netherlands, Germany, the Czech Republic and Hungary and investigated perceived effort of institutions in lowering energy demand and their importance for respondents' own energy relevant behaviour. We can state, that the differences between old and new EU states still exist. The Scottish respondents are most perceptive, while the Czechs are most sceptical.*

**Keywords:** *climate change, institutions, EU, low carbon transition; energy demand Central and Eastern Europe*

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### Introduction

Current financial and economic problems of the European Union have been attracting attention of the media, politicians and people in the EU more than the environmental problems, such as energy demand and climate change, for several years. The opinion polls show that after

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<sup>556</sup> The original paper presented at the MyPhD conference held in October 2012 in Brussels included other findings on overall climate change perception and public acceptance of mitigation measures. Since these data were already published or will be published in different publications, we focus here only on the perception of institutions and elaborate on it in detail.

the peak of interest in climate change in 2007/08, EU citizens have been putting less importance on this topic. Climate change was mentioned among four most important problems for the world as whole by 62 % of EU population in 2008 and by 47 % in 2009.<sup>557</sup> In 2011 only 34 % of EU population included climate change in set of five most important environmental worries.<sup>558</sup> Despite lower publicity, the mitigation of climate change and the process of transition to low carbon economy are still long term goals of the EU. This target is represented by the climate and energy package, which was confirmed in Europe 2020 strategy, aiming to 20% reduction of greenhouse gases, 20% of energy from renewable resources and 20% of energy efficiency improvement in 2020.<sup>559</sup> The overall CO<sub>2</sub> emissions have decreased in last two decades in many European countries and also in the EU as whole.<sup>560</sup> This was caused by various factors, including the transition of Central and Eastern European economics, Kyoto protocol or economic downturn in last years. If we focus on the energy consumption (which is highly correlated with the production of carbon emissions), we can also see that the overall energy demand of EU has decreased in last 20 years. In contrast, the household sector showed growth of the energy demand in that time. Today the households directly consume in the dwellings 27 % of final energy (without the transport or energy embedded in food or other consumption).<sup>561</sup> These data confirm that households are important energy consumer and important players in any carbon mitigation and energy demand lowering policy.

We present some results of the research project GILDED, focused on the possibilities of lowering energy demand in European households.<sup>562</sup> The research project covered qualitative and quantitative surveys in five EU countries including United Kingdom (Scotland), the Netherlands, Germany, the Czech Republic and Hungary. Qualitative part of the research suggested the importance of institutional framework in which the respondents live and make use of energy in their households. When talking about their energy relevant behaviour and constraints to lowering energy demand, respondents often pointed to the importance of the

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<sup>557</sup> European Commission: *Europeans' attitudes towards climate change – Special Eurobarometer 322 – Wave 72.1*. 2009. Online: [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_322\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_322_en.pdf).

<sup>558</sup> European Commission: *Attitudes of European citizens towards the environment – Special Eurobarometer 365 – EB 75.2 – Presentation*. 2011. Online: [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_365\\_pres\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_365_pres_en.pdf).

<sup>559</sup> European Commission: *The EU Climate and energy package*. 2010. Online: [http://ec.europa.eu/clima/policies/package/index\\_en.htm](http://ec.europa.eu/clima/policies/package/index_en.htm).

<sup>560</sup> Olivier, J. G. J., Janssens-Maenhout, G., & Peters, J. A. H. W.: *Trends in global CO<sub>2</sub> emissions. 2012 Report*. 2012. Online: <http://edgar.jrc.ec.europa.eu/CO2REPORT2012.pdf>.

<sup>561</sup> European Environment Agency: *Final energy consumption by sector (CSI 027/ENER 016)*. 2013. Online: <http://www.eea.europa.eu/data-and-maps/indicators/final-energy-consumption-by-sector-5/assessment>.

<sup>562</sup> For more information see project website at <http://gildedeu.hutton.ac.uk/>.

governments (of different levels) as an agents which set rules and supervise them, should lead by example and incentivise required behaviour.<sup>563</sup> The picture of governmental institutions and their effort in the low carbon transition process was rather negative, however not that negative as the description of selfish people and greedy industry in general. We decided to investigate the importance of institutions in the quantitative study, which would allow us to carry out the international comparison. We asked respondents for the perceived effort of the different institutions in lowering energy demand and their influence on own behaviour of respondents.

Some previous studies also support the importance of the institutions in the low carbon transition process. E.g. results of United Kingdom case study on climate change perception show that most of the people in the UK think that government and industry are not doing enough about the climate change and this undermines citizens' willingness to personal act (or they use it as an excuse for lack of own action).<sup>564</sup> In another study, respondents from the Czech Republic, United States and New Zealand expressed their opinion that climate change should be addressed more through economy and legislation than through the individual actions.<sup>565</sup> In 2009 EU opinion polls, most of the EU citizens expressed the opinion that neither EU, national governments, local governments, citizens themselves, nor industry do enough to fight the climate change.<sup>566</sup> These findings are in agreement with ours. However with the knowledge of increasing relative importance of households in energy demand and carbon production, it is important to include the households even more in the low carbon transition process.

We can expect that the institutional conditions and their perception would differ across the countries, which represent not only geographic cross-cut through Europe from Northwest to Southeast, but different political histories, and cultural and economic conditions. Previous study focused on the life satisfaction in Europe argues that the perception of the society (political and institutional settings) is important for the overall life satisfaction. It is even more important in the post-socialist countries, than in old EU states.<sup>567</sup> Despite the quoted research did focus on

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<sup>563</sup> Fischer, A., Peters, V., Vávra, J., Neebe, M., & Megyesi, B.: Energy use, climate change and folk psychology: does sustainability have a chance? Results from a qualitative study in five European countries. *Global Environmental Change*. 2011. vol. 21, no. 3, pp. 1025-1034.

<sup>564</sup> Lorenzoni, I., Nicholson-Cole, S., & Whitmarsh, L.: Barriers perceived to engaging with climate change among the UK public and their policy implications. *Global Environmental Change*. 2007, vol. 17, no. 3-4, pp. 445-459.

<sup>565</sup> Lapka, M. & Cudlínová, E.: Problem of global warming and emerging patterns of global consciousness. International case study. *Journal of Landscape Ecology*. 2007, vol. 0, no. 0, pp. 91-104.

<sup>566</sup> European Commission. 2009.

<sup>567</sup> Böhnke, P.: Does society matter? Life satisfaction in the enlarged Europe. *Social Indicators Research*. 2008. vol. 87, no. 2, pp. 189-210.

the society in general, we can also expect different impact of the institutions on respondents from various countries.

## I. Methods

The questionnaire survey was conducted in spring 2010 in five European countries as a part of the research project GILDED. One region with urban centre and rural surroundings was selected in each country. We collected together 2486 questionnaires. In Scotland (n=482), the study site was the rural area of Aberdeenshire with its urban centre Aberdeen, which lies in the Northeast area of the country. The Dutch (n=468) study site, the city of Assen and the rural area Assen municipality belongs to the Northeast Dutch province Drenthe. The third study site (n=537) consists of the city of Potsdam and the neighbouring district Potsdam-Mittelmark in the Bundesland Brandenburg in the Northeast Germany, a former part of East Germany. In the Czech Republic (n=500) the study site consists of the city of České Budějovice and the former administrative districts České Budějovice and Český Krumlov situated in the South Bohemian Region. The Hungary (n=499) is represented by the city of Debrecen and the surrounding Hajdú-Bihar County in the Northeast Hungary. For detailed information about the study sites see work of Gotts and Kovách.<sup>568</sup>

We combined cluster, random and quota sampling procedures and tried to achieve a regionally representative sample according to age and gender.<sup>569</sup> However, the sample is relatively overeducated in all of the countries. Questionnaires were distributed from door to door, the combination of door to door and postal methods was applied in Scotland. For socio-demographic characteristics of the sample of respondents see Table 1. Despite the fact that our study considered only a small area of each country we use the name of the countries when

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<sup>568</sup> Gotts, N. & Kovách, I. (Eds.): *Climate change and local governance: Alternative approaches to influencing household energy consumption (A comparative study of five European regions)*. Budapest: Institute for Political Science, Hungarian Academy of Sciences, 2010. Online: <http://mek.oszk.hu/09300/09355/09355.pdf>.

<sup>569</sup> The sample is not regionally neither state representative according to the urban/rural distinction. The construction of the GILDED project required half of the respondents from urban and half of them from rural areas. However there is no statistically significant urban/rural variation in our results.

labelling the study sites, not the list of regions (pointing to the Scottish, Dutch, German, Czech or Hungarian respondents, not the respondents from Assen, Aberdeenshire, Debrecen etc.).

**Table 1: Socio-demographic characteristics of the respondents (%)**

		SCO	NL	GER	CZE	HUN
Gender	Male	54	50	54	49	49
	Female	46	50	46	52	51
Age	18-39	17	20	25	44	44
	40-59	40	50	44	35	31
	60+	43	30	30	21	25
Education	Lower	26	27	19	32	41
	Intermediate	36	29	39	51	41
	High	38	45	42	18	18

Source: GILDED research survey 2010.

**Note:** Valid percent; the sum does not always match 100 due to rounding. Education categories: Lower – no education, elementary school or lower level of secondary school (apprenticeship); Intermediate – secondary school with graduation, vocational education; High – any university degree.

The respondents were asked, among other questions, for the two dimensions of perception of four institutions, including EU politics and authorities, central governments, local governments (town, county) and environmental NGOs. The first question asked for the perception of the role of institutions in lowering overall energy demand<sup>570</sup> using the scale from 1 (no effort) through 3 (medium effort) to 5 (very big effort). The second question asked for the

<sup>570</sup> "The following questions concern the extent to which you think different institutions put an effort in decreasing overall energy consumption. Please indicate how you rate the effort of the institutions listed below in decreasing overall energy consumption."

importance of institutions on respondents' own behaviour<sup>571</sup> and used the scale from 1 (extremely unimportant) through 4 (not important, not unimportant) to 7 (extremely important). The scale of the first question was recoded into the 7 points scale for the purpose of further analysis.

We employed the cluster analysis to create the typology of respondents according to their assessment of institutional effort and importance on one's behaviour. Then we focus on the distribution of these types in different countries and their relation to the socio-demographics. The data were processed with IBM SPSS Statistics software.

The factor analysis was used to test how many dimensions are behind the answers of respondents, so that we could reduce the complexity of the answers. Respondents of all countries were treated as one population for this step. The results (Table 2) allow us to reduce the 8 questions into 2 dimensions. We thus calculated the average overall effort and average overall importance (both means of the sum of all 4 institutions) and used them in the following cluster analysis.

**Table 2: Factor analysis of perceived effort and importance of institutions**

	Factor loading	
	Importance	Effort
Importance cent. gov.	0,900	
Importance local gov.	0,869	
Importance EU	0,845	
Importance NGOs	0,763	
Effort cent. gov.		0,799
Effort EU		0,780
Effort local gov.		0,722
Effort NGOs		0,670
Eigenvalue	3,810	1,520
Variance explained	37,3 %	29,4 %

<sup>571</sup> "The following questions concern the impact of organizations on your energy consumption. Could you please indicate how important the organizations (actors) listed below are for reducing your energy consumption?"

Source: GILDED research survey 2010.

**Note:** Principal Component Analysis extraction method, rotation Varimax; only factor loadings with value higher than 0,3 are presented; 66,6 % of total variance explained. KMO=0,77. Bartlett's test of sphericity:  $\chi^2=8876,516$ ; df=28; p=0,000.

## II. Results

K-clusters analysis was employed to define the clusters among the respondents. The option with 4 clusters was chosen as the best solution, due to the best proportionality (no cluster is excessively dominant). The clusters are labelled according to their positions on the two dimensions: average effort and average importance. The members of the first cluster could be called as *perceptive and suggestible* (20 % of population<sup>572</sup>). They show the highest perceived effort of all groups (Mean=4,74) though the value is quite average on the 7 points scale. Their perceived importance is highest as well (M=5,41). The biggest group of respondents (36 %) could be labelled as *perceptive*; these people express average effort (M=4,39) and low importance (M=3,31). We named the smallest group (16 %) as *suggestible sceptics*. They assessed the effort as low (M=3,08) and importance as relatively high (M=4,94). The last group (28 %) was named *mistrustful* due to their lowest ranking of both effort (M=2,73) and importance (M=2,11).

Table 3 shows the distribution of the types (clusters) in the particular countries. The differences between countries are statistically significant, distribution of clusters in countries is unequal ( $\chi^2=377,457$ ; df=12; p=0,000). *Perceptive and suggestible* and *suggestible sceptics* are most frequent in Scotland, the *perceptive* in Germany, and the *mistrustful* in Czech Republic.

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<sup>572</sup> The values represent valid percent; totally 4,2 % of respondents were not included into the cluster analysis due to the missing data.



**Table 3: Distribution of types among countries (%)**

	SCO	NL	GER	CZE	HUN
Perceptive and suggestible	<b>32</b> <sup>(7,1)</sup>	<b>28</b> <sup>(4,9)</sup>	20 <sup>(0,5)</sup>	<b>6</b> <sup>(-8,0)</sup>	<b>13</b> <sup>(-4,6)</sup>
Perceptive	33 <sup>(-1,6)</sup>	36 <sup>(0,0)</sup>	<b>43</b> <sup>(4,0)</sup>	<b>29</b> <sup>(-3,5)</sup>	38 <sup>(0,9)</sup>
Suggestible sceptics	<b>25</b> <sup>(6,1)</sup>	17 <sup>(0,5)</sup>	16 <sup>(0,1)</sup>	<b>9</b> <sup>(-4,6)</sup>	<b>13</b> <sup>(-2,2)</sup>
Mistrustful	<b>11</b> <sup>(-9,4)</sup>	<b>19</b> <sup>(-4,7)</sup>	<b>20</b> <sup>(-4,8)</sup>	<b>57</b> <sup>(14,5)</sup>	<b>37</b> <sup>(5,0)</sup>
All clusters	100	100	100	100	100

Source: GILDED research survey 2010.

**Note:** Valid percent without missing values. The sum of the columns in the table may not be exactly 100 due to rounding. The superscripts are adjusted standardized residuals of  $\chi^2$  distribution (calculated with frequencies, not percent), numbers with adj. st. rez. >1,96 are marked bold.

The differences in opinions of respondents could not be caused only by their nationality, but also by the socio-demographics. To test this, we check the distribution of the gender, age groups and education among the clusters (Table 4) and among the countries. Gender distribution among the countries is equal ( $\chi^2=5,875$ ;  $df=4$ ;  $p=0,209$ ). The gender distribution in the clusters is unequal, with males being underrepresented among the *perceptive and suggestible* and overrepresented in *mistrustful* (women a vice versa), however this does not apply for all countries. When the test is calculated for each country separately ( $\chi^2$  in Table 4), the countries show different patterns. Scottish distribution is the same as overall, in Netherlands women are underrepresented only in *mistrustful* group and in Hungary women are underrepresented in *mistrustful* and overrepresented in *perceptive* type.

The distribution of age groups in the countries is uneven, as suggested by the Table 1 ( $\chi^2=179,071$ ;  $df=8$ ;  $p=0,000$ ), with Scottish, Dutch and German samples being older than Czech or Hungarian. The age groups are not distributed equally in the different clusters. The youngest age group (18–39) is underrepresented in the cluster *perceptive* and overrepresented among *suggestible sceptics*, while the oldest age group (60+) shows exactly opposite distribution. Considering the fact, that age distribution in the clusters is unequal only in the Czech Republic

(18–39 overrepresented in *perceptive* and underrepresented in *mistrustful*, 40–59 vice versa), and the specifics of Czech and overall distribution of age groups, we can state, that the age differences between the clusters are caused mainly by the varying age in the countries.

**Table 4: Distribution of socio-demographics among the clusters**

	All countries	SCO	NL	GER	CZE	HUN
<b>Gender*Clusters</b>	14,263** (3)	8,762* (3)	11,011* (3)	3,648 (3)	1,065 (3)	11,896** (3)
<b>Age groups*Clusters</b>	24,744** (6)	8,985 (6)	7,196 (6)	10,844 (6)	14,995* (6)	10,092 (6)
<b>Education*Clusters</b>	12,353 (6)	10,194 (6)	6,617 (6)	18,996** (6)	11,463 (6)	13,788* (6)

Source: GILDED research survey 2010.

Note: Numbers are  $\chi^2$ , numbers in brackets degrees of freedom; \*  $p < 0,05$ ; \*\*  $p < 0,01$ .

Distribution of education is also uneven in the countries ( $\chi^2=184,019$ ;  $df=8$ ;  $p=0,000$ ). Dutch, Scottish and German samples are characterized by the overrepresentation of highest education, Czech sample of intermediate and Hungarian of lower education. Education groups are represented in the clusters equally in Scotland, the Netherlands and the Czech Republic, not in Germany (intermediate education underrepresented in *perceptive* and overrepresented in *suggestible sceptics*, high education vice versa and underrepresented in *perceptive and suggestible*) and Hungary (lower education overrepresented in *perceptive* and underrepresented in *suggestible sceptics*, higher education vice versa).

The comparison of distribution of the socio-demographics among clusters and countries and the countries' specifics validate the nationality as the most important explanatory trait, as the results in Table 3 suggest.

### III. Discussion

The effect of socio-demographic characteristics is visible, however not dominant. We can say, that women are generally more perceptive to the effort of institutions than men, though not in all of the countries. The age was important only in the Czech Republic, with younger people being more perceptive and middle aged more sceptical. Education has mutually opposed effects in Germany and Hungary and no effect in other countries. While the socio-demographic characteristics can explain some variability of distribution of the types, most of the variability is caused by the nationality. We want to summarise the international distinctions, briefly mention possible effects of increase of institutional effort on particular types and then pay more attention to the East-West differences.

The Scottish and Dutch samples show high occurrence of the *perceptive and suggestible*, people who perceive relatively highest effort of the institutions and express their importance on own behaviour. On the other hand, this type is underrepresented in Hungary and even more in the Czech Republic, with only 6 % of respondents! The *perceptive*, who see average effort and voice low importance, are the most common type in all countries, except the Czech Republic. They reach almost half of all respondents in Germany. *Suggestible sceptics*, who see low effort but express relatively high importance, are quite common in Scotland, least common in the Czech Republic. The *mistrustful*, biggest sceptics of all respondents, are rare in Scotland, quite often in Hungary and they are the majority in the Czech Republic!

While we cannot say for sure, whether are the perceptive people too optimistic and the sceptics more realistic or the perceptive respondents are realistic and sceptics too pessimistic, we can still build upon people's perceptions. We can hypothesize that those more *suggestible*, could be more influenced by increased effort of the institutions and *perceptive suggestible* may be even more affected with lower effort of institutions than *suggestible sceptics*. The *perceptive* express weaker link between the overall effort and importance of institutions, which suggests that the institutional effort does not play important role in their energy relevant behaviour, and other factors are much more important (e.g. money or habits), as our qualitative research also revealed.<sup>573</sup> The *mistrustful* who expressed the lowest perceived effort and importance of all

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<sup>573</sup> Fischer et al. 2011.

groups represent very sceptical part of the population which perceive quite low effort and importance of institutions. This group of people is probably the most difficult to address.

The structure of the distribution of types among the countries suggests that there still exist differences between the old and new EU countries. This is visible mostly in the categories *perceptive and suggestible*, *suggestible* (underrepresented in the CEE states) and *mistrustful* (overrepresented). Why are the Hungarians and even more Czechs so sceptical? Following the findings that perception of the society is more important for the life satisfaction in CEE countries and that these countries face objectively worse governance,<sup>574</sup> we argue that CEE respondents are more sceptical due to their rather negative experience with institutions. For the longest part of the 20<sup>th</sup> century, institutions represented the bureaucratic power aiming to oppress people. This post-socialist heritage of distrust to institutions, was accompanied by the individualization (as a reaction to the end of rhetoric collectivism), since 1989. Difficult transition era has brought a lot of unsuccessful governmental actions, for which is sometimes very hard to say, whether the flaws are due to bad governance and lack of experience or due to corruption and clientelism. Since 1989 CEE countries face the problems with reconstruction and functioning of the institutions, be it “only” ineffective governance or corruption.

As an example of the controversial energy policy, we can briefly describe the case of production of electricity from photovoltaic (PV) sources in the Czech Republic.<sup>575</sup> This case peaked in public in the years 2010 and 2011, thus most of the Czech respondents were probably not yet aware of it in the time of our survey; a year later they could have been even more sceptic.<sup>576</sup> Though this case is only Czech and probably did not influence our respondents, we believe it is a good example of CEE problems.

In order to support the development of solar electricity production, the Czech government legally set high feed-in-tariff with the law signed in 2005.<sup>577</sup> The legislation was not flexible enough to be able to respond to the lowering costs of the PV power stations. The

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<sup>574</sup> Böhnke. 2008.

<sup>575</sup> Due to the lack of peer-review analyses and official reports, we refer also to newspaper articles and blogs in further paragraphs.

<sup>576</sup> Respondents in all surveyed countries, including the Czech Republic, favoured the renewable sources of energy, together with higher energy efficiency, as an acceptable way of climate change mitigation. See Lapka, M. & Vávra, J.: Regional perception of global challenges in five EU countries: Economic crisis, environment and technology. In *INPROFORUM 2011 “Global economic crisis – regional impacts” conference book (CD-ROM)*. České Budějovice: University of South Bohemia, 2011, pp. 236–243. Online: <http://www.ecology.org/wp-content/uploads/Inproforum-global-challenges.pdf>.

<sup>577</sup> Williams, D.: *Czech Republic: A Dark Spot in a Sunny Business*. 2010. Online:

<http://www.renewableenergyworld.com/rea/news/article/2010/12/czech-republic-a-dark-spot-in-a-sunny-business>.

guaranteed high feed-in-tariffs and low construction costs led to great boom of solar industry in 2009 and 2010. This put huge financial burden on the state budget and increased the price of the electricity. To avoid this, the guaranteed feed-in-tariff was afterwards retroactively taxed and the government was sued for this action. The late governmental reaction to the boom of the industry, together with the unclear ownership structure of some of the biggest PV farms,<sup>578</sup> raise a question, whether this case was example of unintentional mistake or well-prepared abuse of public money. The biggest energy producer ČEZ, majority state-owned, also participates in this business and some of its actions are under police investigation due to the possible corruption.<sup>579</sup> A big critic of the solar industry, contemporary boss of the Czech energy supervising agency called Energy Regulatory Office, is now also under investigation of the police due to possible help to abuse of power of an ERO officer responsible for the permissions for new PV power station concessions.<sup>580</sup> While some journalists argue that some of these complaints are just a part of the legal and economic fight<sup>581</sup> (and often are put off by the police as unjustified), the media presentation of the whole problem includes these legal issues and the public perception is influenced by them. The idea of PV electricity (and to some extent the renewable sources as a whole) was thus strongly discredited among the Czech public. We are convinced that this Czech case is a good illustration of many other originally commendable ideas, which turned upside down due to very specific CEE governance.<sup>582</sup>

In order to strengthen the low carbon transition and lowering of energy demand in CEE countries, and to approach the sceptical part of the population it seems to be necessary to improve the overall level of governance and build confidence between people and the government. In a long term, this is probably one of the ways, how to make the *mistrustful* part of the population at least a bit more trusting and opened.

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<sup>578</sup> Pět z dvaceti největších solárních elektráren má skryté vlastníky. *Ekolist*, 16. 2. 2013. Online:

<http://ekolist.cz/cz/zpravodajstvi/zpravy/pet-z-dvaceti-nejvetsich-solarnich-elektraren-ma-skryte-vlastniky>.

<sup>579</sup> Greene, A.: Spotlight on graft in solar sector. *Prague Post*, 6. 3. 2013. Online: <http://www.praguepost.com/business/15653-spotlight-on-graft-in-solar-sector.html>.

<sup>580</sup> Žalobce: Předsedkyně ERÚ napomáhala své podřízené. *Deník.cz*, 28. 3. 2012. Online:

[http://www.denik.cz/z\\_domova/predsedkyne-eru-podle-zalobce-napomahala-sve-podrizene-20130328.html](http://www.denik.cz/z_domova/predsedkyne-eru-podle-zalobce-napomahala-sve-podrizene-20130328.html).

<sup>581</sup> Léko, I.: Mafie se brání. Vorlíčková a Vitásková se jí připletly do cesty. *Česká Pozice*, 28. 3. 2013. Online:

<http://www.ceskapozice.cz/domov/pravo-bezpecnost/mafie-se-brani-vorlickova-vitaskova-se-ji-pripletly-do-cesty>.

<sup>582</sup> Certainly this example is not the ideal realization, which people would prefer, though more than half of the Czech population expressed their view that the Czech Republic can seriously contribute to the carbon emissions mitigation. See Lapka, M., Cudlínová, E. & Marek, M. V.: Vnímání globálních klimatických změn ve společnosti. In Marek, M. V. a kol: *Uhlík v ekosystémech České republiky v měnícím se klimatu*. Praha: Academia, 2011, pp. 211–232.

## Conclusions

There are still persisting differences between the old and new EU states in terms of perception of institutional effort in lowering energy demand and perceived importance of institutions for respondents' own behaviour. While the respondents from Scotland, the Netherlands and Germany are generally more opened and claim to be more influenced, Hungarian and even more Czech respondents seem to be very sceptic towards the institutions. Using the latest case of Czech energy policy, we try to illustrate one of the possible sources of this scepticism. We conclude that the overall improvement of governance and quality of institutions in CEE countries is one of the requisite actions for successful future low carbon transition on the level of households.

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## DIGITAL BASED SOCIETY THROUGH EDUCATION

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Catalin Vrabie

**Abstract:** *The present analysis aims to radiograph the status of the official Web sites for all the municipalities in Romania and, together with the data collected from the educational system (I refer here especially to the education in the field of IT&C) to verify if there is a connection between these and the development of eGovernment in Romania. It is understood that the existence of Web platforms very well maintained doesn't imply that they're also used by the citizens or the business society. The new methods of administration don't need only innovative solutions but also "intelligent citizens". It is not only the personnel of public administration that need to benefit from IT&C education, but also those to whom these platforms address (the citizens).*

**Keywords:** *Municipalities, education, electronic, governance.*

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## Introduction

For the municipalities in Romania electronic governance is a relatively new practice (the first national project on this theme was initiated in the year 2003 - [www.e-guvernare.ro](http://www.e-guvernare.ro)<sup>583</sup>) and

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<sup>583</sup> Law no.161/2003 sets the legal basis of the National Electronic System, with the declared purpose of ensuring access to "public information and provision of public services towards physical and juridical persons."

it includes digital governance (the offering of public services through electronic means) as well as digital democracy (citizen participation at the governance activity)<sup>584</sup>.

Today, for interacting with the public administration a computer connected to the Internet is usually enough. Connecting from a browser to the Web page of the institution you look for is enough (generally) for obtaining and sending information to/from the public administration. Scientific literature presents 5 pillars of interaction of the PA with its environment<sup>585 586 587</sup>.

**Pillar 1. Displaying information on the Web pages – one-way communication.** This is the easiest form of interaction, the posting of information on the official Web page of the institution with the purpose of informing the citizens.

**Pillar 2. Two-way communication.** Through this method the public administration can collect data from the environment to which it addresses, be it through e-mail or more evolved systems of data transferring using intranets or extranets.

**Pillar 3. Financial systems and Web transactions.** The Web site available to the public offers the possibility of effectuating the complete public service through, or including, the decision of using the service and the actual supplying of it. For the applicant there is no need for another official procedure through which he must use documents written on paper. This type of government is partially possible through offering access for the citizens and the business environment to on-line databases.

**Pillar 4. Vertical integration (inter-department) and horizontal (intra-department) of the public services available on-line.** This level of interaction is dependent on the speed with which the synchronization of information is realised for the on-line IT systems to provide in time the data needed by the users.

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<sup>584</sup> Holzer Mark și Seang-Tae Kim; *Digital Governance in Municipalities Worldwide* (2007).

<sup>585</sup> Pardo, T. 2000. *Realizing the promise of digital government: It's more than building a web site*. Albany, NY: Center for Technology in Government

<sup>586</sup> Baltac Vasile, *Expunere orală despre eGovernment*, 2008

<sup>587</sup> Vrabie Cătălin; *Just do IT – Spreading the use of digital services*, EGPA Conference, Malta 2009



**Pillar 5. Citizen participation to the government activity.** In this phase it is promoted the participation through electronic systems like: discussion forums, blogs, electronically voting systems (not necessarily electoral), electronic [questioner](#), or any other method of direct and immediate interaction.

The conceptual frame marked by these 5 pillars is necessary only for the understanding of the evolution of eGovernment. In Romania, in this moment there are 41 districts and 103 municipalities, from which only 96 (93.20%) are present on the Internet in the moment of this study (December 2009 – January 2010). From these, only few of them (we will find in the following pages more detailed information) have a Web site sufficiently developed to allow communication as it is described in the pillars 3, 4 and 5. Practice has showed that there is no lineal evolution and this is a good reason to expect that at the next analysis the number of municipalities that use well developed Web platforms to be greater. To the point, the elements taken into account in the analysis were: *the presence of transparency elements, the management of electronic documents, useful content, methods of bidirectional communication and some general elements regarding the Web site taken into discussion (graphic interface, the easiness in navigating, the richness of information connected to the municipality etc.).*

## I. Research methodology

Although there are numerous Romanian initiatives of connecting to the Internet even smaller communities, like small towns or even communes (one example would be the project [www.ecomunitate.ro](http://www.ecomunitate.ro)<sup>588</sup>, that has the ambition of connecting to the Internet 255 communes and medium to small size towns from Romania), I have chosen the municipalities due to the positive

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<sup>588</sup> The institutions involved in the project are: the Ministry for Administration and Internal Problems, the Ministry for Education, Research and Innovation, the Ministry for Culture, Cults and National Patrimony and the Ministry for Small and Medium Sized Enterprises, Commerce and the Business Environment with the support from the World Bank and the European Union.

relation between the number of inhabitants and the capacity to eGovernment of the local public administration<sup>589 590 591</sup>.

Most of the elements used in this research are taken from previous studies, adapted afterwards to take in relevant values (table 2.1). We can observe, as an example, the study "Digital Governance in Municipalities Worldwide (2007)" realised by Mark Holzer and Seang-Tae Kim in 2007<sup>592</sup>, where Bucharest, the only Romanian municipality, is present on the 37<sup>th</sup> spot, much higher compared to 2005, when it was situated on the 64<sup>th</sup> spot. The obtaining of the data was made through individually accessing of each official Web site of the municipalities, just after these were found on the Internet with the help of the well known search engine Google (this intermediary step was necessary due to the lack of a standard model of Web address; for example the mayor office in the capital city has the address [www.pmb.ro](http://www.pmb.ro) and the mayor office in the city of Iasi uses [www.primaria-iasi.ro](http://www.primaria-iasi.ro)).

The whole research was made in the December 2009 – January 2010 period. Once accessed the Web site, the elements presented in the table 2.1, were followed and values from a scale of 1 to 5 were attributed (according to the table 1 – C5 section) to those elements that present a potential risk of subjectivity from the observer, like: *easiness of browsing*, *attractive design* etc. In all the rest (for sections C1 to C4 – see the exceptions described below, box 1.1.) the attributing of values was made with 0 or 1 (0 = it doesn't exist; 1= it exists) for every element submitted to the research, for example: "Can you submit petitions on-line?" or: "Is there an electronic map of the municipality?"

### Box 1.1. Exceptions

We can find two exceptions to these rules, and these are:

1. In the case of the chapter "Transparence", especially at the presence on the Web site of the CVs of the employees. In case the CVs of all the employees are present, the value that must be introduced is 2 (C14 = 2), if only the CVs from the leaders of the institution are present, then the value 1 must be introduced (C14 = 1), and if none of the CVs can be found, 0 (C14 = 0); (amazingly but in this last situation we can find 37 municipalities from Romania, among which we can count the mayor offices from Baia Mare, Ramnicu Valcea, Sibiu, Targoviste, etc.);
2. In the case of the chapter "E-DOC", if on the Web site can be found documents for on-line fill-in (C211 = 1), as well as in standard electronic format .doc and/or .pdf (C212 = 1), then C21 will take as an exceptional case the value 3, or else C21 will be equal to the sum of C211 and C212, which obviously will be equal with 0 or 1.

<sup>589</sup> Moon, M. Jae, and P. deLeon. 2001. "Municipal Reinvention: Municipal Values and Diffusion among Municipalities." *Journal of Public Administration Research and Theory* 11(3): 327-352

<sup>590</sup> Moon, M. Jae. 2002. "The evolution of E-government among municipalities: Rhetoric or reality?" *Public Administration Review* 62(4): 424-433

<sup>591</sup> Musso, J. 2000. "Designing Web Technologies for Local Governance Reform: Good Management or Good Democracy." *Political Communication* 17(1): 1-19

<sup>592</sup> The Rutgers - SKKU E-Governance Survey Instrument, that can also be found in the paper „Digital Governance in Municipalities Worldwide (2007)" [Marc Holzer & Seang-Tae Kim]

**Table 2.1.: Elements submitted to the research**

The research element	The values	Codification
<b>TRANSPARENCY</b>		<b>C1</b>
Declaration of fortune	0 or 1	C11
Organisational chart	0 or 1	C12
Minutes/meetings published on the Web site	0 or 1	C13
CVs of the employees	0, 1 or 2	C14*
Legislation	0 or 1	C15
<b>E-DOC</b>		<b>C2</b>
Authorizations/certificates/electronic forms		C21**
.pdf, doc, .rtf format	0 or 1	C211
On-line fill in of forms	0 or 1	C212
On-line following of submitted request, electronic or not (after registering no.)	0 or 1	C22
On-line petitions	0 or 1	C23
Public announcements for: acquisition projects, concession, renting	0 or 1	C24
<b>COMMUNICATION</b>		<b>C3</b>
The possibility to send an e-mail directly to the mayor (or his cabinet)	0 or 1	C31
The possibility to send suggestions (other then regarding the Web site)	0 or 1	C32
Discussion forum between/with the citizens	0 or 1	C33
<b>USEFUL CONTENT</b>		<b>C4</b>
Electronic map of the city	0 or 1	C41
Map of public transportation	0 or 1	C42
Possibility to search within the Web site	0 or 1	C43
Language selector	0 or 1	C44
Mayor Office news	0 or 1	C45

Web cam	0 or 1	C46
<b>GENERAL</b>		<b>C5***</b>
Attractive design	Between 1 and 5	C51
Easy browsing	Between 1 and 5	C52
It presents information with general character (taxi phone no., hotel, shows etc.)	Between 1 and 5	C53

### Explanations:

0 - not found on the Web site;  
 1 - found on the Web site  
 \* Exception 1  
 \*\* Exception 2  
 \*\*\* see table 3.8

The study used 24 instruments for the radiography of the Web site<sup>593</sup>, grouped on 5 distinct classes (C1, C2, C3, C4 and C5 as they're presented in the same table), each with a different number of subclasses according to the relevance it had in the analysis. The 5 classes have the same weight in the final classification. The grade on each class is given by the sum of the point's weight obtained at each subclass, so that the subclass will have a value between 1 and 5. In the appendix 1, a model of calculus is presented on the example of the mayor office in Bucharest.

<sup>593</sup> Undertook and adapted after The Rutgers - SKKU E-Governance Survey Instrument, that can also be found in the paper „Digital Governance in Municipalities Worldwide (2007)” [Marc Holzer & Seang-Tae Kim]

Below is presented the calculus formulas for each class at a time and for the final result:

$$C1 \text{ (TRANSPARENCY)} = \frac{N_{max}}{P_{max}} * \sum_{i=1}^5 C1i$$

$$C2 \text{ (E – DOC)} = \frac{N_{max}}{P_{max}} * \sum_{i=1}^4 C2i$$

$$C3 \text{ (COMMUNICATION)} = \frac{N_{max}}{P_{max}} * \sum_{i=1}^3 C3i$$

$$C4 \text{ (USEFUL CONTENT)} = \frac{N_{max}}{P_{max}} * \sum_{i=1}^6 C4i$$

$$C5 \text{ (GENERAL INFO)} = \frac{\sum_{i=1}^3 C5i}{N_{elem}}$$

$$P_{final} = \frac{\sum_{i=1}^5 C_i}{N_{cls}}$$

**Where:**  
**C1, C2, C3, C4, C5**  
**C1i, C2i, C3i, C4i, C5i**  
**N<sub>max</sub>**  
**P<sub>max</sub>**  
**N<sub>elem</sub>**  
**N<sub>cls</sub>**  
**P<sub>final</sub>**

- analysis classes (for C1 and C2 we must keep in sight the exceptions described before);
- subclasses (elements) of analysis, the values obtained after receiving the answers;
- maximum grade that can be obtained, (5 in this case);
- maximum points that can be obtained through summing up the maximum values that can be given to each element;
- number of elements submitted to the analysis;
- number of classes, (5 in this case);
- the points obtained on the Web site under analysis (on a scale of 1 to 5).

## II. Obtained results

All of the 103 Romanian municipalities have been analysed and the results obtained can be presented on each class, but also by the final results. As it was expected, the municipality of Bucharest is in the top if we judge according to the final result, but we can find drawbacks at the chapters of “Transparency” and “Generalities”. From those 103 municipalities only 96 (93,20%) had at the end of the year 2009 (beginning of 2010) an active page on the Internet<sup>594</sup>, from which – after the final results – 3 have obtained the grade *very good* (final points situated between 4,01 and 5,00), 28 *good* (points between 3,01 and 4,00), 46 *satisfactory* (points between 2,01 and 3,00), 16 *low* (points between 1,01 and 2,00) and 3, to which I added the 7 that didn’t have an on-line page in the moment of research was realised, *very low* (points under 1,01).

<sup>594</sup> The 7 municipalities which are missing are: Falticeni, Toplita, Calafat, Gheorghieni, Targu Secuiesc, Sebes and Moinesti.

**Table 3.1. The stage of eGov development in Romania**

<i>Grade</i>	<i>Municipalities</i>	<i>%</i>
Very good	3	2,91
Good	28	27,18
Satisfactory	46	44,66
Low	16	15,53
Very low	10	9,71

We can see this way that almost half of the Romanian municipalities of the country have a *satisfactory* Web page (information about which we can't say that it is satisfactory from the point of view of the citizen or the business environment) and a third is *good* or *very good*. Further, I made averages for each county and created a chromatic map (Image 3.1) displaying the level of implementation of Web technologies from the municipalities of the analysed county.

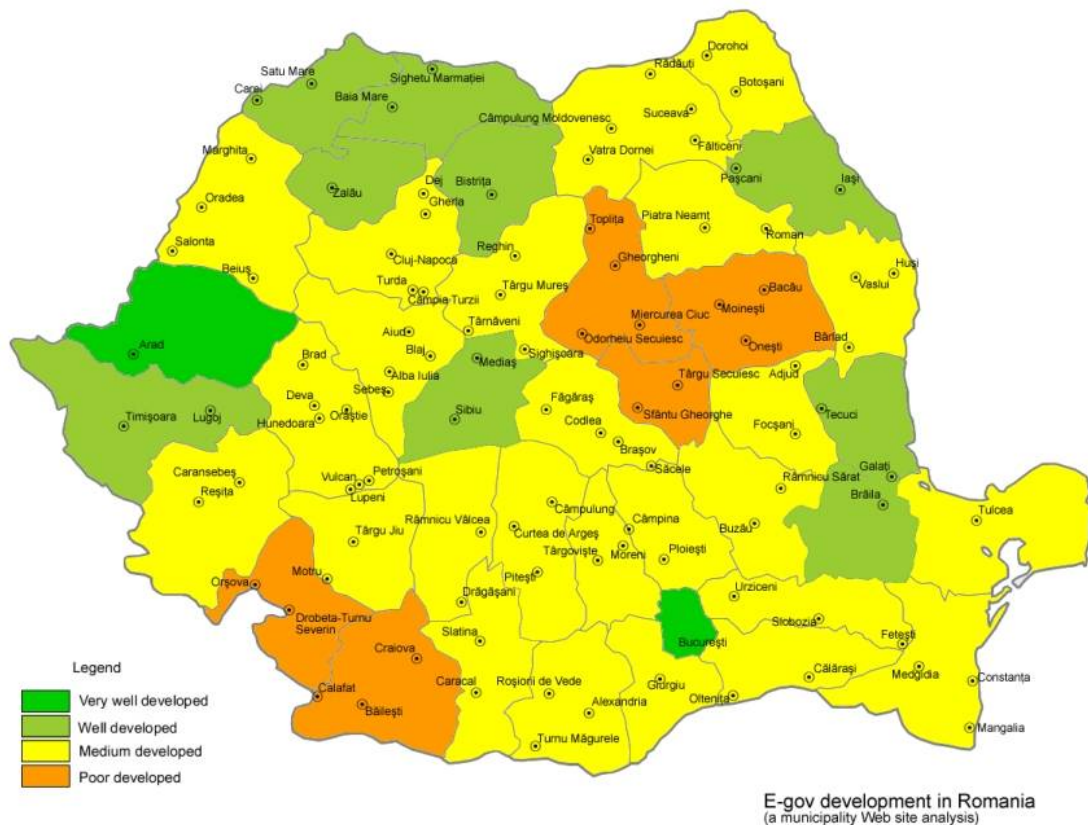
**Table 3.2. The level of eGov development divided by counties**

<i>Grade</i>	<i>Counties</i>	<i>%</i>
Very good	2	4,88%
Good	7	17,07%
Satisfactory	27	65,85%
Low	5	12,20%
Very low	0	0,00%

We can see after the analysis of the counties (table 3.2) that the level of eGovernment development in Romania is mostly *satisfactory* – two thirds of Romania's divisions have received this grade (points between 2.01 and 3.00), while only 2 obtained *very good*: Bucharest (together

with Ilfov county) and Arad. We must notice that none of the counties received the grade very low.

**Image 3.1. EGov development in Romania**



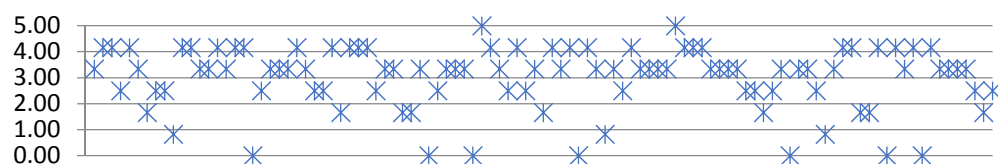
## Transparency elements

From all the 103 municipalities, only 4: Piatra Neamt, Giurgiu, Slobozia and Miercurea Ciuc, had on their Web site CVs for the entire personnel. The rest either didn't have any CVs on the Web site or they had only the CVs for the leading personnel. The average score obtained at this chapter is the highest – 3.01, but probably this high number of points is obtained due to legislative obligations rather than the interest of the officials. We will see that at the E-DOC chapter, where the legislation isn't so compelling, the average is much lower.

**Table 3.3. The municipalities' status at the Transparency chapter**

<i>Grade</i>	<i>Municipalities</i>	<i>%</i>
Very good	30	29,13
Good	37	35,92
Satisfactory	17	16,50
Low	9	8,74
Very low	10	9,71

**Graph 3.1. Dispersion graph at the Transparency chapter**



The graphic displayed above shows us that the score of most of the municipalities (65, meaning 63.10% of their total) is situated in the interval 3.33 – 4.17, which is over the average. This may show that in the future also the ones under the average will go up.

### Electronic document management

The most developed Web sites from this point of view are those from Bucharest, Timisoara, Targu-Mures, Reghin and Ramnicu Valcea, each of them obtaining a full score. It is also worth mentioning that 23 municipalities (22,33%) have obtained a score lower than 1 point, a finding not so encouraging considering the fact that through these on-line services the mayor's office can get closer to the citizens.

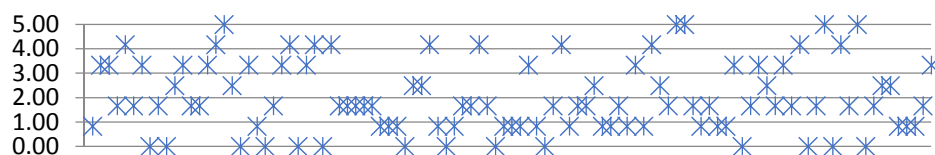


**Table 3.4. The municipalities' status on the E-DOC chapter**

<i>Grade</i>	<i>Municipalities</i>	<i>%</i>
Very good	16	15,53
Good	14	13,59
Satisfactory	9	8,74
Low	28	27,18
Very low	36	34,95

At this chapter we find the lowest average on the entire study (1.99), a fact that shows how many issues the municipalities' Web sites have on the delivering of on-line public services.

**Graph 3.2. Dispersion graph at the E-DOC chapter**



In the graph above we can observe that most of the municipalities (63 – 61.16%) are positioned under the average. For avoiding a further decrease of it the authorities should “force” the mayors' offices - through an adequate legislative frame - on posting on their Web sites electronic forms/materials for the citizens' access.

### Electronic methods for bidirectional communication

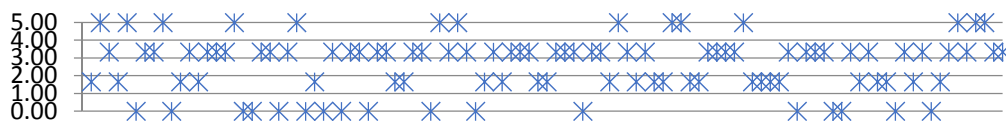
The average score obtained at this chapter was 2.59. The maximum number of points was gained by 14 municipalities (13.59%) – here in this chapter, I have encountered the biggest number of municipalities which obtained maximum points. Sadly, this number is balanced by

10+7<sup>595</sup> municipalities (16.50%) which obtained 0 (zero) points on this subject, a fact that considerably decreased the average score under the expectations, at a value of 2.59.

**Table 3.5. The municipality's status on the *Contact* chapter**

<i>Grade</i>	<i>Municipalities</i>	<i>%</i>
Very good	14	13,59
Good	46	44,66
Satisfactory	0	0,00
Low	26	25,24
Very low	17	16,50

**Graph 3.3. Dispersion graph at the *Contact* chapter**



We can gather from this graph that the scale is slightly out of balance in favour of those with a score over the average results: 60 municipalities (58.25%) are above and 43 (41.75%) below, pointing a possible growth of it.

### Useful content of the Web sites studied

The obtained average is 2.10, which shows that there is an unbalanced situation between the number of municipalities that don't offer information on the Web site about the city and those that present this information. Only 35 Web sites (33.33%) allow citizens to choose between several used languages, and 19 (18.44%) have the option of viewing live images through Web

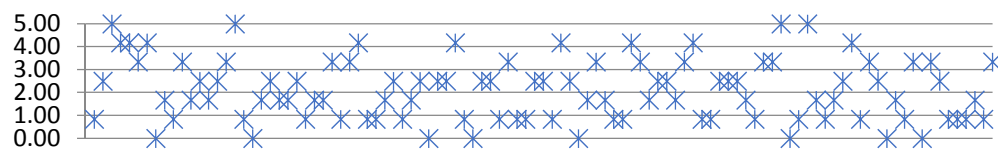
<sup>595</sup> The 7 municipalities which are missing are: Falticeni, Toplita, Calafat, Gheorghieni, Targu Secuiesc, Sebes and Moinesti.

cams. The map for transportation means is available only on 14 Web sites (13.59%) and the map for the entire municipality (a very important element) is presented in 53 Web sites (51.46% - a little more than a half).

**Table 3.6. The municipalities' status on the *Useful content* chapter**

Grade	Municipalities	%
Very good	13	12,62
Good	15	14,56
Satisfactory	22	21,36
Low	19	18,45
Very low	34	33,01

**Graph 3.4. Dispersion graph at the *Useful content* chapter**



Graph 3.4. reveals a concentration of municipalities in its lower part rather than in its upper part (as it would be desired). A number of 53 municipalities (51.46%) are situated below average. It is possible that a legislative intervention, or a higher interest from the local authorities, will increase the values obtained at this category.

### General information about the Web sites in view

This research examines also the level of accessibility of the Web site. In other words, I wanted to see how user friendly the Web sites are. For measuring this, I used mostly, the same techniques applied on to the Web sites analyses made in the private sector, studying how attractive is the design, how easy it is to work inside the Web site, the quality and quantity of information about the municipality. This is the chapter where none of the municipalities

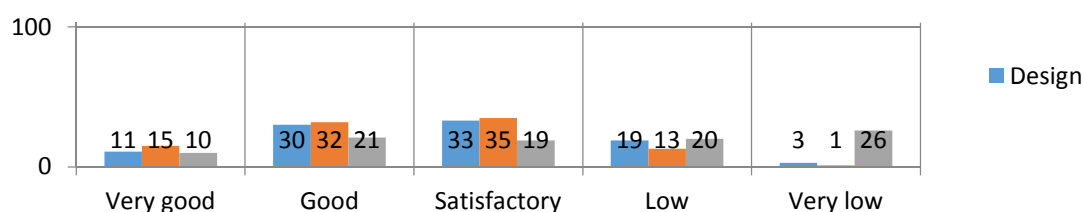
(excepting those 7<sup>596</sup>) didn't obtain a score lower than 1 point, a fact that rise the average to 2.94, very close to the maximum obtained in this analysis (3.01 at the *transparency* chapter, only that in this case the result isn't due to legislative constrains). These results indicate that there is nevertheless an interest from the municipalities for being visible on to the Internet, and this visibility to lead to a pleasant visit (e.g. for tourism the Web site of a city is like its business card).

The results are balanced between those three subclasses analyzed (table 3.7.). We can observe that maximum points were obtained by: 11 municipalities (10.68%) for *design*, 15 for *easy browsing* (14.56%) and 10 for *general information* (9.71%). Despite this, only 5 municipalities can be found in each subclass (Sibiu, Arad, Bistrita, Botosani, Craiova).

**Table 3.7. Results balance for the chapter *General information***

Grade	<i>Attractive design</i>		<i>Easy browsing</i>		<i>General information</i>	
Very good	11	10,68%	15	14,56%	10	9,71%
Good	30	29,13%	32	31,07%	21	20,39%
Satisfactory	33	32,04%	35	33,98%	19	18,45%
Low	19	18,45%	13	12,62%	20	19,42%
Very low	3	2,91%	1	0,97%	26	25,24%

**Graph 3.5. The balanced results of the chapter *General information***



**Table 3.9. The municipalities' status on the *General information***

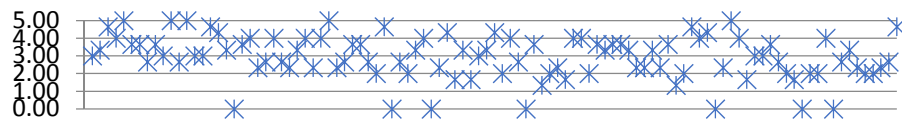
The general information section includes two information categories. One refers to the Web site itself, to the degree of difficulty found in using it and

<sup>596</sup> The 7 municipalities which are missing are: Falticeni, Toplita, Calafat, Gheorghieni, Targu Secuiesc, Sebes and Moinesti.

accessing the information presented on it - finalised in appreciating the Web site's design and the easiness of browsing in it. A second category refers to the information of general interest presented on the Web site: telephone no. for taxi, hotels, shows/events).

<i>Grade</i>	<i>Municipalities</i>	<i>%</i>
Very good	14	13,59
Good	34	33,01
Satisfactory	30	29,13
Low	18	17,48
Very low	7	6,80

**Graph 3.6. Dispersion graph at the *General information* chapter**



From the graphic above we can conclude that most of the municipalities (55 in absolute measure, 53.40% in relative measure) have obtained a rating superior, or very close, to the average (11 cities, meaning 10.67% out of the total, have obtained the rating 2.67). The “concentration”, contrary to the previous chapter, is found in the upper region of the graphic, with an obvious inclination towards an attractive design rather than utility.

### III. Study conclusions

In this study it is revealed the present situation in the level of implementing eGovernment through the mayor's offices Web sites of all Romanian municipalities. As we can observe from the map displayed earlier (img. 3.1.) or from the table 3.1., and table 3.2, the situation is *medium* which signifies that there are still multiple steps to be made in order for us to be able

to speak about electronic governance in Romania, as we encounter it in other European countries (and not only).

**Graph 5.1. Dispersion chart obtained by using the final results of the study**



This can also be seen in the graph 5.1, by the fact that the “concentration” can be found around the average value (2.52), with 56 municipalities (54.37%) obtaining a rating over the average and 47 underneath it (45.63%).

## IV. IT&C education in Romania

About 20 years have passed since the computer has been introduced in the education system. If, at the beginning, the computer was considered a work instrument in so called *IT laboratories*, where pupils learned how to deal with computers, in the last years, a real conceptual revolution was generated in the education sector, the computer become a study environment for almost all the disciplines in school. The step made from *users* – specialists in IT – to *users* as the term is perceived today, was performed slowly, without notice. After that, or maybe in the same time, the Internet has exploded, transforming itself into a global network. All the mediums, in which man is present, need a computer. It has begun with commerce, education, public administration, to extend itself to social networks (e.g. Facebook, hi5).

It is understood that the IT&C field will make available instruments of universal utility, for this a new way of thinking and behaving being necessary which will allow the public institutions to meet any type of request. Each civil servant will have to master competences in this field, a matter which was already covered legislatively through the Governmental Decision no. 100/2001<sup>597</sup> in which it is mentioned. The governmental decision no. 1007/2001 was

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<sup>597</sup> Published in the Official Monitor no. 705 from 6 November 2001;

supplemented by the Order no. 252/2003<sup>598</sup> from the Minister of Public Administration for the approval of the Methodological Rules regarding the instruction and specialization of the civil servants in the field of IT, which requested the use of the ECDL standard at the level of primary training.

According to the government decision no. 97/2009<sup>599</sup> it is introduced within the exams for Bachelor the evaluation of digital competences. *“The results of the evaluation are expressed through the level of competence in relation to the European standards acknowledged in the field.”*<sup>600</sup>

The enclosure 3 to the O.M.E.C.I. no. 5794 / 29.10.2009 stipulates at Art. 2 that *“There are recognised and they’re amounted to the test of digital competences – test D) from the Bachelor examination, the results obtained at the ECDL exams, finalised with the ECDL Start or the ECDL Complete certificate.”*<sup>601</sup> We can observe this way how dynamic this field is even from educational perspectives.

## IT&C education in the academic environment

Regardless the university’s profile, they prepare young people for them to latter either fill in the place of civil servants (e.g. the public administration faculty, social sciences) or to interact with the public administration (nobody “gets away” with this). This is the reason why it is important for them to know how to use the computer as soon as they finish their studies. Sadly, the older generation doesn’t have the same opportunities. It is important that at least from now on steps will be made in order that this digital divide, between the young and older population, will be eliminated. In the present moment all of those 107 universities from Romania have in their educational programme at least one IT course, and more than one course assisted by computer.

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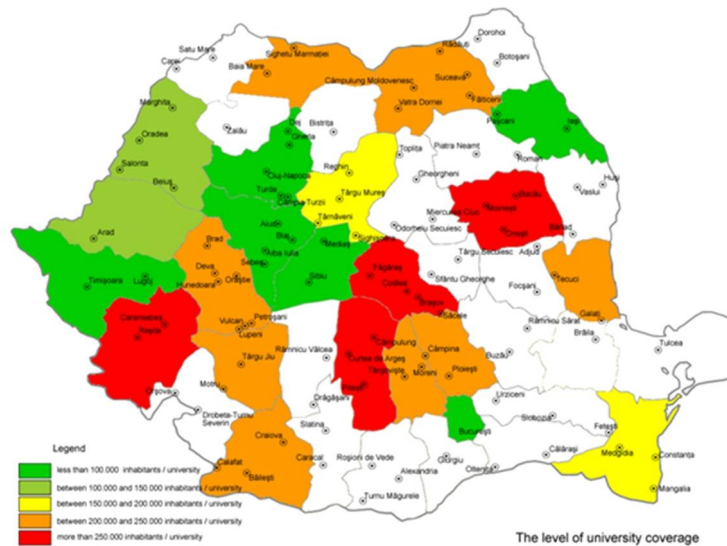
<sup>598</sup> Published in the Official Monitor no. 432 from 19 June 2003;

<sup>599</sup> Published in the Official Monitor no. 618 from 14 September 2009;

<sup>600</sup> <http://www.edu.ro/index.php/legaldocs/12797>

<sup>601</sup> <http://www.edu.ro/index.php/legaldocs/12982>

**Image 6.1. The level of university coverage**



If we look at the map (Img. 6.1.) we see many white areas. The reason: not all of the Romanian counties have a university centre, but only 22. The rest of the colours are given by the ratio between the population of the county and the number of universities from the county. The smaller the ratio, the bigger was the rating received (I took as landmark the average value – 201.723 inhabitants / university).

## Results

- 6 counties have obtained a very good rating, with less than 100.000 inhabitants / university;
- 2 counties between 100.00 and 150.000 inhabitants / university;
- 2 counties between 150.00 and 200.000 inhabitants / university;
- 8 counties with poorer results, between 200.00 and 250.000 inhabitants / university;



- 4 counties with very poor results, more than 250.000 inhabitants / university;
- 19 counties don't have any academic centre;

Not all the time the students choose universities placed in the city they live in (cases are encountered where students leave for a very far university even if they have in their vicinity a big academic centre).

Universities, as we all know, are most of them educational colossus that slowly adapt to the environment<sup>602</sup>. It would be very good if each of these could create branches in the counties uncovered. Some have made it (the date discussed here are not included in the study), but most of them didn't even try. The speed to which they respond to the educational market requests is low<sup>603</sup>. The success is given by on-line classes or distance education then most of them provide to potential students. In this case more and more people have access to education (and I don't mean only IT education).

If we report to the degree of computer use by students, it is most obvious that after the finishing of classes these will know how to use it (let's consider the fact that the students which follow on-line classes or a distance learning education programs, are forced by the nature of the course to use on-line education platforms).

## European Computer Driving Licence

Do you know how to use the computer? This is the question that is heard more and more often at international level, in an expanding number of areas, and probably, each of us finds ourselves in this position. For an affirmative answer to this question and for inspiring credibility, the Council of European Professional Informatics Societies (CEPIS<sup>604</sup>), the most important IT&C

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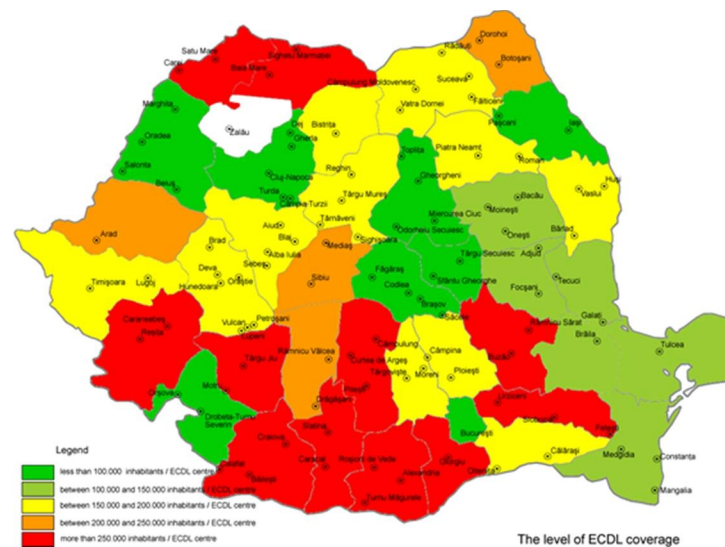
<sup>602</sup> Velea Simona Luciana; *Noile tehnologii în educație – între slogan și impact autentic în activitatea de predare-învățare* (New technologies in education – between slogan and authentic impact in teaching activity); National conference on virtual learning, Romania 2009

<sup>603</sup> Luca Nicolae, Șuletea Angela, Ghiesu Victor, Șuletea Dorin, *Înstruirea la distanță un imperativ al timpului* (Distance learning a time prerogative); National conference on virtual learning, Romania 2009

<sup>604</sup> <http://www.cepis.org/>

European association has created the European Computer Driving Licence, a standard for certification abilities of using the computer.

**Image 6.2. The level of ECDL coverage**



## Results

- 8 counties have obtained a very good rating, with a little below 100.000 inhabitants / centre;
- 6 counties between 100.000 and 150.000 inhabitants / centre;
- 11 counties between 150.000 and 200.000 inhabitants / centre;
- 4 counties with a weaker result, between 200.000 and 250.000 inhabitants / centre;
- 11 counties with very weak results, more than 250.000 inhabitants / centre;
- 1 county (Salaj) that doesn't have an ECDL centre.

The European Computer Driving Licence (ECDL) is the standard document for basic acknowledgement in using the computer, recognised at international level and proving its

beholder's ability of efficiently using a computer<sup>605</sup>. ECDL ROMANIA has created a national network of testing and accreditation centres, which is still in full development, aiming at covering all the counties of the country and counting up to this moment over 500 centres. Among these centres we can find education institutions (universities, high schools, and schools), training centres for administration, and professional training centres from all the big cities of Romania.

As in the analysis of the degree of coverage with universities, in this case we counted how many ECDL centres are in each county and we compared it to the number of inhabitants of the county. We can first observe that besides Salaj, all the counties from Romania have at least one centre of this kind (ECDL Romania has a more dynamic evolution compared to the big universities, for reasons which don't make the subject of study in this analysis).

## Conclusion: Is education the development engine for egovernment?

I will present in the following paragraphs several reasons that I consider important for the developing of the educational component – in the first place – in order that an eGovernment implementation to be successful afterwards. I will start with the connection between *IT education and citizens*, because they must understand the structure of an on-line government system in order to use it efficiently. In the first chapter of this paper I spoke about the 5 pillars of eGovernment. If the citizen isn't aware of the fact that the Web application accessed by him through the Web site makes available elements that he needs, or doesn't trust it, then he will still go to the office, making this investment useless. *The importance for the civil servant*. They should concentrate on the understanding of the technology's basic concepts. The civil servants aren't IT specialists, but they must know what to ask from the specialists. They are the ones that best understand the way of working of a public institution, not the IT engineers, not the programmers. The 2 work groups must have a common language when they work for developing a system of electronic governance. Another relevant element is *the importance for*

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<sup>605</sup> <http://www.ecdl.org.ro/>

*public managers* and for others that hold key positions in the public system. They must understand the role of the education and the computer; they must also understand the fact that the future civil servants *must* have IT competences. In the present time, in Romania, for obtaining a place in a public institution an exam is organised which is based especially on the juridical part of the activity. This is not sufficient and it must be adapted to the new communication technologies for a capable team to be created for working efficiently.

In 2003 (when eGovernment started to be a *talked about* subject in Romania, with the introduction of the e-guvernare.ro project) we can presume that Romania (all its counties) would have received the rating *very weak*. Today, thanks to the investment in these systems, things are looking better. If we look at the table 3.2, we can see a completely different situation, which promises a good evolution of things. Bucharest has obtained the highest rating at all the 3 studies; Arad (also in the chart) has received the rating *good* at the study on *universities* and *weak* at the study for *ECDL centres*. This reveals the fact that IT education is responsible for the development of eGovernment. Further we can consider other cases like that of Mures county, which received the rating *satisfying* to all the 3 studies. With very few exceptions (Iasi, Cluj, Salaj counties) the data are very close, which means that education in the field is directly responsible of the development of eGovernment at local level. Obviously, the two situations analysed worked together, getting to the situation presented in the figure 3.1, reason for which I would propose in the future partnerships between ECDL Romania and the Ministry for Education, Research, Youth and Sports or even with the Ministry for Administration and Internal Problems. This type of partnerships can be only good and would complement the i2010 initiative and the strategy for IT development of the public administration. Education certainly represents the engine for these projects.

As it is said, Evolution will be served, one way or another, and so, why shouldn't it be faster and with fewer side effects.

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## INTERNATIONAL LAW IN DOMESTIC LEGAL ORDER: UKRAINIAN LEGISLATION CONFORMITY WITH INTERNATIONAL STANDARDS

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Kateryna Yarmolyuk

**Abstract:** *The increasing number of international treaties in the process of globalization led to significant normative changes within the domestic legal order of states. As a result, numerous questions about the place of international law in domestic legislation have emerged, including those of conformity of national legislation to international rules, hierarchy and application of international treaties by domestic courts. This paper focuses on such concerns in relation to Central-Eastern European states. Drawing upon general questions as to the place of international law in internal law, the adherence of Ukraine's national legislation to international standards on human rights as well as in labour law are considered.*

**Keywords:** *international law, labour standards, implementation, application*

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### Introduction

The issue of implementing internationally recognized norms and principles into national legislations gained increased attention especially after the World War II – the period, when numerous international human rights treaties were adopted. Consequently, the process of ‘internationalisation’ of states’ constitutions started to take place. While the majority of Western

European countries committed themselves to observing international norms and to giving effect to international treaties in their internal legislation, there was another group of countries, however, which saw international law as an intrusion in their domestic legal order. It is only later that Central-Eastern European states as well as those, which later became members of the CIS<sup>606</sup>, began to introduce provisions on international law in their new constitutions. Thus, after the disintegration of the Soviet Union, the dualist approach as regards the role of international law in the domestic legal order was rejected, and most former Soviet states proclaimed international law to be part of national law.

Antonio Cassese examined how democracy was established after authoritarian rule was overthrown after a revolution or war.<sup>607</sup> More specifically, he explored the connection between newly established democracies and the 'opening' of states' constitutions to international law.<sup>608</sup> Stein, in his study on internationalization of Central-Eastern European constitutions, poses the question as to whether the developments in Central-Eastern Europe, particularly focusing on the Czech Republic and Slovakia, "confirm the parallelism between post revolutionary democratic reform and the 'opening' towards international law in post-communist constitution making".<sup>609</sup>

Bruno Simma names problems faced by constitutional law makers in post-communist countries as an 'identity crisis' of customary law and the absence of effective standards for customary law making.<sup>610</sup> In fact, the idea of an individual asserting his or her rights directly under international law, particularly against his or her own government, had no place in a regime guided by 'socialist legality'.<sup>611</sup>

Numerous studies in international law are dedicated to the application of international legal rules and their enforcement, such as those by Georgiev<sup>612</sup>, Goldsmith and Levinson<sup>613</sup>,

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<sup>606</sup> Commonwealth of Independent States, established by the treaty of 08.12.1991, signed in Minsk, Belarus

<sup>607</sup> Cassese, Antonio. *Modern Constitutions and International Law*, 192 *Recueil Des Cours* 331, 351 (1985 III)

<sup>608</sup> Specifically, Cassese defined four stages of such a development: 1) from 1787 to World War I; 2) from the Weimar Constitution of 1919 to World War II; 3) from the French Constitution of 1946 to the late 1950s; and, 4) early 1960s.

<sup>609</sup> Stein, Eric. *International Law in Internal Law: Toward Internationalization of Central-Eastern European Constitutions?* *The American Journal of International Law*, Vol. 88, No. 3 (Jul., 1994), pp. 427-450, at p. 448

<sup>610</sup> Bruno Simma, *Editorial*, 3 *Eur. J. Int'L*. 215, 216 (1992)

<sup>611</sup> Stein, *op. cit.*, p. 448

<sup>612</sup> Georgiev, Dencho. *Politics or Rule of Law: Deconstruction and Legitimacy in International Law*. 4 *EJIL* (1993) 1-14

<sup>613</sup> Goldsmith, Jack; Levinson, Daryl. *Law for States: International Law, Constitutional Law, Public Law*. *Harvard Law Review*, Vol. 122, No. 7 (May 2009)

Benvenisti<sup>614</sup>, Ginsburg<sup>615</sup>, Betlem and Nollkaemper<sup>616</sup>. Yet various issues as to the role of international law arise, in particular, how international law becomes effective in internal law and what happens when there is a conflict of norms? Shall the international treaty abolish subsequent and prior national legislation in case the latter do not conform? Which legal norms shall be applied in case of collision of international and national norms? How are international treaties applied in practice by states bound by them? What role do domestic courts play in this regard? In fact, such issues are regulated by most of the modern constitutions, although the degree of such regulation varies.

## I. The National Constitutions and International Law in Central-Eastern Europe

The constitutions of Central-Eastern European states include references to international law, although its place in the domestic legal order is defined differently from one country to another. For example, the Constitution of *Bulgaria* states that ratified international treaties are part of the internal law and, in case of conflict between internal law and a treaty, the latter prevails.<sup>617</sup> The Constitutional Court of Bulgaria has the competence to enforce the international rule and it also reviews international treaties for constitutionality before their ratification. With regard to the effect of general principles of international law and customary rules, the Constitutional Court of *Bulgaria* has the competence to pass judgment upon the consistency of internal law “with accepted standards of international law.”<sup>618</sup> According to the Constitution of *Romania*, ratified treaties are part of domestic law.<sup>619</sup> In *Hungary*, the Constitution “harmonizes

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<sup>614</sup> Benvenisti, Eyal. Judicial Misgivings Regarding the Application of International Law: An Analysis of Attitudes of National Courts. 4 EJIL (1993) 159-183; Benvenisti, Eyal; Downs, George W. National Courts, Domestic Democracy and the Evolution of International Law. *The European Journal of International Law* Vol. 20 no.1. EJIL (2009). More specifically on the application of international law by domestic courts see Benvenisti, Eyal. Reclaiming Democracy: The Strategic Uses of Foreign and International Law by National Courts. *American Journal of International Law* (2008)

<sup>615</sup> On how international law can affect domestic legal order see Ginsburg, Tom. Looking in Democracy: Constitutions, Commitment, and International Law. *International Law and Politics*, Vol. 38 (2006).

<sup>616</sup> Betlem, Gerrit; Nollkaemper, Andre. Giving Effect to Public International Law and European Community Law before Domestic Courts. A Comparative Analysis of the Practice of Consistent Interpretation. *EJIL*, (2003), Vol. 14, No. 3, 569-589 – on how domestic courts apply public international law and European Community law, differences and similarities in application, Dutch courts example.

<sup>617</sup> Art. 5(4) of the Constitution of Bulgaria, 1991

<sup>618</sup> Article 149(1)(4) of the Constitution of Bulgaria, 1991

<sup>619</sup> Articles 11(2), 20 of the Constitution of Romania, 1991



internal law and the legislation of the country with obligations assumed under international law”<sup>620</sup> and the state also “accepts the universally recognized principles and regulations of international law.”<sup>621</sup> The Constitution of *Poland* provides that the state “shall respect international law binding upon it”<sup>622</sup> Also, the Republic of Poland “may, by virtue of international agreements, delegate to an international organization or international institution the competence of organs of State authority in relation to certain matters.”<sup>623</sup> The Constitution of *Slovenia* provides that treaties are applied directly and laws and regulations must be in compliance with generally accepted principles of international law and valid treaties.<sup>624</sup> In accordance with the Constitution of *Croatia*, treaties properly ratified and published are part of the Republic’s internal legal order and “are in respect of their legal effect above the law.”<sup>625</sup>

Stein asserts that there is a trend towards recognition of the problem of internal effect and that the model of interaction between post-revolutionary democratization and an ‘opening’ of the new constitutions to the international system, as exposed by Cassese, may be readily applied to post-communist Central-Eastern Europe as most of the constitutions in this area incorporate treaties as an integral part of the domestic order and treaties have the status of ordinary legislation in most cases. In a few countries treaties are superior to both prior and subsequent national legislation, while in some states this concerns human rights treaties only.<sup>626</sup> Stein, however, does not precisely define which states belong to Central-Eastern Europe and names these countries as being an “ill-defined area” and “a concept with blurred edges”.<sup>627</sup> Furthermore, the CIS states are somehow omitted in Stein’s analyses. There are only a few other scholars in the field, who have conducted research on implementation of international law in post-soviet states, now members of the CIS.<sup>628</sup> It would therefore be worth revisiting developments in international law in relation to these issues in CIS states and Ukraine in particular.

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<sup>620</sup> Article 7(1) of the Constitution of Hungary, 1949

<sup>621</sup> Art. 7 (1) of the Constitution of Hungary, 1949

<sup>622</sup> Article 9 of the Constitution of Poland, 1997

<sup>623</sup> Para. 1, Art. 90 of the Constitution of Poland, 1997

<sup>624</sup> Articles 8, 153 (2) of the Constitution of Slovenia, 1991

<sup>625</sup> Article 134 of the Constitution of Croatia, 1990

<sup>626</sup> Stein, *supra* note 4, pp. 447, 448. As noted by Stein in his analyses of 15 constitutions of Central-European States, only in one case the constitution accords its priority over international law, three expressly declare it a part of the international legal order and other instruments are ambiguous as regards its direct effect.

<sup>627</sup> *Ibid.*, p. 429

<sup>628</sup> See Danilenko, Gennady M. Implementation of International Law in CIS States: Theory and Practice, EJIL (1999); Vereshchetin, Vladlen S. New Constitutions and the Old Problem of the Relationship between International Law and National Law, 7 EJIL (1996)

## II. International Law in CIS States

When the existence of the Soviet Union came to an end, many of its former states proclaimed international law part of domestic law, therefore rejecting the Soviet dualist approach to the implementation of international law in domestic legal systems. Political and economic transformation along with constitutional reforms in these states during 1990s as well as increasing concern for human rights at the international level led to the gradual opening of their domestic legal systems to international law.<sup>629</sup> Consequently, interdependence processes objectively led to the *de facto* affirmation of the primacy of international law. This was followed by the gradual process of the *de jure* recognition in the respective stipulations of the new constitutions.<sup>630</sup>

Danilenko categorizes CIS states in three different groups according to the provisions contained in their constitutions concerning international law. The first group of states proclaims international law, usually treaty law, part of national law and international rules are accorded with higher hierarchical status. This is the case of the Russian Federation, Moldova, Kazakhstan, Azerbaijan Republic, Georgia.<sup>631</sup> The second group includes countries, whose constitutions expressly state that international law forms part of the national law. However, these constitutions are silent regarding the hierarchical status of international rules in the domestic legal system, as in case of Ukraine, for instance. In the constitutions of the third group of states there are vague references to international law. This is the case of Uzbekistan and Turkmenistan.<sup>632</sup> Although the constitutions of the first and second group of states represent an important step towards broader application of international law, there is no guarantee that this is the case in practice.<sup>633</sup> Also Vereshchetin argues that the primacy of international law established by a constitution is relative since it is subject to constitutional provisions. Important

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<sup>629</sup> Danilenko, Gennady M. Implementation of International Law in CIS States: Theory and Practice, EJIL (1999), p. 51

<sup>630</sup> Vereshchetin, Vladlen S. New Constitutions and the Old Problem of the Relationship between International Law and National Law, 7 EJIL (1996), p. 14

<sup>631</sup> However, constitutions of Moldova, Kazakhstan and Georgia do not set a higher hierarchical status for the 'generally recognized international principles and norms of international law.'

<sup>632</sup> Article 17 of the 1992 Constitution states that the foreign policy of the Republic of Uzbekistan "shall be based on the principles of sovereign equality of the states, non-use of force or threat of its use, inviolability of frontiers, peaceful settlements of disputes, non-interference in the internal affairs of other states, and other universally recognized norms of international law". Similarly, Article 6 of the 1992 Constitution of Turkmenistan states that "Turkmenistan shall acknowledge priority of generally recognized norms of international law". In both cases such provisions seem to be just a statement of foreign policy, without visible impact on domestic legislation.

<sup>633</sup> Danilenko, *op. cit.*, p. 53

is, nevertheless, that the “compelling objective factors leading to the current primacy of international law cannot be neglected or disregarded by states at will.”<sup>634</sup>

### III. Application of International Norms in CIS Domestic Courts

Domestic courts probably constitute the most important organs for the implementation of international norms at the national level.<sup>635</sup> In order to make any substantive observation on the role of international law in the CIS countries' domestic legal systems, a close examination of their judicial practice is necessary.

International law can be invoked before the domestic courts in several CIS states. Most of the CIS constitutions include a large number of provisions related to human rights. Therefore, domestic courts often use international human rights standards to interpret such constitutional provisions and, in case there is a gap in national law, the courts then may apply international law directly. In several CIS countries, courts have the power to dismiss a domestic legislative or executive act on the ground that it violates international law. Moreover, some CIS judges may take into account international law even in situations where neither the constitutional provisions nor the general political environment favours the direct application of international standards, such as in Belarus.

Also there continues to be problems in some CIS states in determining which international laws or rules shall apply and their methods of application. Only some constitutions of CIS states define self-executing and non-self-executing treaties,<sup>636</sup> while there was no experience in applying international treaties under the Soviet system. That is why some CIS domestic courts are not successful in direct application of rather vague international treaty rules.<sup>637</sup> For instance, the Russian Constitutional Court often bases its decisions on ‘generally recognized principles and norms of international law’ by simply citing international treaties or

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<sup>634</sup> Vereshchetin, *op. cit.*, p. 14

<sup>635</sup> Danilenko, *supra* note 24, p. 54

<sup>636</sup> For instance, Article 4 of the 1995 Constitution of Kazakhstan

<sup>637</sup> Danilenko, *supra* note 24, p. 65

non-binding international instruments.<sup>638</sup> Danilenko draws an example of the *Labour Code Case*,<sup>639</sup> and asserts that the Russian Constitutional Court made no effort to analyze the legislative or other practice of members of the international community on the question of termination of labour relations for persons of retirement age, given that many countries have established special procedures for this type of situation.<sup>640</sup>

Another important factor that influences the direct application of treaties is participation in international institutions.<sup>641</sup> Ukraine, along with Moldova and Russian Federation, are members of the Council of Europe and recognized the jurisdiction of the European Court of Human Rights. Thus, the European Court on Human Rights might have a considerable impact when it comes to exercising human rights treaties in these states and their direct application by national courts.

However, the major problem in application of international law by CIS courts appears to be in the independence of the judiciary. While the majority of the CIS countries have adopted core constitutional provisions on the judiciary being independent and objective, such provisions do not find reflection in practice. Hence, judicial reform remains an important goal for many CIS States.<sup>642</sup>

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<sup>638</sup> Ibid., pp.59-62

<sup>639</sup> *Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii* (Herald of the Constitutional Court of the Russian Federation) (1993), No. 1, at 29. *Labour Code Case* dealt with compulsory termination of labour contracts for persons reaching pensionable age. The Court found that the challenged provisions of the Labour Code violated 'the generally recognized principles and rules of international law', which were derived from the Covenant of Economic, Social and Cultural Rights of 1966, the ILO Convention No. 157 and some ILO recommendations.

<sup>640</sup> Danilenko, *supra* note 24, pp.62, 63. Furthermore, the 1995 Ruling of the Russian Supreme Court provides that all lower courts "shall take into account the generally recognized principles and norms of international law laid down in international covenants, conventions and other documents (particularly in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights)." However, as noted by Danilenko, many international lawyers would argue that the Covenant on Economic, Social and Cultural Rights cannot itself constitute or generate 'the generally recognized principles and norms of the international law', and, therefore, the approaches of the Supreme Court as well as the Constitutional Court of Russian Federation raise same objections.

<sup>641</sup> Ibid., p.68

<sup>642</sup> Ibid., p.55

## IV. International Treaties in Domestic Legislation of Ukraine

Before analyzing the implementation of labour standards in the domestic legislation of Ukraine, it is necessary to draw on the place of international law and treaties in internal Ukrainian legislation as well as state's participation in international organisations.

Ukraine has been a member of the ILO since 1954 and joined the UN in 1945. Thus, international obligations of Ukraine did not change after the collapse of the Soviet Union. After the Declaration on State Sovereignty of Ukraine in 1990 and the adoption of the Act of Independence of Ukraine in 1991, the participation of the state in international organizations becomes more active and certain achievements in the field of human rights and their implementation in Ukrainian legislation has become more evident.<sup>643</sup> Consequently, Ukraine is bound by numerous international treaties which it is a party to.<sup>644</sup> In the labour law field, up to date Ukraine has ratified 69 Conventions, out of which 61 are in force, including 8 core Conventions and 4 priority Conventions. Among recent ratifications, during the last three years, Ukraine has also ratified a number of important instruments on safety and health.<sup>645</sup>

With regard to the status of international treaties in the domestic legal order of Ukraine, paras. 1 and 2 of Article 9 of the Constitution of Ukraine state: "International treaties that are in force, agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine. The conclusion of international treaties that contravene the Constitution of Ukraine is possible only after introducing relevant amendments to the Constitution of Ukraine."

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<sup>643</sup>Ukraine is a member of a number of UN specialized agencies including UNESCO, the World Health Organization, the UN High Commissioner for Refugees, the International Monetary Fund and the International Bank for Reconstruction and Development. Ukraine is a full member of the International Organisation for Migration. The country is as well affiliated with the European Bank for Reconstruction and Development. In November, 1995, Ukraine became the 37<sup>th</sup> member of the European Council and is as well a member of the Organisation for Security and Co-operation in Europe.

<sup>644</sup>Ukraine was among the first 20 States to ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 1966 as well as the Optional Protocol to the International Covenant on Civil and Political Rights. Also, Ukraine has ratified a wide range of international instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention relating to the Status of Refugees, the International Convention on the Prevention and Punishment of the Crimes of Genocide and many more.

<sup>645</sup>Safety and Health in Agriculture Convention, 2001 (No. 184); Occupational Cancer Conventions, 1974 (No. 139); Occupational Health Services Convention, 1985 (No. 161); Prevention of Major Industrial Accident Convention, 1993 (No. 174); Safety and Health in Mines Convention, 1995 (No. 176) and Occupation Health and Safety Convention, 1981 (No. 155). Dates of ratification for each of the Conventions respectively: 01 Dec 2009, 17 Jun 2010, 17 Jun 2010, 15 Jun 2011, 15 Jun 2011, 4 Jan 2012

Para 2, Article 8 of the Constitution defines that the Constitution of Ukraine has the highest legal force. Laws and other normative legal acts are adopted on the basis of the Constitution of Ukraine to which they shall conform. The norms of the Constitution of Ukraine are of direct effect. Appeals to the court in defense of the constitutional rights and freedoms of an individual and a citizen directly on the grounds of the Constitution of Ukraine are guaranteed.<sup>646</sup> The order of conclusion, execution and termination of international treaties is governed by the Law of Ukraine On International Agreements of Ukraine.<sup>647</sup>

According to the Law of Ukraine On Succession of Ukraine, the country is the successor to the rights and duties under the international treaties signed by the USSR provided that such treaties do not contradict constitutional provisions and which shall meet Ukrainian national interests.<sup>648</sup> The Constitution of Ukraine provides that the Parliament of Ukraine is to grant consent for the international agreement to be binding on the territory of Ukraine.<sup>649</sup> Although the Constitution omits the term 'ratification', this competence of the Parliament is defined as 'ratification' in the Law of Ukraine On International Agreements of Ukraine.<sup>650</sup> In practice, international treaties which received consent of the Parliament in different form other than ratification also form part of national legislation of Ukraine.<sup>651</sup>

Since the Constitution of Ukraine is the country's fundamental law, it is situated on the highest level in the hierarchy of Ukrainian legislation and has the highest judicial power. Nevertheless, as stated in para. 2 Article 19 of the Law of Ukraine On International Agreements of Ukraine, "if the international agreement of Ukraine, which has come into force under the defined procedure, sets the rules other than those envisaged in the respective act of Ukrainian legislation, the rules of international agreement shall apply". Also, para. 1, Article 15 of the Law On International Agreements of Ukraine contains one of the basic international law principles – *pacta sunt servanda*, and provides that "international agreements of Ukraine shall be complied

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<sup>646</sup> Para. 3, Article 8 of the Constitution of Ukraine, 1996

<sup>647</sup> Law of Ukraine On International Agreements of Ukraine of 29.06.2004 No. 1906-IV

<sup>648</sup> Art. 7 of the Law of Ukraine On Succession of Ukraine of 12.09.1991 No. 1543-XII

<sup>649</sup> Para. 32, Art. 85 of the Constitution of Ukraine, 1996

<sup>650</sup> In particular, Article 8 of the Law states that the consent of Ukraine to be bound by an international agreement may be expressed by signing, ratification, approval, acceptance of the treaty or joining the treaty; Also, Article 2(b) of the Vienna Convention on the Law of Treaties, 1969, apart of the term 'ratification' also contains terms 'acceptance', 'approval' and 'accession', which "mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty".

<sup>651</sup> Article 8 of the Law of Ukraine On international agreements of Ukraine shall be understood or perceived in a way the Constitution of Ukraine defines the competence of the Parliament, namely in p. 32 Article 85 of the Constitution; See Науково-практичний коментар Конституції України, Харків (2003)/ The Commentary to the Constitution of Ukraine, Kharkiv, (2003)

with in good faith accordingly to the norms of international law". Furthermore, such an obligation to comply with international agreements is seen and expected to be mutual between other parties to the agreements.<sup>652</sup> Thus, international agreements duly ratified or consented to in either way by the Parliament do have the priority over national laws of Ukraine, but not the Constitution. When an international agreement comes into force, other previously adopted national laws of Ukraine shall not be applied if they contradict the international agreement in question.

The possibility of conclusion of international agreements that contravene the Ukrainian Constitution is not excluded in practice, despite of the provision enshrined in para. 2 Article 9 of the Constitution.<sup>653</sup> The Ukrainian Constitution remains silent in this regard and does not address the possibility of application of international treaties that contradict the Constitution; however, it does not accept such a collision *per se*. Also, the Constitutional Court of Ukraine, in case of a collision, gives preference to the provisions of the Constitution over those of an international treaty. According to Article 87 of the Law of Ukraine on the Constitutional Court of Ukraine the Constitutional Court may decide on the constitutionality of international agreements of Ukraine and in cases where it rules that an international agreement does not conform to the Constitution, the Court considers the question of unconstitutionality of the whole agreement or a part of it.

Nevertheless, where an agreement which contravenes the Constitution is concluded, the solution to this problem is to be sought in the Vienna Convention on the Law of Treaties.<sup>654</sup>

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<sup>652</sup> Para 2, Article 15 of the Law of Ukraine On International Agreements of Ukraine

<sup>653</sup> Para. 2, Article 9 of the Constitution of Ukraine states: "The conclusion of international treaties that contravene the Constitution of Ukraine is possible only after introducing relevant amendments to the Constitution of Ukraine".

<sup>654</sup> Para 1. Article 46 of which provides that "a State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance." Para. 2, Article 46 of the Vienna Convention states that "a violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith."

## V. Sources of Labour Law in Ukraine and their Correspondence with International Instruments

Constitution of Ukraine constitutes the main source of the states' labour law.<sup>655</sup> Compared to the Constitution of the former USSR, the 1996 Constitution of Ukraine provides for a wider range of labour rights, due to the inclusion of rights and freedoms envisaged in international treaties on human rights.

According to Article 43 of the Constitution everyone has the right to labour, including the possibility to earn one's living by labour that he or she freely chooses or to which he or she freely agrees. This provision is formulated in line with Article 23 of the Universal Declaration of Human Rights. The obligation of the state is to create conditions for citizens to fully realize their right to labour (para.2). The state should also guarantee equal opportunities in the choice of profession and of types of labour activity, to implement programmes of vocational education, training and retraining of personnel according to the needs of society. According to para. 3, Article 43 the use of forced labour is prohibited. This corresponds with Article 8 of the International Covenant on Civil and Political Rights, 1966. Para. 4 Article 43 of the Constitution states that everyone has the right to proper, safe and healthy working conditions, and, to remuneration no less than the minimum wage as determined by law. The employment of women and minors for work that is hazardous to their health is prohibited (para. 5). Citizens are guaranteed protection from unlawful dismissal (para. 6) and the right to timely payment for labour is protected by law (para. 7).

Also, for the first time the following rights and freedoms are enshrined in the Constitution of 1996: the right to entrepreneurial activity that is not prohibited by law (Art. 42); the right to labour (Art. 43); the right to strike (Art. 44); the right to social protection (Art. 46). The right to strike in the Constitution of Ukraine corresponds with Article 8 of International Covenant on Economic, Social and Cultural Rights. According to para. 2, Article 44 of the Constitution, the procedure for exercising the right to strike is established by law, taking into account the necessity to ensure national security, health protection, and rights and freedoms of

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<sup>655</sup> Articles 3, 8, 19, 21, 22, 23, 24, 36, 43, 44, 45, 46, 55, 56, 57, 58, 59, 60, 61, 64, 68 of the Constitution of Ukraine enshrine the main labour rights of a person.



other persons. Also, no one shall be forced to participate or not in a strike (para. 3) and the prohibition of a strike is possible only on the basis of law (para. 4).

Article 45 of the Constitution provides to everyone who is employed, the right to rest. Such provision is in line with Article 7 of the International Covenant on Economic, Social and Cultural Rights as well as with Article 24 of the Universal Declaration of Human Rights.

Freedom of association is enshrined in Article 36 of the Constitution. Citizens of Ukraine have the right to participate in trade unions with the purpose of protecting their labour and socio-economic rights and interests.<sup>656</sup> Trade unions are formed without prior permission on the basis of free choice of their members and all associations of citizens are equal before the law.<sup>657</sup>

In accordance with Article 55 of the Constitution of Ukraine, human and citizens' rights and freedoms are protected by court. After exhausting all domestic legal remedies, everyone has the right to appeal for the protection of his or her rights and freedoms to the relevant international judicial institutions or the relevant bodies of international organizations of which Ukraine is a member of.<sup>658</sup> It should be noted, that by inclusion of such a provision in the Constitution of 1996, the mechanism of the protection of rights has changed, making it possible to directly appeal to the court for labour rights protection in case of their violation. Before 1996 in Ukraine almost all individual labour claims<sup>659</sup> were addressed first to the special commissions, which dealt with labour rights violation cases.

International Covenants of 1966 as well as Conventions and Recommendations of the ILO constitute sources of Ukrainian labour law, based on Art.9 of the Constitution. Also, sources of labour law of Ukraine include regional legal acts such as European Convention on Human Rights, 1950 and European Social Charter (revised) of 1996.

There is a principle of the priority of international legal norms over national legal norms in accordance with Article 8-1 of the Labour Code of Ukraine. Therefore, in case of an international treaty, which Ukraine is a party to, provides with different norms than those contained in labour legislation of Ukraine, the norms of the international treaty will be applied.

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<sup>656</sup> Para. 3, Article 36 of the Constitution of Ukraine, 1996

<sup>657</sup> Para. 5, Article 36 of the Constitution of Ukraine, 1996

<sup>658</sup> Para. 4, Article 55 of the Constitution of Ukraine, 1996

<sup>659</sup> Except those enshrined in Articles 222, 232 of the Labour Code of Ukraine

This norm is obligatory as well for the courts, when deciding on a labour law case. In practice, however, the principle of the priority of international norms is not always complied with by the courts in Ukraine.

After the Constitution and international treaties, ratified by Ukraine, the main source of labour law is the Labour Code of Ukraine of 1971. Since Ukraine inherited this Labour Code from the former Soviet Union, to date, numerous amendments and changes were made to it. However, a number of provisions of the Code are largely outdated, and it can be asserted as well that the Code of 1971 as a whole cannot adequately respond to modern labour relations. The draft of the new Labour Code, which for years has been so intensely debated in Ukraine, already, has serious disadvantages – amongst others it is not oriented to a market economy and does not correspond to the new socio-economic conditions which now prevail.<sup>660</sup>

Apart from the Labour Code of Ukraine of 1971, there is wide range of legislative acts covering labour relations and which serve as sources of labour law in Ukraine such as the Law of Ukraine on the Procedure for Settlement of Collective Labour Disputes (Conflicts)<sup>661</sup>; On Remuneration of Labour<sup>662</sup>; On Labour Protection<sup>663</sup>; On Vocational Education<sup>664</sup>; On Trade Unions, Trade Union Rights and Guarantees of Activity<sup>665</sup> and others.<sup>666</sup>

## VI. Application of International Treaties by Ukrainian Courts

As Ukrainian courts, especially the Constitutional Court, are designed to be able to enforce the individuals' constitutional rights against the government<sup>667</sup>, one could expect that

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<sup>660</sup> Bolotina N.B., Chanusheva G. I. Labour Law of Ukraine. Kyiv (2000)

<sup>661</sup> No. 137/98-VR of 03.03.1998

<sup>662</sup> No. 108/95-VR of 24.03.1995

<sup>663</sup> No. 2694-XII of 14.10.1992

<sup>664</sup> No. 103/98-VR of 10.02.1998

<sup>665</sup> No. 1045-XIV of 15.09.1999

<sup>666</sup> Also, decrees of the Parliament of Ukraine, enactments of the Cabinet of Ministers of Ukraine and orders of the President of Ukraine, acts of the Ministry of Labour and Social Politics of Ukraine and acts of local government bodies as well as collective agreements are sources of the country's labour law; such acts should not, however, contradict the Constitution and the Laws of Ukraine.

<sup>667</sup> According to the Article 55 of the Constitution of Ukraine "everyone is guaranteed the right to challenge in court the decisions, actions or omissions of bodies of state power, bodies of local government, officials and officers."

they will also use their power to enforce the international treaties, especially human rights treaties, ratified by Ukraine.<sup>668</sup> Article 150 of the Constitution of Ukraine, however, does not provide for the rights of individuals to file constitutional complaints with the Constitutional Court. Yet the Law of Ukraine on the Constitutional Court contains such a provision.<sup>669</sup>

Although Ukraine has adopted numerous laws that correspond to international instruments, particularly those on human rights, the body of 'Ukrainian Human Rights Law' remains rather weak as many elements of the old system managed to survive and are still included in the new Ukrainian legislation.<sup>670</sup> The practice of application by international entities of some treaties may influence the content of obligations under such a treaty, provided that such practice is an official interpretation of the treaty as in the case of the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950.<sup>671</sup> Thus, to take into account the interpretation of the Convention by the ECHR is part of Ukraine's obligations under this international treaty.<sup>672</sup>

In the context of the European legal system and the obligation for member states of the European Council to recognize the jurisdiction of the European Court of Human Rights, Butkevych points out that there is no strong and independent judiciary in Ukraine; the national courts of Ukraine are incapable of acting independently of the legislative and executive branches and are more concerned with punishment rather than protection of human rights. Also, he notes, for Ukraine the European Court of Human Rights can become secondary only after the national courts of Ukraine begin to function on the same legal basis.<sup>673</sup>

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<sup>668</sup> Danilenko, *supra* note 24, p. 55

<sup>669</sup> Article 42 of the Law states that 'constitutional appeals' to the Constitutional Court may be submitted by Ukrainian citizens, aliens, stateless persons and legal entities.

<sup>670</sup> Antonovych, Myroslava. Implementation of International Human Rights Norms in Ukrainian Legislation, *Annual Survey of International and Comparative Law*: Vol. 3, Iss. 1, Article 2 (1996), p. 14; See also Butkevych, Volodymyr. *Human Rights in Ukraine*, 1 Political Thought 188 (1993) at pp.196, 197 Butkevych mentions the rhetorical character of former Soviet legislation with its overload of values of moral, political and ideological nature and points out other shortcomings in Ukrainian legal system such as legal fictions, vague legal presumptions and definitions: "A legal system functions properly when it contains no more than 2 to 5 percent of atypical normative indications such as: legal definitions, presumptions and fictions. However, Ukrainian legislation contains ten times that percentage, and in some legal acts they make up well over 50 percent.... A legal system functions adequately if it has 5 to 10 percent 'prohibitive' norms and 5 to 10 percent 'obliging' norms. At present, the legislation of Ukraine contains three times those numbers...As for the 'permissive norms' (the only ones which make it possible to ensure that individuals have the freedom to pursue and achieve their wishes) only about twenty percent of Ukraine's legal acts contain them".

<sup>671</sup> Para. 1, Article 32 of which provides that the jurisdiction of the European Court of Human Rights (ECHR) shall extend to all matters concerning the interpretation and application of the Convention.

<sup>672</sup> Науково-практичний коментар Конституції України, Харків, 2003 / The Commentary to the Constitution of Ukraine, Kharkiv (2003)

<sup>673</sup> Until 1993, as Butkevych notes, no court in Ukraine has taken into account any international instrument on human rights.

In labour law field, the practice of applying international labour standards by domestic courts of Ukraine was not evident during the last decades. The case law regarding such an application, as in many other post-soviet states, is only gradually emerging. Moreover, there are insufficient definitions of self-executing and non-self-executing treaties developed in Ukraine. In some of the labour law cases which were brought before Ukrainian courts, where there was conflict between the national and international norms, decisions favored national norms. On the other hand, there are court cases in labour law, where decisions were based on international labour conventions and other international instruments.

## Conclusions

The collapse of the Soviet Union brought a new wave of 'opening' of Central-Eastern European states' constitutions to the international law. While most of the states have clarified the hierarchical status of different international rules in their domestic law, only few of them developed criteria for defining self-executing and non-self executing treaties. As a result of legal reforms of that period, judges of post-soviet states were confronted with a new challenge, namely, the application of international law, which was not considered before, under the Soviet regime. In fact, there are different political-legal factors such as the strength of domestic democratic institutions and the rule of law, the nature of international norms that are applied, independence of judiciary as well as participation in international institutions contribute to the effective implementation of constitutional provisions and application of international standards.

Ukraine, while positioning itself as a democratic state and introducing international law in constitutional provisions, declaring adherence to international norms and respect for international obligations under ratified treaties, is still in the process of overcoming its soviet legal heritage. Ongoing reforms in labour law, as well as other political-legal factors influence the application of international rules in the national context, with international norms often being set aside despite the state's international commitments. As in any other state which lacks the rule of law and democratic institutions, the constitutional provisions and their application in practice in Ukraine differ to a great extent. In addition, lack of experience, as well as lack of

knowledge, adequate training for judges and practice still hinder the correct application of international norms by domestic courts in Ukraine. Furthermore, case law on the implementation of the international law, and specifically international labour standards, is only now developing. Therefore, in order to trace the tendency in application of international norms by Ukrainian courts requires further and closer examination of judicial practice.

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## IS THERE A PLACE FOR ANTI-DISCRIMINATION IN „MODERN” LABOUR LAW?

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Márton Leó Zaccaria

**Abstract:** *This essay deals with some special problems of modernising labour law nowadays. It describes the main features of changing labour law norms on the basis of the Green Paper on modernising labour law to meet the challenges of the 21<sup>st</sup> century. The demand on equal treatment between employees gets into danger because of the more and more flexible labour law relations. The study suggests some methods for remaining the right to equality in the labour law system in the European Union.*

**Keywords:** *labour law, equal employment, employees' rights, discrimination, Green Paper*

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### Introduction

The regulation material in labour law and the nature of labour relations and their legal specialization in connection with them are changing continuously. It comprises the establishment of the labour relation as well as its termination, what is more, to examine this question before the establishment of the labour relation and after its termination is also relevant.<sup>674</sup>

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<sup>674</sup> Kiss, Gy.: *A piac és az emberi tényező*. Budapest: Balassi Kiadó, 1995, p. 11.

## I. Raising a problem – the unfavourable side of the development of labour law

Certain labour market processes, their changing, certain employees' or groups of employees' labour position or certain segregation of different job positions belong to this sphere. The essence of the change is that other and other emphasis and portions are stressed from time to time in the parties' relationship. Namely, the continuous change and development of labour relations result the change in the relations between the parties (employer and employee) necessarily. The labour law relations can be characterized mostly by the employer's and employee's legal position.

The development of labour relations dates back several hundred years and basically its origin reaches back to the classical Roman law.<sup>675</sup> Consequently the labour relations have not been left untouched by the achievements of certain economic, social, state and legal development, and at the same time the definite effects of some – mainly philosophical – system of ideas.<sup>676</sup>

Nevertheless labour law always has had a special direction in the different legal systems and has had its own way, so some tendencies of development cannot be observed in labour legal regulation today fully.

This special way of development has been restricted so far and limits will be set from many points of view in the future, too. The feature and regulation of labour relations have a special connection with the certain state's economic system and the priorities which are put in the focus by the certain state or all the states in the case of the European Union.<sup>677</sup>

The fact that performing labour cannot be restricted to a certain geographical area since the organized application of manpower in return for reward is not limited to a fixed area also

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<sup>675</sup> Földi, A. – Hamza, G.: *A római jog története és intézményei*. Budapest: Nemzeti Tankönyvkiadó, 1996, p. 520-530.

<sup>676</sup> The requirement of equal treatment what is the base of this essay definitely goes back to the idea of the absolute equality between people from birth and that is one of the most important achievement of the Enlightenment.

<sup>677</sup> Prugberger, T.: *Az európai munkajog vázlata*. Debrecen: DE ÁJK és Lícium Kiadó, 2006, p. 25-35.

should be taken into consideration and I'd like to add that in this sphere the freedom of employment as fundamental freedom is of great importance mainly in the European Union.

On the basis of the above mentioned facts I think that though on examining several legal systems of the world we cannot find a generally accepted labour law norm material, the tendencies and ambitions which characterize – and are the subject of this essay – the Union and the Hungarian labour law can be observed even if to different extent and in different way in the regulations of most legal culture.<sup>678</sup> It can be stated definitely that with regard to the present progressive tendencies in labour law the legal features of employment relations are developing, in many respects they become more simple and flexible.<sup>679</sup> I'd like to state also that the logic of regulation is coming closer and closer to the basis of the classical Roman law while it is being adapted to the economic and social requirements of the 21<sup>st</sup> century as it stands to reason.

As a consequence of modernization the system of rights and obligations are changing in some respects to such an extent that it overdraws the compass of the legal relation.<sup>680</sup> The necessary modernization and flexibility as means of it produce such changes which strengthen or weaken the parties' position fundamentally. This way the social function of labour regulation is exposed to danger, namely, the attribute on the basis of which, regarding the aims of regulation, labour regulations can be distinguished from other legal fields. Elements of guarantee fall into background, the employees' defencelessness becomes larger, the legal relation will be terminated more easily and at effective costs – all these happen (or may happen) if employment relations get beyond the borders of the criteria of the state care and social defence totally.<sup>681</sup>

The subject of this essay is one of the employer's obligations which is really very special from legal point of view and regarding to its guaranteeing significance has a fundamental importance from the point of the employees' legal defence. Equal treatment of the employees and the requirement of equal treatment itself – equal opportunities in a wider sense – is such a

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<sup>678</sup> E.g. in Japanese law – what is very different from the European standard or the Hungarian law – the so called atypical employment has an important role to such an extent that more employees work in Japan this way than within the frames of „classical” or „typical” labour relations.

<sup>679</sup> Prugberger, T.: *Európai és magyar összehasonlító munka- és közszolgálati jog*. Budapest: CompLex Kiadó, 2006, p. 27-29.

<sup>680</sup> Bercusson, B.: *European Labour Law* (second edition). Cambridge: Cambridge University Press, 2009, p. 5-11.

<sup>681</sup> It also must be added that direct flexibility does not mean losing the essence of a labour relation, since in several European countries labour law relations are regulated only on the basis of civil law according to the traditions of Roman law, though the contract – with its every element – between the parties has priority but the legislator does not forget about the social functions either, and they are declared in other regulations (see the case of the labour law of Switzerland, Sweden, Spain, Portugal).



typical right for employees which enforcement gets into danger during the labour legal modernization.

## II. The other side of the coin – the basic features of modern labour law

At this point I'd like to add to the aforementioned ideas that the basic aim of the modern labour legal regulation is that both parties would gain benefit from the new norm system, namely, the aim is to make balance between the parties, to help the parties' free will to be realized as great extent as possible. As a consequence of the labour relationship's legal feature the parties cannot be „equal” because of the employer's authoritative position against the employee<sup>682</sup>, it precludes the possibility of „equality” in the legal relation, but the parties get closer to each other since there are less cogent norms and direct governmental measures set limits to the parties' wishes in the contracts.<sup>683</sup> That's why some experts say that to put labour relations to the sphere of civil law<sup>684</sup> totally is inconsistent and superfluous and it cannot be realized because of the parties' positions, namely, we would receive a false picture about the labour law regulation if we apply directly the means of civil law.<sup>685</sup> Though it must be added that this kind of application would not result ill-functioning regulation material necessarily, but it induces totally new paradigms in the world of legal relations referring to work.<sup>686</sup>

In the European Union the Green Paper of 2006 about the modernization of the labour law contains the basis of modern labour law relations.<sup>687</sup> Naturally, this paper is not unprecedented. In the Union legal system employment policies, questions of manpower and

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<sup>682</sup> Bercusson, B.: *European Labour Law* (second edition). Cambridge: Cambridge University Press, 2009, p. 5-8.

<sup>683</sup> This approach can be argued as follows: labour law relations because of their origin and nature often are compared with the legal relations in civil law. May these relations of contract be similar, the differences are too big to be regarded identical. Dogmatically there is not a significant difference between them, so that the parties' free will that is embodied in the contracts is primary, the state's only task is to establish the legal frames of the two-sided legal relation by the relevant regulation. Nevertheless, if the legislator lets the principle of *laissez faire, laissez passer* to be realized, then the ideas mentioned in part I. will be justified, namely, the social function what is the essence of labour law relation will disappear from it.

<sup>684</sup> Kenderes, Gy.: A munkajogi és polgári jogi szabályozás viszonyának egyes alapkérdései. *Jogtudományi Közlöny*. 2001, vol. 56, no.2, pp. 113-120.

<sup>685</sup> In a certain sense it is the case in the new Hungarian Labour Law reform declared in Act I. of 2012.

<sup>686</sup> If the labour law regulation material traditionally belongs to civil law, modification in the direction and improvement are needed for modernization (e.g. in Portugal).

<sup>687</sup> Green Paper on Modernising labour law to meet the challenges of the 21st century, [http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006\\_0708en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0708en01.pdf) (21. 09. 2012).

labour legal questions connected to it at both legislative and practical level have had great importance for decades.<sup>688</sup> The Green Paper is a kind of summary of experiences so far and it tries to define the new directions of labour law that should be followed by the Member States and the EU itself.

The base of modern labour law is the so called atypical – different from typical – types and forms of employment. The base is that work can be done not only within the frames of typical or traditional labour relation in the classical sense but also within its subtypes or without a real labour relation.<sup>689</sup> In the European Union the need for making and fulfilling labour relations not only within the old frames by the old methods and forms came up as early as the end of the 1970s. So labour relations started to become simplified, the first signs were that the parties left out or only hinted at some important elements from the contracts. A good example of this is telework<sup>690</sup> which was one of the first types among these special legal relations and was rather widespread in the European Union<sup>691</sup> in the 1980s, but part-time work also should be mentioned. Namely, it could be observed earlier that these types of employment serve both parties' interests since the classical labour relations are „changed” according to their own interests. At the same time labour market makes benefit of it to such an extent that without the headway and giving preference to these types of employment it would be ill-functioning.<sup>692</sup>

The differences from the typical labour relation can be realized in any important element, so the most frequent ones are the subjects, place of work, duration of the labour relation, methods and conditions of employment, means and working time. Of course, all these differences may occur together. A good example of the specialities of these legal relations is that in the case of manpower lease contract<sup>693</sup> – what is really widespread these days – we cannot

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<sup>688</sup> On practical level legal material is provided by the judgements – in connection with the requirement of equal treatment and equal treatment for employees – of the Court of Justice of the European Union what expresses important criteria of the atypical (modern) labour relations in connection with requirement of the equal treatment and equal treatment for employees.

<sup>689</sup> A typical example of the latter is the labour performed within the frames of the civil law such as the agency contract or the delivery contract.

<sup>690</sup> Bankó, Z.: A távmunka szabályozása az Európai Unióban és Magyarországon. *Munkaügyi szemle*. 2005, vol. 49, no.2, pp. 25-28.

<sup>691</sup> Its popularity has not reduced these days and in legal literature it is often called „typical atypical” legal relation. This kind of labour is becoming more and more widespread in the Member States nowadays.

<sup>692</sup> The Green Paper itself declares that modernization is the only way of the future, since taking into consideration the economic and labour aspects we come to the conclusion that to make the frames of labour in Europe more flexible is indispensable.

<sup>693</sup> In the text of Directive 2008/104/EC „temporary agency work”. They are not exactly the same, but their aim and function are very similar.

speak about labour relation in the classical sense, namely it is such a three-sided legal relation in which the non-labour legal relation between the lessor and lessee is stressed.

Naturally, these kind of legal relations also need regulation, e.g. principles, judgements in Luxembourg, regulation in the Member States, that is for the effective operation the most important frames and guarantees must be fixed. It is also true that in most of the cases these frames and guarantees were established according to the parties' will because they feel too narrow, and – in a sense – overregulated the frames of the classical labour relation. It is also possible that within the frames of the atypical legal relation between the parties would differ from the regulations securing the possibility of realizing a labour relation in accordance with their common will.

The Green Paper defines several aspects what modern labour law should be.<sup>694</sup> It also states that though the practices of the Member States are very different, the united tendencies are clearly outlined and the European Union itself urges them to keep a rather homogenous behaviour.<sup>695</sup> First of all, it defines the penetrability of the labour relations, that is the flexibility would refer not only to the fact that the termination of legal relations would be easier and cheaper but also the fact that after the termination the employees could take further steps in the labour market<sup>696</sup> – even develop themselves – as it is also the employer's interest to find human resources at the appropriate quality and quantity as soon as possible.<sup>697</sup> In connection with this the Green Paper also discusses that the labour legal relations get beyond the labour regulation and new guarantees and methods of regulation must be explored and shaped.<sup>698</sup>

Such legal relations which represent not only the employer's and employee's legal relation but they become three-sided have special and at the same time emphasized role in this field. This way the Green Paper puts the stress not only on hiring manpower but also on every

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<sup>694</sup> Green Paper on Modernising labour law to meet the challenges of the 21st century, [http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006\\_0708en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0708en01.pdf) (21. 09. 2012).

<sup>695</sup> Its primary cause is that it is also the interest of the Member States that they should make order in the field of labour politics, since the development would be restrained if labour relations are not fixed properly. Though most of the states became aware of it and started to change their labour policies, this progress will be more effective if the European Union itself would help the Member States even if declaring strategies.

<sup>696</sup> Arthurs, H.W.: *Labour Law After Labour. Osgoode CLPE Research Paper*. 2011, vol. 07, no.15, pp. 11-29.

<sup>697</sup> It should be added that putting these progresses into function needs the effective participation of the states all over Europe.

<sup>698</sup> This situation is described in an above mentioned essay entitled „Labour law after labour” written by Harry Arthurs. Even this title suggests that during these labour reform progresses these special legal relations lose their classical legal features. Naturally, this does not mean that labour law as legal field or science would disappear, but looking for new ways and the contrast between the traditional and modern are emphasized by this kind of arguments.

legal relation in which besides labour relation there is another – in the circle of civil law – legal relation.<sup>699</sup>

This is characteristically the labour power recruiting without the traditional state element, namely, on the base of the contract the lessor – in return service – intercedes, and lends employees to the hirer. The importance of this kind of legal relation is becoming greater and greater, since this is a reliable possibility for the employees to work really and the relationship between the employers may result a long-lasting effective cooperation, what is beneficial for both parties.

The Green Paper regards the regulation of the working time what is precedent in modern labour law relations as important as the above mentioned element. The Green Paper states that without the appropriate regulation of it the parties' cooperation cannot be effective and according to the argument most principles of 2003/88/EC<sup>700</sup> are applied properly in the Member States but in some fields – e.g. in public health – the problems in connection with working time have not been solved yet. Moreover the working time is one of the most important elements of the labour legal relation, so the modern labour law relation cannot be fulfilled without its proper application.<sup>701</sup>

The Green Paper also declares that to develop the mobility of employees and to make more possibilities for the employees are also required in the way that the transnational – beyond the Union – mobility for employees should be put in the centre of employment policy.<sup>702</sup> It will be a question what kind of possibilities will the Member States ensure in this case, or how the mobility for the employees will be possible in reality not only by the idea of fundamental freedom labour. To define the concept of employee is also important since in a non-usual legal relation it will be a question whom the scope of law will apply to, who are/will be entitled to the assurances. It is also important that according to the essence of modern labour law mobility means that the employees in favour of their own interests would not be bound to one certain

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<sup>699</sup> Green Paper on Modernising labour law to meet the challenges of the 21st century, [http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006\\_0708en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0708en01.pdf) (21. 09. 2012).

<sup>700</sup> Directive 2003/88/EC on Concerning certain aspects of the organisation of working time, [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=32003L0088&model=guichett](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=32003L0088&model=guichett) (03. 09. 2012).

<sup>701</sup> A basic problem is to differentiate ordinary and extraordinary working time because it has a great effect on remuneration.

<sup>702</sup> Green Paper on Modernising labour law to meet the challenges of the 21st century, [http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006\\_0708en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0708en01.pdf) (21. 09. 2012).

place, so if she/he wants to leave the mother country is favourable for them they could do it freely and in a way that their labour possibilities would not be damaged.

To reduce any illegal employment or blackleg work is also among the primary aims because regarding to their feature they are atypical and illegal at the same time referring to the contract, wages or working time.

The Green Paper explains that till this sphere will not disappear or at least will not be reduced to the minimum, the modern labour norms will not be enforced, besides being risky for the employees the illegal labour urges the parties to evade the regulations (it means that they also regard that as a possibility). The illegal employment may result state (authoritative) punitive sanctions for the employer and reducing manpower for the employees at the same time.<sup>703</sup> In long term it will result in asymmetry in the labour market and the blackleg work will gain more ground.

### III. About the protection assured by anti-discrimination

We have to examine the following fair question: how do these norms serve the employees' interests and how will their rightful interests be protected? In general it is true that these rights do not appear as concrete rights on employees' side like e.g. wage<sup>704</sup> as performance of a contract but they are protected in their personality by active and passive criteria.

It is also special from the point that it does not refer to a concrete right but rather a system of requirements in which the prohibition of discrimination between employees is fundamental. At the same time in concrete cases it can be taken to the fields entitled the employees, namely such fields of which the requirement of equal treatment consists. E.g. the performance of the aspects of labour market, some questions of wage, the termination of labour law relation also belong to this circle.

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<sup>703</sup> In the new Member States like in Hungary it is one of the greatest problems in employment structure.

<sup>704</sup> In legal literature the expression „the right to equal treatment” is rather widespread and it is justified because in case of infringement the employee will have been – partly or fully – authorized like regarding any other subjective right.

Passive behaviour – that is reserve – basically means the circle of cases in which the employer meets such legal obstacles by which the legislator tries to fulfil the requirement of equal treatment. If an employer's decision is favourable or needed for her/him decision and at the same time it is discriminative for the employees, this decision does not belong to the employer's discretion only but the legal limits and personal circumstances must be taken into consideration. As a whole the norms of anti-discrimination restrict the employers but we cannot say that they would have negative effects on the economic figures necessarily. In the field of modern labour relations – that is atypical labour relations – most of the regulations support the requirement of equal treatment, so they serve the employees' interests mainly. Though these legal relations may be more attractive on the employees' side but the employer should gain advantages from it, too, since the atypical employment should serve both parties' interests (let's think of the case when the employer needs e.g. teleworking or temporary hired workers).

Restrictions alone would not be enough so both in the Union and Hungarian law we can find several anti-discriminational regulations which require the employer's action. During the progress of shaping the scopes of activities and tasks, scaling the wages the employer would not damage the employees' right to equality.<sup>705</sup> According to Hungarian labour law the employer has the duty of information towards the works council about what steps are taken to perform equal treatment. It is a typical case that the employer has to favour an employee or a group of employees in disadvantageous situation from the outset, or at least the employer has to make some arrangements that this person (or these persons) would be treated equally compared to the other employees. The Hungarian Labour Code declares that in case of a disabled employee is employed by the employer the employer has to take all arrangements that would ensure her/his equal, real and effective employment.<sup>706</sup>

The requirement of equal treatment cannot be interpreted only by labour norms or on the basis of authorities in connection with every single labour relation. The requirement of equal treatment is a general requirement and it is based on fundamental human rights<sup>707</sup> and to perform it is the task of the whole legal system and in single legal fields to declare and perform some regulations independently is also justified.<sup>708</sup> Its base is the illimitable human right to

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<sup>705</sup> Bercusson, B.: *European Labour Law* (second edition). Cambridge: Cambridge University Press, 2009, p. 9-11.

<sup>706</sup> 51. § (5), Act I. of 2012 on the Labour Code, [http://www.njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=143164.209460](http://www.njt.hu/cgi_bin/njt_doc.cgi?docid=143164.209460) (20. 09. 2012).

<sup>707</sup> Bitskey, B. – Gyulavári, T.: Kell-e diszkriminációs törvény. *Jogtudományi Közlöny*. 2003, vol. 58, no.1, pp. 1-8.

human life and dignity and its essence is that discrimination between people or groups of people on the basis of their personal features is forbidden. Equal treatment as a result of labour relations also originates from this basic principle, so it is clear that the employees' legal protection is very important in modern legal system, too.

#### IV. Equal treatment in "modern" labour relations

The problem raised in the title of my essay should be answered as follows. The requirement of equal treatment as basic labour law principle was formed much earlier than some atypical labour relations emerged in the labour market but it is also true that in several aspects they are formulated together.<sup>709</sup> The requirement of equal treatment should cover all the phases and elements of equal treatment and equality must be performed before (tender announcement or job interview) and in a sense after (e.g. the system of legal effects of the labour regulation, but also the way and the cause of termination) establishing the labour relation.<sup>710</sup> Regarding to the atypical employment the fact that employment equality should be performed in a way that as a consequence of it anti-discrimination would be fulfilled is of high importance.<sup>711</sup>

A good example of the latter is the regulation the Hungarian Labour Code emphasizing the obligation of equal treatment for teleworking people and states that the employer must give the same information to the teleworking employee as to the employees working in traditional

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<sup>19</sup> This is the general feature of the legal systems which are observant of human rights with respect to the democratic principles and values even if we speak about European states or let's say the United States of America. As a consequence in the European Union the general requirement of equality can be interpreted on two levels and besides the level of the Member State it must be examined in the legal system of the EU, too. Though the European Union does not have an own charter or non-charter constitution but basic constitutional values and norms have effect on the Union law as a whole and they are rather stressed. The fact that to establish a homogenous Union constitution is practically impossible (though some earlier attempts were made) does not mean that the constitutional norms would not have any effect on the Union law. The common constitutional tradition of the Member States, the Basic Agreements or the regulations of the Charter of Fundamental Rights of the European Union are important pieces of the Union legal material but they do not come from one written or unwritten constitution or basic law like in the cases of the Member States. In the cases of the latter – this is the second level – the most important fundamental rights and principles – also containing the prohibition of discrimination – are declared in the constitutions of the Member States. Furthermore other legal sources – typically laws – declare further regulations in such way that they can be traced back to the constitution namely, the defence of equality rights should be performed on constitutional level.

<sup>709</sup> See Directive 97/81/EC about part-time employment according to which in the sphere of atypical labour relations to perform the principle of equal treatment, namely employment equality has priority.

<sup>710</sup> See Directive 2000/78/EC on Establishing a framework for equal treatment on employment and occupation, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML> (03. 09. 2012).

<sup>711</sup> Bercusson, B.: *European Labour Law* (second edition). Cambridge: Cambridge University Press, 2009, p. 5-11.

form, and the rule also claims that the teleworkers have right to keep contact with the employees working on the employer's place of business.

So these guaranteed regulations basically are contradictory to the features of flexible labour relations since the essence of it is the employee could work between looser frames with less obligations. In my opinion – the next thought gives a solution to the problem raised in the title – the requirement of equal treatment should get a leading role in modern labour relations, namely the employees independently from the form of employment, since their fundamental human rights and their work entitles them to anti-discriminational employment.<sup>712</sup> Therefore the concept of flexicurity cannot lose the part of security defending the employees' equality.

The Green Paper basically emphasizes flexibility and its intellectuality suggests that modern labour relations should be beneficial for both parties and would not mean coercion or pressure.<sup>713</sup> In this sense the level of legal protection would not be lower, since the employees always are in a forced situation, mainly because of the processions of labour market. On the other hand we must add that flexibility and putting the parties' free will into the foreground requires some sacrifices from the parties, since if only the terminology of labour relations and some working methods would be modernized but the essence of labour relations would remain unchanged we could not speak about real modernization. This would mean forfeiture for both parties in this process.<sup>714</sup>

Citing some examples from the practice I'd like to mention that flexibility and simplification – for the time being – may have negative effect on several fields of the equal treatment.<sup>715</sup>

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<sup>712</sup> On examining both the European and the Hungarian practice it is clear that the employers do not admit this. In most cases they do not realize that equality for the employees does not only mean that regarding the wages the unjustified and disproportionate discrimination is forbidden but also means in case they are discriminated their fundamental human rights are damaged (beyond the concrete employment discrimination). Namely, the employers should not regard the employee's equality as a special kind of necessary badness or some unjustified advantage but rather as part of their own employing principle and practice and mainly not because they are afraid of the consequences.

<sup>713</sup> Green Paper on Modernising labour law to meet the challenges of the 21st century, [http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006\\_0708en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0708en01.pdf) (21. 09. 2012).

<sup>714</sup> The fact that forfeiture as a consequence of the employer's authoritative situation of power will be disadvantageous for the employee. In this context it is justified that the classical protective and social function of the labour norms should stay.

<sup>715</sup> The new Hungarian Labour Code is a good example of this process since the legislator takes a stand on definite flexibility and turn towards civil law. This way it is expressed that the legal protective net is decreasing.



The employees' equality rights may have been affected by the fact within which legal relations the employer wishes to apply manpower from the labour market. As a consequence of flexibility in the employment labour relations the parties' free will should be emphasized, but the parties can establish not only labour relation with this aim. It is favourable from many points of view if labour is done clearly within the frames of private law that is civil law.<sup>716</sup> Though it is favourable mainly for the employer, since in these kinds of labour relations according to the main regulations – typically – all the important questions are decided on the parties' consensus.<sup>717</sup> So it must be taken into consideration that this way the employees' entitlements which in the labour regulation material in the classical sense defend the employees' rights will be reduced, that is the social element will disappear. On the other hand the flexibility performed this way also serves the employees' interests since they enjoy less obligations and the labour relation can be established or terminated more easily. The general experience shows that the employers willingly apply the „employees" within the frames of civil law relation and not within labour law.<sup>718</sup> But the requirement of equal treatment in case of employment in non-labour relation can be performed only to a restricted extent.<sup>719</sup>

Since flexibility does not only mean that atypical labour relations come into the front, it is worthy to examine such elements of the labour relation which are affected by equal treatment or by lack of equal treatment. If we accept that to establish labour relations more easily is a fundamental aim, than at first sight we can see that it may even help to perform anti-discrimination between the employees.<sup>720</sup> The Member States try to support persons in special situation to get a job<sup>721</sup> and these days they definitely support non-general employment.<sup>722</sup> So the employers are willing to apply manpower from this circle as soon as possible. At the same time this raises the question of indirect discrimination since the employers may refer to some

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<sup>716</sup> Mainly on the basis of agency or enterprise contracts.

<sup>717</sup> It means that there are definitely less legal regulatory obligations.

<sup>718</sup> It is definitely true in Hungary.

<sup>719</sup> This problem should be examined from different points of view. On the one hand the requirement of equal treatment should be fulfilled regarding to the persons who do labour activity at a certain employer but do not have labour relation. The Court of Justice of the European Union declared several times that neither the name nor the feature of this activity should cause leaving the requirement of equal treatment out. On the other hand this requirement is specific of the labour relations in a sense that the employer is definitely obliged to fulfil these obligations in case of a labour relation. Regarding to the legal feature of the labour relations it is clear that they are special – besides other causes – because of the guarantees and social aspects for the employees. That's why the regulation of prohibition of discrimination cannot be applied fully according to the logic of the legal relations in civil law.

<sup>720</sup> Bercusson, B.: *European Labour Law* (second edition). Cambridge: Cambridge University Press, 2009, p. 5-11.

<sup>721</sup> Typically by the means of employment policy.

<sup>722</sup> Mostly part-time work and telework belong to this field.

„flexible” regulations when they decide on „this” and not the „other” employee. At this point we come to the end since this way unjustified and disproportionate discrimination may become practice.

I regard the problem of terminating the legal relation similarly because any kind of flexibility or freedom may increase the employer’s absolutism, admitting that the employee’s right to resignation/termination may be applied in wider range. In the cases of resignations in the practice of the Member States and the Union itself<sup>723</sup> it is a returning problem that the employee’s labour relation is terminated illegally in such way that seemingly it is rightful but the measure is discriminative. Such cases may occur when the employer terminates the labour relation referring to the employee’s deficiency in her labour but it is justified that some characteristics of hers – e.g. she is a woman – is in the background.<sup>724</sup>

In the cases of atypical labour relations it is also clear that the employees’ equality should be performed to such extent as in the cases of employees in traditional labour relation.<sup>725</sup> The starting point of classical labour relation is that employees in such labour relations – in comparison with persons in typical labour relation – are in a disadvantageous situation in a sense because from the employer’s point atypical employment is a special kind of force.<sup>726</sup> So in atypical labour relations the primary aim is to perform equality between the employees while flexibility weakens it.<sup>727</sup>

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<sup>723</sup> See C-447/09 Reinhard Prigge and Others v Deutsche Lufthansa AG, curia.europa.eu (10. 05. 2012).

<sup>724</sup> See Directive 2006/54/EC on The implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:204:0023:0036:en:PDF> (03. 09. 2012).

<sup>725</sup> In a sense these kinds of legal relations should be supported to be more and more „popular” and in many cases we can meet further guarantees.

<sup>726</sup> Young mothers take part-time job not only because this would be the limit of their capacity but rather because of family obligations.

<sup>727</sup> Typically in cases of wage system, professional advancement or the termination of legal relation. This legal problem traces back long ago, since in case of atypical employment such anomaly has existed since the beginning of the legal relation. It is another fact that in modern labour law regulation it is more emphasized.

## Conclusions – defending the interests in connection with equality

Finally, I'd like to examine what could be the solution of this seemingly insoluble controversy, or rather the compromise for the two oppositional interests. It is clear that the requirement of equal treatment has a special role in the legal systems of either the Member States or the Union not necessarily by chance; this important requirement does not exist for its own sake. It is not such an obligation on the employer's side by which the employee would be restricted and difference in interests would emerge between him/her and his/her employees for long. The essence of this principle is quite the opposite: it is to make employment and existential security for the employees easier. And the employers should admit that they cannot act arbitrarily even in the world of „modern” labour law or cannot interpret „flexibility” to their own taste, mainly not in those cases when the employees' fundamental human rights are the topic. Besides, the European Union's labour market will function effectively only if the requirement of equal treatment with regard to the modern labour relations would be performed and the employers would adjust their behaviour to this requirement. In any other case the employees' rights, ad absurdum the employees as persons and the value making work together with them would be undervalued or fade away.

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