STUDIA EUROPEJSKIE

STUDIES IN EUROPEAN AFFAIRS

Centre for Europe, University of Warsaw

Volume 26 • Number 1 • 2022

ISSN 1428-149X

UNIWERSYTET WARSZAWSKI

STUDIA EUROPEJSKIE

STUDIES IN EUROPEAN AFFAIRS

Centre for Europe, University of Warsaw

Volume 26 • Number 1 • 2022

ISSN 1428-149X

Warsaw 2022

The Peer-reviewed Quarterly
"Studia Europejskie – Studies in European Affairs"
published by:
Centre for Europe, University of Warsaw
Al. Niepodległości 22, 02-653 Warszawa

Head of the Centre for Europe, University of Warsaw Publishing Programme:
Dr hab. Kamil Zajączkowski

Editor in Chief of the Quarterly:
Dr Artur Adamczyk

Deputy Editors in Chief:
Dr Małgorzata Pacek, Professor Rafał Riedel

Managing Editor:
Przemysław Bartuszek

Language and stylistic correction:
Joanna Roderick, Michael Roderick

Technical correction:
Studio Poligraficzne Edytorka
www.edytorka.pl

ISSN 1428-149X
e-ISSN 2719-3780

Printing House:
Oficyna Wydawnicza ASPRA-JR
e-mail: sekretariat@aspra.pl
www.aspra.pl

Publication co-financed by Ministry of Education and Science

Table of Contents

ARTICLES

CENTRE FOR EUROPE UNIVERSITY OF WARSAW

ARTICLES

DOI: 10.33067/SE.1.2022.1

*Danuta Kabat-Rudnicka**

The European Union as a Security Community Against the Backdrop of Challenges Caused by the Global Pandemic**

Abstract

The European Union, the most advanced integrational arrangement of its kind today, and a model for other regional integration projects, is a relatively new actor on the international scene. It constitutes a community of values, a normative power, a cultural and political community, but, above all else, a security community. And it is to this final dimension that Europe owes the longest period of peace in its modern history. However, today, faced with a new reality forged by global changes and the emergence of new threats, the theoretical construct of the security community, developed by Karl W. Deutsch, requires new insights and adjustments, including in relation to the European Union.

The aim of this study is to establish whether, despite the current crisis, the European Union still meets the criteria of a security community. And considering the changes that have taken place over the years, the research problem amounts to the question of whether the concept of security itself, and thus of the security community, shouldn't be revised so as to better reflect the present reality. In turn, the research thesis is as follows: despite all the difficulties and more or less unprecedented events, especially those of recent times, the EU meets the criteria of a security community, wherein it presents an intermediate (halfway-house) solution between a pluralistic and an amalgamated community.

In support of the presented arguments, primary and secondary sources will be used, and research methods such as a description, interpretation, comparison, and critical assessment of the literature will be applied.

* **Danuta Kabat-Rudnicka** – Cracow University of Economics, e-mail: kabatd@uek.krakow.pl, ORCID ID: https://orcid.org/0000-0003-4776-4481

** This publication has been co-financed by a subsidy granted to the Cracow University of Economics, Program POTENCJAŁ nr 19/EEP/2021/POT.

Considerations will start with theoretical issues, followed by a discussion of the EU as a new actor on the international scene, after which security factors and their manifestations in the EU will be addressed.

Keywords: European Union, COVID-19, Security Community, Karl W. Deutsch

Introductory Remarks

Like most salient non-state entities that compete for power and authority, the European Union (EU) is an international organization (IO), albeit a special kind of organisation. The EU (previously, the European Communities) not only serves as a common ground for an exchange of views and ideas, a forum for debates and negotiations, a place where politics is made and decisions are taken, but it is also an economic, legal, cultural, and political community, a community of values, and a normative power. However, above all else it is a security community. And unlike at the outset of integration processes, when security lay at the heart of the European project and contributed to the maintenance of peace in Europe, today it is ideas, values, norms, rules, principles, common practices, a common identity, welfare, and the well-being of citizens that make up the essence of the community.

According to Karl W. Deutsch, one of the leading and most influential theoreticians of international integration, the forms of cooperation which have materialised in Western Europe are characteristic of a *pluralistic security community*. However, today, following treaty revisions and the current headway being made towards integration which has manifested itself, among other things, in new structures, procedures, principles, norms, and practices, are we still justified in calling this advanced form of cooperation a *pluralistic security community*, or should we rather label this not yet fully-fledged political entity with a single centre of power an *amalgamated security community*? The absence of a single centre of public authority does not change the fact that most matters concerning European citizens are decided by EU institutions rather than by individual states. It should be pointed out that a security community as a theoretical category, was (and still is) an innovative concept compared to other, traditional approaches to international relations and to international integration, in particular.

The EU is currently the most advanced regional integrational arrangement in the world. As a result of transferring competences to the supranational level, i.e., to EU institutions, or rather – as some would say – as a consequence of restricting the exercise of such competences at the national level, a new kind of political entity, indeed a novel type of

international actor, has been established. This institutionalised form of collaboration, depending on the perspective adopted, can be seen as an international organisation, a quasi-state structure, a polity in its own rights or, last but not least, a new kind of actor on the international scene.

The current state of the crisis facing the EU, triggered by the global pandemic and, to some extent, also by Brexit (more in ideational than in factual terms, as a challenge to the very notion of integration and thus to the entire European project), as well as by other factors, is not a new phenomenon. As is well known, the EU has to date experienced economic, financial, migration, and refugee crises as well as a crisis of legitimacy. And yet these destabilising factors have not brought about its collapse. On the contrary, in some ways they have strengthened it, and the hope is that this positive trend will continue in the future.

While it may be a truism to say that every crisis is unique, the recent SARS-CoV-2 emergency and the concomitant restrictions on economic activities have, along with national lockdowns, had an impact on virtually every sphere of people's lives. Hence, the question that needs to be asked is how has the current global health emergency affected the very existence of the EU, and does the EU still meet the criteria of a security community? Moreover, given the changes that have taken place in the international arena *in genere* and in the EU *in specie* over the years, shouldn't the concept of security itself, and thus of the security community, be revised so as to better reflect the present reality, i.e., take into account the non-military dimensions of security to a greater extent? The thesis that will be confirmed (or rejected) in this study is as follows: despite all the difficulties and obstacles encountered, and despite, too, the events (more or less unprecedented) and crises that have occurred, especially those of recent times, the EU has met the criteria of a security community. Another question that arises here is whether in the case of the EU we are dealing with a pluralistic or an amalgamated security community or instead with a *tertium genus* that better reflects the present reality?

To substantiate the arguments set out in this paper, primary and secondary sources will be used, and different research methods applied, such as a description, interpretation, comparison, and critical assessment of the literature. The focus of this analysis will be the EU as a supranational integrational arrangement and at the same time a security community. The discussion will proceed as follows; first, a number of theoretical issues will be raised, such as the constructivist turn in international relations and the concept of the security community. Then, there will be a discussion of the EU as a new actor on the international scene, after which security factors and their manifestations in the EU will be addressed.

A New Paradigm in International Relations

Unlike traditional approaches to international relations that emphasise an anarchic international environment and sovereign states as the main actors, the new paradigm presents the world as less ordered in some respects and more in others. On the one hand, the world is much more complex and features many more actors that are different from, and operate within and outside, sovereign states and that certain variables (social, economic, cultural, etc.) need to be taken into account alongside political factors. On the other hand, the world is more ordered with international relations moving in the direction of a more structured if not hierarchical system (in line with Hugo Grotius's concept of a world society) (Lijphart, 1981, p. 234).

The traditional theory of international relations, which focuses on state sovereignty and international anarchy, provides a platform for three interrelated theories, namely: world government, the balance of power, and collective security. The world government theory holds that international relations exist in a state of nature, and since anarchy is a source of conflict, the logical solution would be to conclude a social contract that would allow for the removal of separate sovereignties and for the establishment of one sovereign government. The balance of power theory, on the other hand, holds that anarchy, which comes to the fore in the absence of sovereign rule, does not necessarily imply disorder, and the struggle for power which states are forced into by the security dilemma, leads to equilibrium rather than conflict. In turn, the collective security theory rejects the possibility of achieving any automatic equilibrium and argues that states should agree on taking collective action against any aggressor. Hence, the theory appears to recognise the social contract theory in which international anarchy is not abolished but weakened, leaving state sovereignties intact (Ibidem, pp. 234–235).

As we can observe, the fundamental issue at stake is how to arrange relations between states in such a way as to reduce (or even eliminate) anarchy and thus diminish the possibility of conflict, in conditions where establishing a world government is extremely difficult (if not impossible), the balance of power mechanism does not guarantee lasting peace, and the institution of collective security is very weak. One such solution (compared to those presented above) may be to place international relations on a legal basis by creating a special kind of international organisation, i.e., regional integrational arrangements-*cum*-security communities, which would impede international anarchy (if not eliminate it altogether) and reduce the potential for inter-state conflict.

The traditional paradigm implies the establishment of a world government, whereas the new paradigm holds that peace can be achieved by moving towards a pluralistic world of restrained international law, expanding international cooperation and pluralistic security communities (Ibidem, pp. 238–239). From the latter perspective, the key to harmonious international relations is neither the creation of a single global authority, nor competition between states leading to a balance of power, but rather through the founding of security communities. This, in turn, implies law-based international relations, a more orderly and predictable world, and reduced international anarchy. What is equally important is that the new paradigm liberates research on international relations from the limitations of the traditional paradigm, i.e., one based on a vision of an anarchic world where sovereign states are the only actors on the international scene. And according to A. Lijphart, the rejection of the uniqueness of the sovereign state and the blurring of the lines between international and domestic politics have had two implications, namely that international relations are no longer seen as a qualitatively different sphere from political science, which, in turn, means that domestic policy analogies can be applied at the international level and that international relations can be treated as a part of the social sciences and can benefit from their knowledge and methods (Ibidem, pp. 239–240). As for the constructivist argument that the political order can be conceived as the result of processes of social interaction, Gunther Hellmann et al. point out that the security community approach originated in the desire to transcend the state-centric perspective of international relations, which, in turn, allows us to conceive of "the West" as a political space characterised by transnational processes of political association and integration (Hellmann et al., 2014, p. 370). The logic of community challenges the logic of anarchy according to which, despite occasional efforts to cooperate with one another, the anarchic nature of the international order prompts states to act in their own interest, thereby eliminating all prospects for peaceful change (Koschut, 2014, p. 524).

With regard to the theory of international relations, there are a number of possible ways to explain lasting peace. Structural realism defines peaceful change primarily in terms of the ordering function of the international system based on the balance of power, alliances and deterrence, while neoliberal institutionalism views such change through the prism of mutual gains achieved through institutionalised cooperation and norms. Constructivism, on the other hand, focuses on changing social and normative interpretations of the material world as a result of human interaction, while the English school shares some features with the security community, but underestimates the role of transnational and non-state

actors. Finally, democratic peace theory provides some insights into how security communities develop but its scope is limited to democratic states (Ibidem, p. 527). These approaches share some characteristics with the Deutschian concept of a security community (norms, identity, language), but differ in their treatment of the post-Westphalian system. According to S. Koschut, the Deutschian concept takes the middle ground between realism and liberal democratic theories in that it rejects the realist approach that regime type is irrelevant to the study of international peace and questions the liberal democratic claim that a certain regime type serves as a prerequisite for peaceful international relations; it also lies between a state-centric view of neorealism and neoliberalism on the one hand, and the social ontology of postmodern and reflectivist theories that examine social interactions and social relations between states and non-state actors, on the other (Ibidem, p. 528). Furthermore, Koschut accepts the realist assumption that international relations are organised as a system of states based on the distribution of material power and capabilities, while at the same time emphasising their social relationships based on shared understanding, belief systems and narratives (Ibidem, p. 522).

A Constructivist Turn in International Relations and European Studies

The concept of security, which today is associated more with values, ideas, identities, and practices than with material forces, fits in with the constructivist approach to international relations. This also holds true for the security community.[1] The term 'constructivism' was first applied to international relations by Nicholas Onuf, but it was not until the early 1980s that it gained in influence, especially in North America, and it was only in the 1990s that it began to permeate European studies. It should be pointed out that constructivism in international relations arose in opposition to the dominant rationalist paradigm and it draws, *inter alia*, on Deutsch's concept of common identities (Czaputowicz, 2015, p. 8).

Constructivism, which focuses on intersubjective ideas, in actual fact constitutes an empirical approach to the study of international relations (Jackson, Sørensen, 2013, p. 213). Constructivists claim that the interna-

[1] Fotios Moustakis and Tracey German distinguish the following characteristics of security communities: collective security, joint military planning, integration, unfortified borders, free movement of people as well as common definitions of internal and external threats; hence, security means prosperity, stability and a common destiny rather than the protection of borders against military threats – see Moustakis and German (2009, p. 6).

tional system is made up of ideas rather than material forces. They maintain that structures of human association are primarily determined by shared ideas rather than by material forces, and that the identities and interests of actors are constructed by shared ideas rather than bestowed by nature. And while the former represents an idealist approach and in its emphasis on the sharing of ideas is social, the latter is a holistic or structuralist approach given its emphasis on emergent powers of social structures (Wendt, 1999, p. 1; Wendt, 1995, pp. 71–81).

Constructivism assumes that the *milieu* in which actors operate is primarily social rather than material, and this is the reference point for understanding the ways in which actors' interests and identities are conceptualised with language as a tool for shaping social reality alongside other ideational factors, such as norms, rules, and decision-making procedures (Skolimowska, 2015a, p. 111). Constructivists assume that norms, values, and principles shaped by European integration can influence (or even change) the behaviour and identity of participants, while pointing to processes such as socialisation, social learning, loyalty transfer, the redefinition of national interests and the shaping of participants' identities, norms, values, and interests (Ibidem, p. 111). And it is also the constructivists who introduced the concept of the security community into analyses of the EU's common foreign and security policy, where, by prioritising the establishment of peaceful relations, war is no longer seen as a tool for settling differences (Ibidem, p. 127).[2] To sum up, the constructivist turn entails a perception of international relations as a social and political space in which, alongside states' interests, the common good, justice, peace, good governance, etc. are equally important factors; and what is more, within this space issues of morality and ethics once again play an important role, as does the endeavour to define and interpret international norms (Skolimowska, 2015b, p. 38).

The notion of peaceful change so distinctive to the Deutschian concept, achievable through the institutionalisation of mutual identification, transnational values, intersubjective understanding, and shared identities, comes closest to the constructivist approach, which recognises the importance of knowledge in the transformation of international structures and security policy, and thus is the most serious attempt to gauge how the in-

[2] Such a community must meet the following criteria: value system compliance, common lifestyle, expectations of strengthened ties or economic gains, a significant increase in administrative and political possibilities, social communication channels, people's mobility, and diversity of contacts. Charles Taylor adds to this list mutual responsiveness, the capabilities of core areas and a broadening of the elites, as well as the reluctance to wage fratricidal war, an outside military threat, and ethnic or linguistic assimilation, see Taylor (2020, p. 24).

ternational community can shape security policy and create conditions for lasting peace (Adler, Barnett, 1998c, p. 59). On the other hand, the concept of the security community shares two basic assumptions with constructivist theory, namely that the key structures in the state system are intersubjective rather than material and state identities and interests are largely based on social structures rather than grafted exogenously on to the system by human nature or domestic politics (Acharya, 1998, p. 201).

As for the EU, conceptualising this entity on the basis of the assumptions of constructivist theory seems justified, given both its materialistic features, e.g., a clearly defined territory where EU law is applied and prevails in national legal orders and its ideational underpinnings, such as ideas, norms, sense of community, common practices, common identity, solidarity, and trust. And as S. Koschut has observed, it is within the constructivist approach that the notion of a security community lies, since ensuring "dependable expectations of peaceful change" requires lasting norms and identities that are capable of transforming states' behaviour from self-help to trust-building (Koschut, op. cit., p. 525), a goal which has been achieved within European integration processes.

The Security Community According to Karl W. Deutsch

In their main research, Karl W. Deutsch and his collaborators define a security community as one whose members do not engage in physical conflict but instead settle their differences in other ways.[3] Deutsch distinguishes between two types of security community, namely the *amalgamated* and *pluralistic*. The former emerges when two or more independent units merge formally into a larger entity with a common government established as a result of amalgamation, whereas the latter entails the continued legal independence of separate governments (*Introduction*, 1957, p. 6). In a pluralistic security community, states comply with core values derived from common institutions and are char-

[3] "A security-community, therefore, is one in which there is real assurance that the members of that community will not fight each other physically but will settle their disputes in some other way", see *Introduction* (1957, p. 5). In their definition of the term, the constructivists Emanuel Adler and Michael Barnett put the stress on ideational rather than material issues, contending that a community is characterised by shared identities, values and meanings, multifaceted and direct relations, and reciprocity as an expression of long-term interests, see Adler and Barnett (1998a, p. 31). Some authors, relying on empirical research, question some of these assumptions, especially shared values, raising instead the importance of trust and tolerance, see Tusicisny (2007, pp. 425–449).

acterised by mutual responsiveness, a sense of *we-ness* and expectations of peaceful change (Adler, Barnett, 1998b, pp. 6–7). And even if the states building a security community are still sovereign in a formal-legalistic sense, their sovereignty, authority, and legitimacy depend on the security community (Adler, Barnett, 1998c, p. 36). Another issue is that both solutions require some level – albeit to varying degrees – of integration within the community (Moustakis, German, 2009, p. 5) and thus some kind of organisation at the international level (*Introduction*, op. cit., p. 6).

Deutsch's pluralistic approach is based on the assumption that communication is the cement of social groups *in genere* and political communities *in specie*, making it possible for a group to think, see, and act together. Communication and transaction flows are not only a way of attracting attention, but also a source of shared identity. Thanks to transactions such as trade, migration, tourism, cultural and educational exchanges, and the use of communication facilities, a social fabric is built not only out of elites but also the masses, thereby instilling a sense of community based on demonstrations of mutual sympathy and loyalty, we-feeling, trust and mutual attention, identity in terms of self-image and interests and mutually successful predictions of behaviour – in short, a dynamic process of mutual attention, communication, and the perception of needs and responsiveness in the decision-making process (Adler, Barnett, 1998b, p. 7).[4]

As has already been pointed out, security communities can emerge either through amalgamation or pluralism. An amalgamated community may be federal or unitary, but either way it will have one central, supreme decision-making centre. In turn, a pluralistic community preserves the sovereignty of states, while promoting the integration of people. In other words, it involves a common sense of identity with institutions and practices strong and widespread enough to assure expectations of peaceful change. And while the creation of such communities makes war between states highly unlikely, it is not impossible (Taylor, 2020, pp. 23–24).

If we accept that the primary goal of integration is not only to preserve peace[5] but to acquire greater power for general or specific purposes, or a common identity, then an amalgamated security community with a com-

[4] See also Deutsch et al. (1957, p. 36), Peltonen (2014, pp. 475–494) and Dougherty and Pfaltzgraff Jr (1971, pp. 284–287).

[5] Karl Deutsch distinguished four main goals of integration, namely: maintaining peace, attaining greater multi-purpose capabilities, accomplishing specific tasks, and gaining a new self-image and role identity, see Deutsch (1978, p. 271).

mon government would be the preferred solution; on the other hand, if the main goal is peace, then the desired approach would be an easier-to-achieve pluralistic security community (Deutsch, 1978, p. 272).[6] In other words, a pluralistic security community would suffice when the keeping of peace between separate entities is the main political goal, and if the goal is more ambitious, i.e., not only to maintain peace but also to act as one unit (a political community), then the striving for an amalgamated security community would be advisable as a superior solution (*Main findings*, 1957, p. 31). And even if an amalgamated security community is more risky for whatever reason, it would still be more attractive and desirable than any other alternative. For if it is successful, it will not only maintain peace, but also provide a source of greater strength as well as a stronger sense of identity and reassurance for both the elites and masses; and although this is a much more desirable goal, it will be, like most better solutions, more difficult to achieve and sustain (Deutsch, op. cit., p. 273).

By defining a security community as "a group of people which has become integrated", Deutsch did not limit himself to an analysis of inter-state relations but instead took an individual-societal and a bottom-up approach. What is more, he never thought of international relations as being limited to interactions between states, but he rather adopted a cybernetic approach that focused on transactions between individuals, groups, and societies.

Unlike Deutsch, who claims that states can be embedded in a set of social relations understood as a community whose fabric can generate expectations of a peaceful change, other theories of international relations employ the language of force or refer to institutions whose purpose is to pursue and maintain peace (Adler, Barnett, 1998b, p. 6). And while most international relations theories refer to material forces and utilise the language of power and a rather superficial concept of society, Deutsch relies on shared knowledge, ideational forces, and a dense normative environment (Ibidem, p. 8). What is more, contrary to other integration theories, especially neofunctionalism, Deutsch's theory makes it possible to define the end product of unification processes (Puchala, 1981, p. 156).

Europe and the Issue of Security

Security has always played a central role in European history. Lasting peace and security were the pivotal ideas that guided the founders of the Communities in the 1950s. According to O. Wæver, Europe can be thought of as a security community, a community defied in terms of

[6] Although less demanding, pluralism is the most promising means of eliminating warfare by fostering consultation, communication, and cooperation.

the absence of war, or, to use the language of Karl Deutsch, as a non-war community, which has been achieved not by setting up common security structures, but rather through the processes of securitisation, desecuritisation, and resecuritisation (Wæver, 1998, p. 69).

In the post-war period, such issues as the Soviet military threat, the political menace of communism, the economy, the rebuilding of post-war Europe, the German question, the need to "anchor" Germany in Europe, as well as the prioritising of integration over war, were already the subject of securitisation in Europe (Ibidem, pp. 81–83). Later, in 1960–1985, when thinking on European security was dominated by neo-functionalism and Gaullism, and when the sense of an immediate threat was already beginning to fade, security issues tended to be absorbed within the doctrine of deterrence as Europe entered a period of desecuritisation. Furthermore, unlike during the early post-war period, when peace-keeping arguments predominated, efforts focused on making concrete advances in various areas. Although the neofunctionalists realised the importance of security issues, this time strategy underwent a process of desecuritisation (Ibidem, pp. 84–87). From the mid-1980s to the early 1990s, European integration entered a new phase and security arguments once again began to take centre stage, partly fuelled by the dangers posed by East-West confrontation resulting from uncontrolled détente as well as by Europe's declining share of the global economic market, but also by new issues that emerged in the post-1989 security debate, such as environmental protection, ethnic conflict, organised crime, and terrorism (Ibidem, pp. 87–88). In turn, the dominant themes in European security identity after 1992 were integration and fragmentation, which manifested themselves in the anti-EU discourse promoted by anti-establishment movements which called for the defence of (national) identity. Integration defends itself because the alternative is fragmentation, a process which risks destroying the European project and ruling out any possibility of a united Europe for a long time; hence, integration has become a reference point in European security rhetoric, one which, to an ever-greater degree, relies on the security argument to avoid fragmentation (Ibidem, pp. 89–91). And today, given the recent spate of crises affecting the continent (economic, financial, migration and refugee crises, the global pandemic and Brexit) together with the threat of terrorism and war, we are still in the resecuritisation phase, which manifests itself in the form of restrictions, however justified, imposed on the population with the aim of combating terrorism, illegal border crossings, and public health emergencies. And as one may notice, the non-military dimensions of security (economic, financial, health, medical, environmental, cyber, etc.) have come to the fore, which, however,

does not mean that the traditional security threats have ceased to exist. Indeed, nothing could be further from the truth, as military security is still an issue and even more so than in the past.[7]

Hence, it is evident that the very existence of the EU (earlier, the Communities) is bound up with issues of security. From the very beginning, efforts were made to make European countries so interdependent that war would become unthinkable, thereby laying the foundations for lasting peace. Because it is not a military alliance, the EU has focused on soft security issues, promoting national economies and democratic societies rather than aiming to build military power (hence, the commonly used phrase "the EU as a civilian power"). This does not mean, however, that Europe has abandoned the goal of developing its own military capabilities and defence identity, as evidenced by attempts, albeit unsuccessful, to establish a European Defence Community and European Political Community. The importance attached to security was reflected, *inter alia*, in the so-called pillar structure of the treaties. Justice and home affairs [the area of freedom, security, and justice under the Treaty of Lisbon (title 5 TFUE)] focused on internal security (human rights, police and judicial cooperation in the fight against crime, drug and people trafficking, and terrorism) while the EU's common foreign and security policy [the common foreign and security policy, and the common security and defence policy under the Lisbon Treaty (title V TUE)], an institutionalised form of intergovernmental cooperation, focused on external security. In particular, the EU's security and defence policy transformed it from a civilian to – as some wish to call it – a military organisation (Moustakis, German, op. cit., pp. 17–18).[8]

As has already been mentioned, the EU is a pluralistic security community that has developed through non-military security channels, i.e., through economic and political cooperation. From the 1950s onwards, firstly the then European Communities and later the EU have engaged in – to use the words of F. Moustakis and T. German – a non-security response to specific security issues, projecting a specific security culture and identity that differs from territorial or collective defence needs and objectives, and encouraging soft, civilian security measures such as: reconciliation, reforms, constructive dialogue, economic incentives, soft governance, common security, and non-military responses (Ibidem, pp. 18–19). In turn, in the post-cold war period, in the face of new challenges and threats, the EU securitised such issues as: migration, ethnic conflict and

[7] It is worth emphasising the changing nature of military-type threats related to new strategies and techniques of combating them and determined by such phenomena as hybrid wars or new means of the battlefield using drones or other unmanned vehicles.

[8] See also Gambles (1995).

terrorism, and somewhat later other security concerns were identified, including poverty, open borders, interconnected infrastructure, competition for natural resources, energy dependency, organised crime and maritime piracy (Ibidem, pp. 18–19).[9] Moreover, according to Moustakis and German, the EU promotes a broad understanding of security that ranges from the security of the individual, society, and nation towards the security of Member States. It is distinguished by its normative and moral approach in that it promotes peace, human rights and democratic ideals, and forms part of a broader European security framework along with the NATO and the OSCE, in which the EU represents economic and political security, while the NATO is responsible for collective defence and military security (Ibidem, pp. 19–20).

As for the recent crisis, namely that triggered by the global pandemic, the question arises of what the future holds for European economic, monetary and political union; can the EU ensure economic, financial, energy, environmental, social, medical, cyber, information, military and political security? And what are the prospects for European solidarity, identity, we-feeling, and a sense of belonging to a community? And is it still legitimate to claim that the EU meets the criteria of a security community when states are retreating towards national positions and invoking national interests?

The European Union's Response to the Pandemic

Both the financial, economic, migrant and refugee crises of the past, as well as the more recent emergencies brought on by the global pandemic and Brexit, have had an impact on the functioning of the EU and thus on the way we perceive integration processes and the entire European project.

The SARS-CoV-2 virus, which originated in Wuhan, China, and spread to other countries and continents has become a pandemic with far-reaching consequences. To combat the disease, states resorted to various measures such as isolation, social distancing, the closure of borders and the suspension of international flights, restrictions on the transport of goods and economic activity, and shutting down of entire economies and proclaiming national lockdowns – measures aimed at protecting people's health and countries from excessive economic costs and even an economic catastro-

[9] See also General Secretariat of the Council (2003) and (2010) where a number of threats to security were identified, such as terrorism, cybercrime, cross-border crime, violence, natural disasters and those caused by human activity; European External Action Service (2016) where threats such as terrorism, hybrid threats, economic volatility, climate change and energy insecurity were further identified as well as *EU Security Union Strategy: connecting the dots in a new security ecosystem* (Communication, 2020d).

phe, given the low capacity of national health systems, weak social security schemes, and already heavily indebted economies. These measures, however justified, resulted in restrictions on the freedom to conduct economic activities, and even more so in the curtailment of personal liberties. And since national economies are closely interlinked, the question arose of who would be responsible for dealing with such issues? Should it be the individual states themselves, given that health policy falls within their orbit, while the EU can only support, coordinate and supplement states' actions, or, given the impact of the pandemic on the functioning of the common market, should the EU take a more active role, not only because the EU had the means (both legal and financial) to do so, however circumscribed, especially in the field of public health, but also because this was what was expected of the EU by states and societies.

The EU already had at its disposal the European Centre for Disease Prevention and Control – an independent agency, which provides scientific advice, assistance, and expertise (Regulation, 2004), as well as an early warning and response system for the prevention and control of diseases (Decision, 1998). The European Commission got involved in joint procurement procedures to ensure advance purchases of medical countermeasures against serious cross-border threats to health in order to eliminate harmful competition over vaccines and medical equipment. It also worked out an exit strategy – the Joint European Roadmap towards lifting COVID-19 containment measures (Joint European Roadmap, 2020), adopted and implemented a regulation establishing export authorisation for personal protective equipment outside the EU (Commission implementing regulation, 2020), granted relief from import duties and VAT exemption on the import of goods needed to combat the effects of the COVID-19 outbreak (Ibidem), set common criteria for legitimate border restrictions (Guidelines, 2020), green lines for protecting health and ensuring the availability of goods and essential services (Communication, 2020a), as well as measures focusing on exit strategies, mainly with regard to social distancing. The Commission also proposed specific measures to mobilise investments in the health care systems of Member States as well as in other sectors by mobilising cash reserves in the European Structural and Investments Funds (Regulation, 2020). It also increased the amount of *de minimis* aid granted by states to enterprises (Communication, 2020b), allowed for the use of domestic funds to ensure access to liquidity and finance, facilitated COVID-19 research and development, supported the construction and upgrading of COVID-19 testing facilities and creating additional manufacturing capacity for products needed to combat the epidemic (Communication, 2020c).

The Commission, along with the Member States, is also working on a common approach to ensuring safe COVID-19 vaccines, coordinating testing strategies and facilitating the supply of protective and medical equipment. As for other measures, states can make use of the Integrated Political Crisis Response mechanism (Council Implementing Decision, 2018), which enables timely coordination and response to crises at the EU level, regardless of whether they originate inside or outside the Union.[10] Equally important are the financial resources the EU has at its disposal and the additional funds it has for the post-crisis reconstruction of Europe, such as the recently agreed-upon instrument – Next Generation EU (Regulation, 2021).

The current crisis has clearly shown that the non-military dimensions of security are more important than ever. In terms of military security, the Lisbon Treaty provides for a common foreign and security policy and common security and defence policy, with appropriate procedures, structures, and institutions,[11] as well as capabilities, although limited, in which the presence of EU institutions is marginal, and cooperation takes place mainly on an intergovernmental basis. On the other hand, when it comes to the non-military dimensions of security, the EU, and the European Commission in particular, has engaged in joint efforts in the areas of health, medicine, the economy, finances, and the law so as to cope effectively with the consequences of the pandemic.

At this point, mention should be made of two recent initiatives, namely the already-mentioned recovery plan for Europe, which allows for the post-pandemic recovery of national economies, and the Conference on the Future of Europe (CoFoE). In the former case, to finance Next Generation EU, the Commission is borrowing on the capital markets, which, in turn, will contribute to capital and banking integration in the EU; and in the latter case, health policy has become an issue of the Conference and voices are being raised to make it a shared competence. The CoFoE will, in all likelihood, have its follow up in the form of an Intergovernmental Conference (preceded or not by the Convention) and will introduce changes into the treaties assigning more tools and hence more competences to EU institutions. Nor should we underestimate Brexit, with all its consequences for the common market *in specie* and the European project *in genere*. Hence the efforts to review and reform the founding treaties so that the EU has the tools it needs and can use in crisis situations.

[10] The said mechanism was activated on the 28th of February 2020 by Croatia.

[11] E.g., the European Defence Agency (EDA), the EU Military Staff (EUMS), the EU Military Committee (EUMC), Permanent Structured Cooperation (PESCO), the European External Action Service (EEAS).

The European Union as a Security Community

Karl Deutsch defined a security community as a group of people who have achieved such a degree of integration that they do not need to resort to physical violence but can settle disputes in other ways. When applying Deutsch's definition to our analysis of the EU as a security community, given all the changes the EU has experienced so far and against the background of the current situation in the region and internationally, a number of issues arise that require closer attention.

The notion that the EU is a security community is a widely held belief. Assuming that this is the case, what kind of community is it? The concept of a pluralistic security community was coined in the 1950s, when we were still dealing with European Communities, regional economic organisations, and with decision-making procedures that allowed Member States to control legislative outcomes.[12] Hence, it was states, and not the Community itself (the European Economic Community), which decided on legal acts, and even if they were Community acts and states only acted as agents of the Community (via the institutions), the claim that there was a single decision-making centre is difficult to sustain. This is all the more so as the then Community had narrow competences, largely shared with the Member States, and lacked the principles that made Community law (nowadays EU law) what it is today. And now, after all the changes that the Communities have undergone (legal, political, economic), and with the EU now enjoying legal personality (article 47 TUE) and exercising authority over such areas of high politics as justice and home affairs and foreign, security and defence policy, all this leads to the conclusion that the EU has evolved beyond a pluralistic community towards something bordering on an amalgamated community.[13] The EU is not a state, but an international organisation of a special kind, based on treaties of public in-

[12] The situation was different in the case of the European Coal and Steel Community, as it was the European Commission (the High Authority) that was responsible for enacting legal acts.

[13] Similarly, Ole Wæver claims that given the way security is provided in Europe, the EU presents itself as an emerging regional polity rather than a set of universal norms assigning a place to individual states, and for these reasons alone such a security community does not represent a pluralistic security community, but rather an in-between form bordering on amalgamation, see Wæver (1998, p. 71). This arrangement, which is referred to as an intermediate/in-between solution, is the closest to a pluralistic security community tightly coupled (a post-sovereign system, equipped with common, supranational, and transnational institutions, and some kind of a collective security system), according to Wæver's division into loosely and tightly coupled pluralistic security communities. See Adler and Barnett (1996, p. 73).

ternational law, whose masters are states – high contracting parties. This, however, does not change the fact that now, after all the treaty changes, there is hardly any area that, to a greater or lesser extent, does not fall within the ambit of EU competence.[14]

Another issue is the current understanding of security itself. Should the concept of security refer to security in the literal meaning of the word, or should it rather relate to others, i.e., non-military dimensions of security, such as: economic, social, medical, health, cyber, environmental, etc.?[15] In post-war Europe, security, especially from a military, territorial, and political perspective, played a key role. Today, however, welfare and prosperity, well-being, civil rights and liberties, social security, among many others, have come to the fore. Thus, as our perception and understanding of power evolves, so the locus of security has also changed. In other words, we can observe a shift from the state to the individual, and from the sovereignty and independence of the state to the security, integrity and identity of the individual. And once we adopt such a broadly understood notion of security, the question arises of who is to provide this security? Should it be the state, because, traditionally, the obligation to ensure security lay with a state, or should it be the EU, as contemporary threats are not confined to national borders, but are transnational, if not indeed global, such as the recent communicable diseases causing worldwide pandemics.

As for the security community, it is not simply about people not resorting to physical violence, or more specifically resorting to military means to settle disputes, but also, and perhaps most of all, that peoples, societies, and individuals are integrated so that there is mutual trust and solidarity, a sense of "we-ness" and responsibility for a common future. Hence, it is about a community in which security broadly understood is ensured.[16]

With regard to the current crisis, it has shown that public health is highly securitised, and what is more, this is not just a national issue. And

[14] It was in the 1990s when Koen Lenaerts wrote: "there simply is no nucleus of sovereignty that the Member States can invoke, as such, against the Community", Lenaerts (1990, p. 220).

[15] Emanuel Adler and Michael Barnett point out that as the meaning and purpose of power begins to encompass the ability of a community to defend its values and expectations of proper behaviour against an external threat and to attract new states with ideas that convey a sense of national security and material progress, so too the meaning and purpose of security also begins to change, see Adler and Barnett (1998a, p. 4).

[16] We can distinguish between two parallel processes, namely the deepening and the widening of security. The latter refers to the broadening of our understanding of the security concept to include non-military security aspects, i.e., it is about securing objects (space, domain, etc.), while he former relates to entities that provide security, i.e., it is about security subjects (actors). See also Moustakis (2009, pp. 12–13).

although health matters can be categorised as complementary EU competences, and as a consequence states are primarily responsible for them, the EU has stepped in. It needs to be said that a similar scenario played out during earlier economic, financial, migration, and refugee crises, but in the latter case, in particular, the effects were much less severe. Each crisis has shown that hardly any matter can be classified as national, for either they are transnational by nature, or given spill-over effects, countermeasures need to be taken at the EU level, if not even at the global level, to be effective. The EU has proved that despite difficulties and tensions, it can deal with the pandemic and its consequences to guarantee the safety of European citizens. Moreover, despite Brexit and the challenges the latter posed for the European project, it still remains a community.[17] The current crisis does not, strictly speaking, threaten the EU as a security community, as it does not herald an intra-European war, but rather undermines EU cohesion, both in terms of territory and image, as in the case of Brexit, and identity, when it comes to extreme-right movements questioning liberal democracy and its values, primarily the welfare and well-being of citizens.

Conclusions

Security was a matter of special concern for both the European Communities in the past, and the EU today, and it remains a fundamental value underpinning the European project. Thanks to the progress achieved in integration, the EU, originally designed as a non-war community, has evolved into a fully-fledged security community. Karl Deutsch coined the very concept of security community, which was essentially understood to mean a non-war (non-aggressive) community, in which states did not resort to war as an instrument of dispute settlement. And Europe, as it evolved from a non-war community into a non-military (and military) security community, achieved a much more solid basis by eliminating the most dangerous of mechanisms, i.e., deep-seated fears and actions motivated by security threats (Wæver, op. cit., p. 104).[18]

Although it has been criticised for its Eurocentrism, Deutsch's concept of security community does not easily apply to today's Europe. But

[17] Regardless of the economic and social consequences of Brexit, its destructive impact on the EU and UK should be assessed in the context of the security community. Although Brexit does not invalidate NATO's commitments, it does complicate them, which, in turn, will necessitate redefining the framework for defence cooperation in Europe. One thing is certain, Brexit will not help strengthen the security community.

[18] See also Konopacki (1998, p. 37) where after Karl Deutsch he writes about war as a social institution.

despite criticism and objections, from which no theory is free, the security community has proved to be an inspiring concept, for it has contributed to a rethinking of European politics and given rise to many reflections on the complex issue of European integration, where the rejection of war as a means of settling disputes corresponds to the transformation of security itself. This transformation also entails an eclipse of the central position of the state in favour of non-state entities.

The European project has gone through a number of complex processes, beginning with post-war securitisation, and, later, state-based desecuritisation to reach its current state of post-sovereign non-military resecuritisation. And as Ole Wæver observes, without a central concept of war, security becomes much more complex, and identities built on this type of security pose a real obstacle not only to security analysis, but also to international relations theory, which is poorly equipped to deal with structured thinking about post-sovereign politics (Ibidem, pp. 105–106). However, from the very beginning the Communities (and later the EU) also posed a cognitive challenge to both the theory of international relations and political theory. And the very concept of security community, still relevant and even gaining in importance, needs to be reconsidered in light of the new, rapidly changing situation in Europe and the world.

The concept of the security community offers a new perspective on the problems of international security and attempts to establish rules and regulations as well as institutional solutions that would ensure peace between nations. Compared to the principles of balance of power and collective security, the concept of security community, derived from the Deutschian communication theory, is multifaceted and goes beyond military strategy and international law to propose a new approach to conflict and its peaceful resolution.

Today, the international environment contrasts significantly with the one shaped by the Cold War, which conditioned thinking in terms of security communities. However, today's EU also differs from the first Communities, which, according to Deutsch, already constituted a *pluralistic security community*. And now, with all the changes that have taken place both in the Communities (and later in the EU) and in the international *milieu*, and the new challenges and crises that followed, along with the transformation of the very concept of security, it is still legitimate to claim that the EU is a security community, wherein it presents an intermediate (halfway-house) solution between a pluralistic and amalgamated community, since it goes beyond a classical international organisation, but at the same time is not yet a supranational state, and perhaps never will be. And regarding actions to counteract the effects of the pandemic, there is always a con-

cern that something more or better could be done; however, in the case of the EU, we have to bear in mind that it is not a state and operates within enumerated competences, hence the actions it took under circumscribed competences allow the conclusion that it has stood the test of the time.

References

Acharya, A. (1998) *Collective identity and conflict management in Southeast Asia* in Adler, E. and Barnett, M. (eds.) *Security Communities*. Cambridge: Cambridge University Press, pp. 198–227. DOI: https://doi.org/10.1017/CBO9780511598661.006.

Adler, E. and Barnett, M. (1996) "Governing Anarchy: A Research Agenda for the Study of Security Communities", *Ethics & International Affairs*, Vol. 10, pp. 63–98. DOI: https://doi.org/10.1111/j.1747-7093.1996.tb00004.x.

Adler, E. and Barnett, M. (eds.) (1998a) *Security Communities*. Cambridge: Cambridge University Press. DOI: https://doi.org/10.1017/CBO9780511598661.

Adler, E. and Barnett, M. (1998b) *Security communities in theoretical perspective* in Adler, E. and Barnett, M. (eds.) *Security Communities*. Cambridge: Cambridge University Press, pp. 3–28. DOI: https://doi.org/10.1017/CBO9780511598661.001.

Adler, E. and Barnett, M. (1998c) *A framework for the study of security communities* in Adler, E. and Barnett, M. (eds.) *Security Communities*. Cambridge: Cambridge University Press, pp. 29–66. DOI: https://doi.org/10.1017/CBO9780511598661.002.

Commission implementing regulation (EU) 2020/402 making the exportation of certain products subject to the production of an export authorisation (2020) *Official Journal L77I*, 15 March, pp. 1–7. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R0402 (Access 30.06.2021).

Communication from the Commission on the implementation of the Green Lanes under the Guidelines for border management measures to protect health and ensure the availability of goods and essential services (2020a) *Official Journal C 96I*, 24 March, pp. 1–7. Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52020XC0324%2801%29 (Access 30.06.2021).

Communication from the Commission Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (2020b) *Official Journal C91I*, 20 March, pp. 1–9. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOC_2020_091_I_0001 (Access 30.06.2021).

Communication from the Commission Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (2020c) *Official Journal C112I*, 4 April, pp. 1–9. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020XC0404%2801%29 (Access 30.06.2021).

Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Security Union Strategy (2020d) *COM* 605 final, 24 July, pp. 1–27. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0605 (Access 30.06.2021).

Council Implementing Decision (EU) 2018/1993 on the EU Integrated Political Crisis Response Arrangements (2018) *Official Journal L320*, 17 December, pp. 28–34. Available at: https://eur-lex.europa.eu/eli/dec_impl/2018/1993/oj (Access 30.06.2021).

Czaputowicz, J. (2015) *Wprowadzenie. Potencjał konstruktywizmu w wyjaśnianiu integracji europejskiej* in Czaputowicz, J. (ed.) *Zastosowanie konstruktywizmu w studiach europejskich*. Warszawa: Wydawnictwo Uniwersytetu Warszawskiego, pp. 7–30. DOI: https://doi.org/10.31338/uw.9788323521709.

Decision No 2119/98/EC of the European Parliament and of the Council setting up a network for the epidemiological surveillance and control of communicable diseases in the Community (1998) *Official Journal L268*, 3 October, pp. 1–7. Available at: https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:31998D2119 (Access 30.06.2021).

Deutsch, K.W. et al. (1957) *Political Community and the North Atlantic Area: International Organization in the Light of Historical Experience*. Princeton N.Y.: Princeton University Press.

Deutsch, K.W. (1978) *The Analysis of International Relations*. 2nd edn. New York: Prentice-Hall.

Dougherty, J.E. and Pfaltzgraff, R.L. Jr (1971) *Contending Theories of International Relations*. New York–Hagerstown–Philadelphia–San Francisco–London: Harper & Row Publishers.

European External Action Service (2016) *Shared vision, common action: a stronger Europe: a global strategy for the European Union's foreign and security policy*. Luxembourg: Publications Office of the European Union. DOI: https://doi.org/10.2871/64849.

Gambles, I. (ed.) (1995) *Une paix durable en Europe Centrale?* París: Institut d'études de sécurité.

General Secretariat of the Council (2003) *A secure Europe in a better world. European Security Strategy*. Available at: http://ue.eu.int/uedocs/cmsUpload/78367.pdf (Access 30.06.2021).

General Secretariat of the Council (2010) *Internal security strategy for the European Union. Towards a European security model*. Available at: https://www.consilium.europa.eu/media/30753/qc3010313enc.pdf (Access 30.06.2021).

Guidelines for border management measures to protect health and ensure the availability of goods and essential services (2020) *Official Journal C86I*, 16 March, pp. 1–4. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020XC0316%2803%29 (Access 30.06.2021).

Hellmann, G. et al. (2014) "The West: a securitising community?", *Journal of International Relations and Development*. Vol. 17(3), pp. 367–396. DOI: https://doi.org/10.1057/jird.2013.9.

Introduction (1957) in Deutsch, K.W. et al. *Political Community and the North Atlantic Area: International Organization in the Light of Historical Experience*. Princeton N.Y.: Princeton University Press, pp. 3–21.

Jackson, R. and Sørensen, G. (2013) *Introduction to International Relations: Theories and Approaches*. Oxford: Oxford University Press.

Joint European Roadmap towards lifting COVID-19 containment measures (2020) *Official Journal C126*, 17 April, pp. 1–11. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XC0417(06) (Access 30.06.2021).

Konopacki, S. (1998) „Komunikacyjna teoria integracji politycznej Karla Deutscha", *Studia Europejskie*. No. 1, pp. 37–47.

Koschut, S. (2014) "Regional order and peaceful change: Security communities as a via media in international relations theory", *Cooperation and Conflict*. Vol. 49(4), pp. 519–535. DOI: https://doi.org/10.1177/0010836713517570.

Lenaerts, K. (1990) "Constitutionalism and the Many Faces of Federalism", *The American Journal of Comparative Law.* Vol. 38(2), pp. 205–263. DOI: https://doi.org/10.2307/840100.

Lijphart, A. (1981) *Karl W. Deutsch and the New Paradigm in International Relations* in Merritt, R.L. and Russett, B.M. (eds.) *From national development to global community: essays in honor of Karl W. Deutsch*. London: Allen & Unwin, pp. 233–251.

Main findings: background conditions (1957) in Deutsch, K.W. et al. *Political Community and the North Atlantic Area: International Organization in the Light of Historical Experience*. Princeton N.Y.: Princeton University Press, pp. 22–69.

Moustakis, F. and German, T. (2009) *Securing Europe. Western Interventions Towards a New Security Community*. New York: Tauris Academic Studies.

Puchala, D.J. (1981) *Integration Theory and the Study of International Relations* in Merritt, R.L. and Russett, B.M. (eds.) *From national development to global community: essays in honor of Karl W. Deutsch*. London: Allen & Unwin, pp. 145–165.

Peltonen, H. (2014) "In or out? International community membership: beliefs, behavior, contextuality and principles", *Cambridge Review of International Affairs*. Vol. 27(3), pp. 475–494. DOI: https://doi.org/10.1080/09557571.2012.684669.

Regulation (EC) No 851/2004 of the European Parliament and of the Council establishing a European Centre for disease prevention and control (2004) *Official Journal L142*, 30 April, pp. 1–11. Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32004R0851 (Access 30.06.2021).

Regulation (EU) 2020/460 of the European Parliament and of the Council amending Regulations (EU) No 1301/2013, (EU) No 1303/2013 and (EU) No 508/2014 as regards specific measures to mobilise investments in the healthcare systems of Member States and in other sectors of their economies in response to the COVID-19 outbreak (Coronavirus Response Investment Initiative) (2020) *Official Journal L99*, 31 March, pp. 5–8. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R0460 (Access 30.06.2021).

Regulation (EU) 2021/241 of the European Parliament and of the Council establishing the Recovery and Resilience Facility (2021) *Official Journal L57*, 18 February, pp. 17–75. *Available* at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R0241 (Access 30.06.2021).

Skolimowska, A. (2015a) *Teoretyczne i empiryczne zastosowanie konstruktywizmu do analizy zewnętrznych relacji UE* in Czaputowicz, J. (ed.) *Zastosowanie konstruktywizmu w studiach europejskich*. Warszawa: Wydawnictwo Uniwersytetu Warszawskiego, pp. 109–133. DOI: https://doi.org/10.31338/uw.9788323521709.

Skolimowska, A. (2015b) *Potęga norm w stosunkach międzynarodowych* in Skolimowska, A. (ed.) *Normatywna potęga Unii Europejskiej w obliczu umiędzynarodowionych konfliktów wewnętrznych*. Warszawa: ELIPSA, pp. 23–40.

Taylor, C.L. (2020) *A Life of Productivity* in Taylor, C.L. and Russett, B.M. (eds.) *Karl W. Deutsch: Pioneer in the Theory of International Relations*. Cham: Springer, pp. 15–47. DOI: https://doi.org/10.1007/978-3-319-02910-8_2.

Tusicisny, A. (2007) "Security Communities and Their Values: Taking Masses Seriously", *International Political Science Review*. Vol. 28(4), pp. 425–499. DOI: https://doi.org/10.1177/0192512107079639.

Wæver, O. (1998) *Insecurity, security, and asecurity in the West European non-war community* in Adler, E. and Barnett, M. (eds.) *Security Communities*. Cambridge: Cambridge University Press, pp. 69–118. DOI: https://doi.org/10.1017/CBO9780511598661.003.

Wendt, A. (1995) "Constructing International Politics", *International Security*. Vol. 20(1), pp. 71–81. DOI: https://doi.org/10.2307/2539217.

Wendt, A. (1999) *Social Theory of International Politics*. Cambridge: Cambridge University Press. DOI: https://doi.org/10.1017/CBO9780511612183.

DOI: 10.33067/SE.1.2022.2

*Justyna Pierewoj**

Lobbying in the European Union and Interinstitutional Agreement on a Mandatory Transparency Register for Lobbyists

Abstract

The article presents the effects of an attempt to ascertain to what extent the Interinstitutional Agreement on a mandatory transparency register affects the phenomenon of lobbying in the European Union (EU). In order to examine the issue, the concept and essence of lobbying in the EU were introduced. Legal regulations concerning EU lobbying were also identified. A further portion of the article analyses the Interinstitutional Agreement of 20 May 2021 between the European Parliament, the Council of the European Union, and the European Commission on a mandatory transparency register (IAMTR) in relation to the previously binding Agreement between the Parliament and the European Commission on the transparency register for organisations and self-employed individuals in EU Policy-making and Policy implementation (ATR). The article uses the formal-dogmatic method. As a result of the analysis, it was concluded that the Interinstitutional Agreement on a mandatory transparency register contains numerous exclusions, both subjective and objective, to registration in the Transparency Register. One positive aspect is the application of the IAMTR to the EU Council also.

Keywords: European Union, Lobbying, Regulations, Transparency Register, Interest Groups

* **Justyna Pierewoj** – University of Bialystok, e-mail: j.pierewoj@uwb.edu.pl, ORCID ID: https://orcid.org/0000-0002-8580-7238.

Introduction

In the political guidelines for the next term of the European Commission (2019–2024), Ursula von der Leyen stressed the need to reinforce the transparency of the entire legislative process in the European Union and announced a partnership with the European Parliament and the EU Council to enhance transparency (European Commission, Directorate-General for Communication, Leyen, 2020). According to the words of the President of the European Commission, "as institutions, we serve citizens, so they should know with whom we meet in our work, with whom we conduct talks, and what position we hold in them" (Ibidem). In 2021, the Eurobarometer survey demonstrated that 49% of Europeans trust the European Union, while the level of trust of Europeans in relation to individual EU institutions is as follows: the European Commission 50%, the European Parliament 53%, and the European Council 47% (European Commission, Directorate-General for Communication, 2021). Time and again, articles appear in the press which concern lobbying in the European Union. To give one example, there was an article published by the French daily "Libération" at the end of 2021, or publications concerning the disclosure of internal Google documents regarding campaigns against lawmakers in the EU on the proposed provisions of the Digital Markets Act (DMA) and the Digital Services Act (DSA) (Quatremer, 2021; Espinoza, 2020). Meanwhile, the technology sector is the largest lobbying sector in the EU, ahead of sectors such as pharmaceuticals, fossil fuels, finance, and chemicals. Despite the diverse structure of lobbyists for digital economy policy in the EU, there is a domination of ten key players, whose expenditure on lobbying activities amounts to over €32 million annually (Corporate Europe Observatory, LobbyControl, 2021, p. 6).

Lobbying in the European Union – An Outline of the Issue

Lobbying should be interpreted as a form of participation in the decision-making process, which consists in representing positions by various interest groups and other entities with legal means (Wiszowaty, 2021; Bitonti, Hogan, 2021). Article 11 of the Treaty on European Union (hereinafter: TEU) expresses the principle of the so-called participatory democracy, whereby EU institutions are open to participation in the decision-making processes of citizens and their organisations. For a longer time period, the indicated provision was the only one relating to the functioning of interest groups and the right of lobbying (Wiszowaty, 2018, p. 81).

Pursuant to Art. 11 para. 1 TEU: "the institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action" (Treaty on European Union, 2016). This phrase provides the legal basis for horizontal civil dialogue, but the legislator should further identify the specific measures which it deems necessary to meet the resource requirement (EESC, 2010).

The activity of the various kinds of entities that operate in the sphere of lobbying has become an essential part of the EU decision-making process (Coen, Richardson, 2009, p. 3; Doliwa-Klepacka, 2011). Article 11 para. 2 TEU provides: "the institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society" (Treaty on European Union, 2016). The reference to representative associations primarily alludes to organised interest groups that lobby in an attempt to influence economic and political decisions made by EU institutions (Blanke, Mangiameli, 2013). Lobbying, as a phenomenon, is a fully accepted and legal action in democratic systems (Greenwood, Thomas 1998). The openness and transparency of the lobbying process, laid down in art. 11 para. 2 TEU, comprises an important step towards controlling associations and avoiding non-transparency (Grad, Frischhut, 2019). All the more so as a large majority of pressure groups represent economic and commercial interests, and their ultimate objective is to gain economic advantages (Blanke, Mangiameli, 2013).

In the European Union, considering the specificity and the very broad range of decision-making competences, information is perceived as a critical commodity (Doliwa-Klepacka, 2014). It also plays an indicated role in lobbyists' activities, as access to information marks the beginning of all lobbying activities (Coen, Katsaitis, Vannoni, 2021, p. 176; Graniszewski, Piątkowski, 2004, p. 32). A vital element of the regulation of lobbying activities is to ensure the transparency of the decision-making process in the European Union and access to all documents related thereto, especially the so-called trialogues – formal trilogue meetings (Wiszowaty, 2018, p. 94; Brandsma et al., 2021). Trialogues are a particular form of the decision-making process in the Union which involves representatives of the Council, Parliament, the Commission, and representatives of the Member States. The documents exchanged during informal trialogues are not made available to the public in a proactive manner, which is an expression of a lack of transparency (Brandsma, 2019). The founding treaties include the citizen's right to access information, which is currently expressed in Art. 15 sec. 3 TFEU and Art. 42 of the EU Charter of Fundamental Rights (Treaty on the Functioning of the European Union, 2016;

Charter of Fundamental Rights of the European, 2016). As the notions of lobbyist and lobbying are sometimes perceived pejoratively in the public opinion, official documents of the European Union have adopted neutral wording, based on the terms: representative of interest groups and representing interest groups (Doliwa-Klepacka, 2011).

The Conditionality Principle in the IAMTR

Four years of negotiations have resulted in the adopting of the Interinstitutional Agreements of 20 May 2021 between the European Parliament, the Council of the European Union, and the European Commission on a mandatory transparency register (hereinafter: IAMTR). Interinstitutional agreements represent an instrument of the EU's internal law and a common way of establishing the principles of cooperation between EU institutions in selected areas (Kenig-Witkowska, Łazowski, 2019, p. 217; Obradovic, 2009, p. 318). The signatory institutions of the IAMTR have committed to make the register compulsory for certain interest representation activities (Interinstitutional Agreements, 2021). Pursuant to Art. 2 h IAMTR, the conditionality principle means that an interest representative must be entered in the register in order to carry out some activities covered by this document (Ibidem). By the end of 2021, over 13,000 entities were registered, and in order to meet the new requirements resulting from IAMTR, the entries are to be updated by March 19, 2022 (Transparency Register, 2021).

The conditionality principle and supplementary measures adopted in the document are intended to set transparent and ethical high standards for the representation of interest groups in the EU. Accordingly, registration is voluntary, but if representatives of interest groups are seeking to carry out specific activities against the institution that have introduced such a measure, they must obtain an entry in the register (Secretariat of the Register, 2021b). Pursuant to Art. 5 IAMTR, individual signatory institutions implement the principle of conditionality by means of individual decisions made on the basis of their internal organisational powers (Interinstitutional Agreements, 2021). Signatory institutions may also adopt complementary transparency measures, encouraging registration and strengthening the common registry framework. The purpose of these measures is to promote adherence to registry rules and the code of conduct by offering benefits in exchange for entry. The conditionality and complementary transparency measures taken by the European Parliament, the Council of the European Union, and the European Commission are made public on a regularly updated register website.

As distinct from the previously-binding Agreement between the Parlia-

ment and the European Commission on the transparency register for organisations and self-employed individuals in EU Policy-making and Policy implementation from 2014 (hereinafter: ATR), IAMTR includes the Council of the European Union. Pursuant to Art. 3 sec. 1 of the EU Council Decision 2021/929, registration in the Transparency Register is a condition for holding a meeting of interest representatives with the Secretary-General and the Directors-General of the General Secretariat of the Council (Council Decision EU, 2021). The regulation excludes permanent representative offices of the Member States, which, according to Emilia Korkea-aho, are the most obvious addressees of lobbying (Korkea-aho, 2021b).

Pursuant to Art. 11 IAMTR, conditionality measures and complementary transparency measures may be taken by EU institutions, bodies, offices, and agencies other than the signatory institutions, as notified by the register management and published on the register's website. Based on Art. 12 IAMTR, Member States may also adopt conditionality measures and complementary transparency measures with regard to their permanent representations in the EU, in accordance with national law (Interinstitutional Agreements, 2021). An evaluation of the performance adopted pursuant to Art. 5 IAMTR will be made by the signatory institutions by 2 July 2022 and at regular intervals thereafter.

An applicant is eligible for entry in the register if that applicant, as an individual or legal person, or formal or informal group, association or network, carries out activities falling within the scope of the register and adheres to the code of conduct set out in Annex I to the IAMTR. It is the duty of the registered entity to conduct activities in accordance with sixteen balanced provisions and principles which make up the code of conduct. Moreover, the registered entity is obliged to inform the personnel and their representatives about the rules and regulations. Information reported to the register by entities shall be complete, up-to-date, correct, and not misleading (Ibidem). In 2020, monitoring activities included quality control carried out on almost 5,000 entries, as a result of which, 27% of the registered entities subject to control were removed from the register due to ineligibility or failure to update the entry (Secretariat of the Register, 2021a).

Activities of Interest Representatives in the IAMTR

Pursuant to Art. 2 a) IAMTR "interest representative means any natural or legal person, or formal or informal group, association or network, that engages in covered activities" (Interinstitutional Agreements, 2021). The document assumes that representing interest groups, in accordance

with Art. 3 sec. 1, "shall cover activities carried out by interest representatives with the objective of influencing the formulation or implementation of policy or legislation, or the decision-making processes of the signatory institutions or other Union institutions, bodies, offices and agencies, without prejudice to Article 4" (Ibidem).

In 2016, the European Commission brought forward an Interinstitutional Agreement on a Mandatory Transparency Register, proposing to understand advocacy as "activities which promote certain interests by interacting with any of the three signatory institutions, their members or officials" (European Commission Proposal, 2016). The ATR defines advocacy as covering "all activities carried out with the objective of directly or indirectly influencing" (Agreement, 2014). Indirect influence was understood as influencing by using funds such as the media, public opinion, conferences or social events addressed to EU institutions (Ibidem). The definition brought forward by the European Commission excludes indirect lobbying, which would be a significant step backwards towards the optimal regulation of lobbying activities in the European Union (Oluwole, 2019). Thus, tactical and strategic advice from, among others, law firms, consulting companies or former EU officials, was omitted (Ibidem).

The activities covered by the agreement include, for example: a) organising and participating in meetings, conferences or events as well as engaging in any similar contact with EU institutions; b) contributing to or participating in consultations, hearings or other similar initiatives (e.g., expert groups or intergroups); c) organising communication campaigns, platforms, networks, and grassroots initiatives; d) preparing or commissioning the preparation of political documents and positions, amendments, polls and analyses, open letters and other types of communication or information materials, and commissioning and carrying out research (Interinstitutional Agreements, 2021).

The activity of most entities engaging in representing interest groups is characterised by great variety and often goes beyond *strictly* lobbying activities (Doliwa-Klepacka, 2014, p. 111). The definition of an interest representative in the IAMTR is derived from the performance criterion. The activities of an interest representative are included in the scope of the register, regardless of the means or channel of communication used for this purpose and where they are undertaken. Non-influencing activities that monitor changes in EU law or policy for scientific or journalistic purposes, personal interests or law enforcement purposes fall outside the scope of the register (Secretariat of the Register, 2021b). Both the ATR and IAMTR contain several problematic exemptions to registration that may undermine transparency (Ammann, 2021).

Objective Exclusions in the IAMTR

Under Art. 4 sec. 1, IAMTR cannot be deemed to represent interest groups: providing legal advice or other professional advice when: "1 it consists of representing clients in the context of conciliation or mediation procedure aimed at preventing a dispute from being brought before a judicial or administrative body; 2 the advice is given to clients to help them ensure that their activities comply with the existing legal framework; 3 it consists of representing clients and safeguarding their fundamental or procedural rights, such as the right to be heard, the right to a fair trial, and the right of defence in administrative proceedings, and includes activities carried out by lawyers or by any other professionals involved in representing clients and safeguarding their fundamental or procedural rights" (Interinstitutional Agreements, 2021). The term "client" is defined in Art. 2 d IAMTR as "any interest representative that has entered into a contractual relationship with an intermediary for the purpose of that intermediary advancing that interest representative's interests by carrying out covered activities". On the other hand, "intermediary" in accordance with Art. 2 e IAMTR means "any interest representative that advances the interests of a client by carrying out covered activities" (Ibidem).

Entities providing legal advice or other professional advice, which are not covered by the above-mentioned exemptions, and carrying out activities related to the representation of interest groups towards the EU institutions on behalf of their clients, are treated as representatives of interest groups, engaged in activities covered by the register and qualify for entry (application for entry) in the register (Secretariat of the Register, 2021b). One of the leading law firms, not registered in the Transparency Register, describes itself as "the power of political lobbying in the EU", employing, among others, former EU officials and politicians (Law Firm, 2021). On its website, it provides information about, inter alia, addressing EU lawmakers to emphasise Huawei's compliance with EU standards and strengthening the company's credibility at risk, due to concerns about its product cyber-security, or other lobbying activities undertaken, for example, in the case of the so-called Panama Papers (Ibidem).

In the ATR, the exclusions relating to legal advice and other types of specialist advice are contained in para. 10. The aforementioned regulation exempts from registration, among others, activities consisting in "advisory work and contacts with public bodies in order to better inform clients about a general legal situation", or preparing analyses and research for clients on "potential impact of any legislative or changes with regard to their legal position or field of activity" (Agreements, 2014). The ATR

indicates that it is subject to entry in the register of legal and other specialist advisory services consisting in "the provision of support via representation or mediation, or of advocacy, including argumentation and drafting" and "the provision of tactical or strategic advice, including the raising of issues the scope of which and the timing of communication of which are intended to influence the EU institutions, their Members and their assistants or their officials or other staff" (Ibidem). Emilia Korkea-aho indicates that the scope of the activities which are exempt and non-exempt from registration, and related to legal advice in the ATR, has not been clearly delimited (Korkea-aho, 2021a). In addition, Korkea-aho has identified the restriction on the preparation of analyses of legislative or regulatory changes for clients as being problematic, as the preparation of the indicated analyses comprises the focal point of the activities of non-lawyer lobbyists (Ibidem). According to the ATR, lawyers who prepared the above-mentioned analyses were not subject to entry in the register, unlike other entities providing the services in question (Ibidem).

In response to a public consultation of the European Commission on the proposal for a mandatory transparency register, the Council of Bars and Law Societies of Europe made a postulate referring to the need to clearly define the activities leading to registration and to cover only activities in which there is direct contact with officials of the EU institutions (CCBE, 2016). Pursuant to para. 7 of the ATR, "preparing, circulating and communicating letters, information material or discussion paper and position papers" (Agreement, 2014) was recognised as an activity subject to registration (Ibidem). In a CCBE assessment, the preparation of the indicated documents is subject to professional secrecy, and the indicated activity is confidential in relation to third parties (CCBE, op. cit.).

The final draft report of the European Parliament's Committee on Constitutional Affairs, prepared under the supervision of Sven Giegold, formed the basis for the adoption, by the European Parliament, of a resolution on countability, transparency, and reliability in EU institutions (European Parliament Resolution, 2018). The document includes, among others, recommendations regarding the legal regulation of lobbying. Item 17 underlines the obligation to impose upon consulting companies, law firms, and advisers running their own businesses, the commitment to define the exact scale of activities covered by the register, while item 18 indicates in the register all clients on whose behalf they conduct business representing interests in order to ensure transparency (Ibidem). The Parliament also concludes that it "welcomes the decisions taken by various bars and law societies in recognizing the differences between court-related activities of lawyers and other activities falling within the scope

of the Transparency Register" (Ibidem). This distinction is a major issue, and the regulation should be specific and exclude any gaps that could be exploited by lobbyists-lawyers to avoid registration (Wiszowaty, 2018, p. 90). Marcin Wiszowaty claims that the decisions of legal self-governments and the institutional agreement between EU bodies are acts of too low rank to modify the provisions on the practice of legal professions and professional secrecy (Ibidem).

IAMTR indicates that registration excludes the activity of "making submissions as a party or a third party in the framework of a legal or administrative procedure established by Union law or by international law applicable to the Union", e.g., in EU competition law proceedings or trade (Interinstitutional Agreements, 2021). It is not considered as interest representation to take a position on the basis of a contractual relationship with the Commission, Parliament or Council or on the basis of a grant agreement from Union funds (Ibidem). The indicated exclusion also encompasses circumstances where, on the basis of a public procurement contract (concluded with the Commission, Parliament, Council) or a contract for granting subsidies from EU funds, the position on behalf of this entity is taken by an intermediary based on the power of attorney granted (Secretariat of the Register, 2021b). Another limitation concerns the activities of social partners participating in the social dialogue in accordance with Art. 152 TFEU; a similar exclusion is contained in para. 11th ATR (Interinstitutional Agreements, 2021; Agreement, 2014). The activities of organisations which represent the interests of employers and employees and which act as social partners in the European Social Dialogue are excluded from the register, but when employers' or employees' organisations conduct bilateral discussions to promote their own or their members' interests, they are subject to registration (Secretariat of the Register, 2021b).

Exemption from registration is subject to "making submissions in response to direct and specific requests from any the Union institutions, their representatives or Staff, for factual information, data or expertise" (Interinstitutional Agreements, 2021; Agreement, 2014). Thus, an expert in a specific policy or scientific field does not act as a representative of interest groups when he is contacted by a representative or staff member of the EU institutions with a concrete request (Secretariat of the Register, 2021b). A similar exclusion was contained in para. 12 ATR, and, as Stijn Smismans notes, "the Register has thus strong limitations since most formal consultation mechanisms do not fall in its field of application" (Smismans, 2014).

The scope of agreement fails to include "activities carried out by natural persons acting in a strictly personal capacity and not in association

with others". However, activities of natural persons associating with others aimed at representing common interests, for example grassroots or other movements of civil society, are subject to registration (Interinstitutional Agreements, 2021; Secretariat of the Register, 2021b). The activities covered by the registration excluded "spontaneous meetings, meetings of a purely private or social character and meeting taking place in the context of an administrative procedure established by the TEU or TFEU or legal acts of the Union" (Interinstitutional Agreements, 2021). The guidelines clarify that spontaneous meetings should be understood as meetings that are unplanned and unsettled (Secretariat of the Register, 2021b).

Subjective Exclusions in the IAMTR

The registration excludes activities performed by the following entities: "public authorities of Member States, including their permanent representations and embassies, at national and subnational level" and "associations and networks of public authorities at Union, national or subnational level, on condition that they act exclusively on behalf of the relevant public authorities" (Interinstitutional Agreements, 2021). Public authorities at the sub-national level are federal states, regional, municipal, and other local authorities as well as national regulatory authorities and independent administrative bodies established by Member States (Secretariat of the Register, 2021b). The aforementioned resolution of the European Parliament contained a demand in relation to Art. 4 sec. 2 and art. 5 sec. 2 TEU to exclude democratically elected state institutions at the national, regional, and local level from registration (European Parliament resolution, 2018). This postulate was justified by the multi-level nature of the governance system in the European Union (European Parliament resolution, 2018; Kurczewska, 2021).

The agreement also excludes activities performed by "intergovernmental organizations, including agencies and bodies emanating from them" and "public authorities of third countries, including their diplomatic missions and embassies, except where such authorities are represented by legal entities, offices or networks without diplomatic status or are represented by an intermediary" (Interinstitutional Agreements, 2021). Thus, registration is required for law firms and professional consulting companies hired by governments and public authorities of non-EU countries, acting on their behalf, aimed at representing interest groups towards the EU institutions (Secretariat of the Register, 2021b). An entity that is a legal person, an entity or a network with no diplomatic status is considered

to be a representative of interest groups (e.g., a public-private partnership or a government investment fund or investment agency, without diplomatic status) carrying out activities related to the representation of interest groups towards the EU institutions on behalf of the government or public bodies outside the European Union (Ibidem). In accordance with para. 15 TRA, registration was not applicable to "Member States' government services, third countries' governments, international intergovernmental organizations and their diplomatic missions" (Agreement, 2014). This implies that, among others, corporations or associations based in third countries were subject to registration, which in practice sometimes led to a joining forces of third-country governments with entities from these countries, representing industry interests (Korkea-aho, 2016). The indicated practice took place, for example, regarding Big Tech's activities towards provisions of the Digital Markets Act (DMA) and the Digital Services Act (DSA) (Clarke, Swindells, 2021).

The exemption from registration also covers political parties (except for organisations established by or associated with political parties) and churches, associations, religious communities (also philosophical and non-confessional organisations, referred to in art. 17 TFEU), with the exception of offices, legal entities or networks established to represent those entities in relations with the Union's institutions (Interinstitutional Agreements, 2021).

Conclusions

Lobbying in the European Union is determined through the prism of its institutional model. Lobbying activities are seen as something integral which influences strategic decisions taken in the European Union. Entities undertaking lobbying activities in EU institutions impact the decision-making processes in (among others) the European Commission, the European Parliament, and the Council of the European Union. A number of EU entities undertake lobbying activities, which are varied in terms of their internal structure, forms of lobbying, and the methods and strategies used.

In the EU, lobbying is a fully accepted and legal action. In legal systems where lobbying is normatively regulated, regulations are aimed at enhancing the transparency of the decision-making process and law-making. Controlling the exertion of influence of specific interest groups on decision-makers is expected to result in restricting unlawful practices.

The effectiveness of legal regulations on lobbying is determined by their consistency and the absence of loopholes. The previous TRA regulation took into account numerous exclusions, both subjective and ob-

jective, to registration in the Transparency Register. A number of exclusions were also included in the current IAMTR regulation, although the positive aspects of IAMTR should be indicated by the application of the Transparency Register also to the EU Council, and the lobbying activities of non-EU countries when they are run by intermediaries without diplomatic status. Furthermore, meetings of lobbyists with the Secretary-General and the Directors-General of the General Secretariat of the Council of the EU have been made conditional on an entry in the Transparency Register, and the register will be open to the voluntary participation of other EU institutions, bodies, offices, and agencies.

References

Ammann, O. (2021) "Transparency at the Expense of Equality and Integrity: Present and Future Directions of Lobby Regulation in the European Parliament", *European Papers – A Journal on Law and Integration*. Vol. 6 (1), pp. 239–268. DOI: https://doi.org/10.15166/2499-8249/465.

Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation (2014), *Official Journal L277*, 19 September, pp. 11–24. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014Q0919(01) (Access 25.12.2021).

Bitonti, A. and Hogan, J. (2021) Lobbying Regulation in Harris, P., Bitonti, A., Fleisher, C.S., Skorkjaer Binderkrantz, A. (eds.) The Palgrave Encyclopedia of Interest Groups, Lobbying and Public Affairs. Cham: Palgrave Macmillan. DOI:10.1007/978-3-030-13895-0_105-1.

Blanke, H.J. and Mangiameli, S. (2013) *Article 11 [Participatory Democracy]* in Blanke, H.J. and Mangiameli, S. (eds.) *The Treaty on European Union (TEU)*. Berlin: Springer. DOI: https://prima.uwb.edu.pl:2108/10.1007/978-3-642-31706-4_12.

Brandsma, G.J. (2019) "Transparency of EU informal trilogues through public feedback in the European Parliament: Promise unfulfilled", *Journal of European Public Policy*. Vol. 26(10), pp. 1464–1483. DOI: https://doi.org/10.1080/13501763.2018.1528295.

Brandsma, G.J. et al. (2021) "Inside the Black box of trilogues: introduction to the special issue", *Journal of European Public Policy.* Vol. 28 (1), pp. 1–9. DOI: https://doi.org/10.1080/13501763.2020.1859600.

CCBE (2016) *Response to the Public Consultation on a propos al for mandatory Transparency Register*, 20 May. Available at: https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/EUROPEAN_

TRANSPARENCY_REGISTER/ETR_Position_papers/EN_ETR_20160520_CCB_response_to_the_Public_Consultation_on_a_propos_al_for_mandatory_Transparency_Register_TR_pdf (Access 25.12.2021).

Charter of Fundamental Rights of the European Union – consolidated version (2016) *Official Journal C202*, 7 June, pp. 389–405. Available at: http://data.europa.eu/eli/treaty/char_2016/oj (Access 25.12.2021).

Clarke, L. and Swindells, K. (2021) "Why the EU's new tech legislation could become the most lobbied in history", *The New Statesman.* 19.02. Available at: https://www.newstatesman.com/science-tech/2021/02/why-eus-new-tech-legislation-could-become-most-lobbied-history (Access 25.12.2021).

Coen, D. and Richardson, J. (2009) Learning to Lobby the European Union: 20 Years of Change in Coen, D. and Richardson, J. (eds.) Lobbying the European Union: Institutions, Actors, and Issues. New York: Oxford University Press.

Coen, D., Katsaitis, A. and Vannoni, M. (2021) Business Lobbying in the European Union. New York: Oxford University Press. DOI:10.1093/oso/9780199589753.001.0001.18.

Council Decision (EU) 2021/929 of 6 May 2021 on the regulation of contacts between the General Secretariat of the Council and interest representatives (2021) Official Journal L207, 11 June, pp. 19–21. Available at: https://data.europa.eu/eli/dec/2021/929 (Access 2.09.2021).

Corporate Europe Observatory, Lobby Control (2021), *The Lobby Network: Big Tech's Web of Influence in the EU.* Available at: https://corporateeurope.org/sites/default/files/2021-08/The%lobby%20network%20-%20Big%Techs%20web%20of%20influence%20in%20the%20EU.pdf (Access 25.12.2021).

Doliwa-Klepacka, A. (2011) "Ways of influencing the process of law establishment by lobby groups in the European Union", *Studies in Logic, Grammar and Rhetoric*. Vol. 26(39), pp. 245–255.

Doliwa-Klepacka, A. (2014) *Stanowienie aktów ustawodawczych w Unii Europejskiej*. Warszawa–Białystok: Oficyna Wydawnicza ASPRA.

EESC (2010) Opinion of the European Economic and Social Committee on "The implementation of the Lisbon Treaty: participatory democracy and the citizens initiative (Article 11)" (own-initiative opinion), OJ C 354, 28.12.2010, pp. 59–65.

Espinoza, J. (2020) "Internal Google document reveals campaign against EU lawmakers", *Financial Times.* 28.10, pp. 1–3. Available at: https://

www.ft.com/content/d9d05b1e-45c0-44b8-a1ba-3aa6d0561bed (Access 25.12.2021).

European Commission, Directorate-General for Communication (2021) *Report: Public opinion in the European Union (Standard Eurobarometer no. 95)*, June–July, pp. 34–53. Available at: https://europa.eu/eurobarometr/surveys/datail/2532 (Access 25.12.2021).

European Commission, Directorate-General for Communication, Leyen, U. (2020) *Political Guidelines for the next European Commission 2019–2014*, Publications Office, Available at: https://data.europa.eu/doi/10.2775/368914 (Access 25.12.2021).

European Commission Proposal for a Interinstitutional Agreement on a mandatory Transparency Register COM(2016) 627 final, 28 September. (2016) Available at: https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52016PC0627 (Access 2.09.2021).

European Parliament resolution of 14 September 2017 on transparency, accountability and integrity in the EU institutions (2015/2041(INI)) (2018) *Official Journal C 337*, 20 September, pp. 120–130. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017IP0358 (Access 25.12.2021).

Grad, J. and Frischhut, M. (2019) *Legal and Ethical Rules in EU Decision-Making: "Soft Law" for Targets and Actors of Lobbying* in Diler, D. and Richter M. (eds.) *Lobbying in the European Union*. Cham: Springer. DOI: https://doi.org/10.1007/978-3-319-98800-9_22.

Graniszewski, J. and Piątkowski, C. (2004) *Grupy interesu w Unii Europejskiej*. Warszawa: Wydawnictwo Sejmowe.

Greenwood, J. and Thomas, C.S. (1998) "Introduction: Regulating Lobbying in the Western World", *Parliamentary Affairs*. Vol. 51(4), pp. 487–488.

Interinstitutional Agreement of 20 May 2021 between the European Parliament, the Council of the European Union and the European Commission on a mandatory transparency register (2021) *Official Journal L207*, 11 June, pp. 1–17. Available at: http://data.europa.eu/eli/agree_interinstit/2021/611/oj (Access 25.12.2021).

Kenig-Witkowska, M.M. and Łazowski, A. (2019) *Źródła prawa Unii Europejskiej* in Kenig-Witkowska, M.M. (ed.) *Prawo instytucjonalne Unii Europejskiej*. Warszawa: C.H. BECK, pp. 150–217.

Korkea-aho, E. (2016) "Mr Smith Goes To Brussels: Third Country Lobbying and the Making of EU Law and Policy", *Cambridge Yearbook of European Legal Studies.* Vol. 18, pp. 45–68, DOI:https://doi.org/10.1017/cel.2016.1.

Korkea-aho, E. (2021a) "Legal Lobbyin: The Evolving (But Hidder) Role of Lawyers and Law Firms in the EU Public Affairs Market", *German*

Law Journal. Vol. 22(1), pp. 65–84. DOI: https://doi.org/10.1017/glj.2020.97.

Korkea-aho, E. (2021b) New *Year, New Transparency Register?*, Available at: https://www.eu-opengovernment.eu/?p=1235 (Access 25.12.2021).

Kurczewska, U. (2021) "The lobbying of cities in the European Union", Sprawy Międzynarodowe. Vol. 74 (1), pp. 175–194, DOI: https://10.35757/SM.2021.74.1.03.

Law Firm Albert & Geiger (2021) Available at: https://albergeiger.com (Access 25.12.2021).

Obradovic, D. (2009) Regulating Lobbying in the European Union in Coen D. and Richardson J. (eds.) Lobbing the European Union: Institutions, Actors, and Issues. New York: Oxford University Press.

Oluwole, F. (2019) *Getting Past the Lobby! The Alliance for Lobbying Transparency and Ethics Regulation (ALERT-EU)* in Diler, D. and Richter, M. (eds.) *Lobbying in the European Union.* Cham: Springer. DOI: https://doi.org/10.1007/978-3-319-98800-9_21.

Secretariat of the Register (2021a) *Annual Report on the operations of the Transparency Register 2020*, 7 May. Available at: https://ec.europa.eu/transparencyregister/public/staticPage/displayStaticPage.do?locale=en&reference=ANNUAL _REPORT (Access 25.12.2021).

Secretariat of the Register (2021b), *Transparency Register Guidelines for Applicants and Registrants*, 1 September, Available at: https://ec.europa.eu/transparencyregister/public/staticPage/displayStaticPage.do?locale=en&reference=GUIDELINES (Access 25.12.2021).

Smismans, S. (2014) "Regulating Interest Group Participation in the EU: Changing Paradigms between Transparency and Representation", *European Law Review.* Vol. 39(4), pp. 470–492. Available at: https://papers.ssrn.com/sol3/papers.cfm?_id=2763464 (Access 25.12.2021)

Treaty on European Union (consolidated version) (2016) *Official Journal C202*, 7 June, pp. 13-46. Available at: http://data.europa.eu/eli/treaty/teu_2016/oj (Access 25.12.2021).

Treaty on the Functioning of the European Union (consolidated version) (2016) *Official Journal C202*, 7 June, pp. 47–200. Available at: http://data.europa.eu/eli/treaty/tfeu_2016/oj (Access 25.12.2021).

Transparency Register (2021), *Statistics*. Available at: https://ec.europa.eu/transparencyregister/public/homePage.do?redir=false&locale=en (Access 25.12.2021).

Wiszowaty, M.M. (2018) *Ocena tzw. raportu Giegolda na tle regulacji prawnej lobbingu w Unii Europejskiej* in Grajewski, K., Szmyt, A. and Wiszowaty, M.M., *W kręgu zagadnień parlamentarnych. Z doświadczeń Sejmu i Senatu*

RP oraz Parlamentu Europejskiego. Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego, pp. 79–112.

Wiszowaty, M.M. (2021) *Lobbying* in Cremades, J. and Hermida, C. (eds.) *Encyclopedia of Contemporary Constitutionalism*. Cham: Springer. DOI: https://doi.org/10.1007/978-3-319-31739-7_82-1.

Quatremer, J. (2021) "Conflitsd'intérêts et traficsd'influence au sommet de l'UE : des juges et commissaires à l'éthiqueen toc", *Libération*, 1.12, pp. 1–3, Available at: https://www.liberation.fr/international/europe/dans-les-hautes-spheres-de-lunion-europeenne-des-commissaires-et-des-juges-a-lethique-en-toc 2021120163AW5LPZPNE23NNCMA-DOXNSGEM/ (Access 25.12.2021).

DOI: 10.33067/SE.1.2022.3

Rafał Riedel[⋆]

Emilia Szyszkowska[⋆⋆]

Interest Representation Preconditions in Illiberal Poland and Hungary

Abstract

Poland and Hungary have been widely recognised as countries affected by illiberalism. This has undoubtedly created a challenging environment for interest groups; groups which are a touchstone for the quality of democratic processes. In this article, we aim to understand how preconditions for interest representation have changed due to illiberal drift through the eyes of interest groups operating in these two selected post-communist countries. In order to examine their perception of opportunity structures, interaction infrastructure as well as the level of political coordination under the new circumstances, we rely on quantitative research in the form of a survey carried out among interest group representatives. Our results indicate that the political systems of Poland and Hungary are still a mix of pluralist and corporatist features, however, the Polish political opportunity structures are still more open to input from civic society and interest groups have stronger positions compared to the situation in Hungary.

Keywords: Central Europe, Eastern Europe, Interest Groups, Illiberalism, Democratic Backsliding, Hungary, Poland

⋆ **Rafał Riedel** – University of Opole, e-mail: rriedel@uni.opole.pl, ORCID ID: https://orcid.org/0000-0001-8344-2944.

⋆⋆ **Emilia Szyszkowska** – University of Opole, Warsaw School of Economics e-mail: ep79595@doktorant.sgh.waw.pl, ORCID ID: https://orcid.org/0000-0002-8837-6824.

Introduction

Various theoretical paradigms in scholarly analysis have contributed to our understanding of post-communist transformations. Some strands of research focus on the immediate communist past as the main constraint on post-1989 transformations, while others attempt to transcend the specificities of post-communism and integrate the study of the region into a general study of comparative politics. Other researchers have explored historical and cultural contexts and their role in shaping the outcomes of transformation (Ekiert, 2014). Relatively little scientific attention has been dedicated to questions of civic involvement in post-transition societies that go beyond standard political participation (e.g., party membership, electoral participation, protest, etc.). The advocacy strategies and tactics of interest groups trying to engage in the political decision-making process received even less attention until recently (Rozbicka et al., 2021; Dobbins, Riedel, 2021).

This article partially addresses this deficit by exploring interest representation preconditions as seen by interest groups in the two Central and Eastern European (CEE) illiberal democracies of Poland and Hungary. We use the term "illiberal democracy" to describe neo-authoritarian settlements, keeping in mind that some scholars treat it as an example of neologism and consciously reject it from the scientific dictionary, arguing that only a liberal democracy can be a democracy (Giannakopoulos, 2019). Both countries have evolved in various historical contexts, both in the distant past and contemporarily and share many common experiences including the communist past, a democratic transition, EU membership and, most recently, a turn towards a populist-authoritarian agenda (Riedel, 2020). The current political leaders of Poland and Hungary also openly express the perceived community of values both in domestic political discourse and internationally. After the parliamentary elections in 2010 (Hungary) and 2011 (Poland), Jarosław Kaczyński, the leader of PiS (*Prawo i Sprawiedliwość* – the Law and Justice party) declared: "I am deeply convinced that the day will come when we will have Budapest in Warsaw". This statement illustrates how strongly the policy visions and trajectories of the two countries are intertwined, making them the most obvious examples of illiberalism in the region (Cianetti et al., 2018).

Although the literature widely explores the influence of different types of interest groups on decision-making processes (Klüver, Saurugger, 2013), the impact of political structures on interest groups (Beyers, 2008), and democratic backsliding across the CEE (Bustikova, Guasti, 2017; Pirro, Stanley, 2021), there is limited empirical research on how

exactly the right-wing populist governments and illiberal tendencies have impacted interest groups' activities. The aim of this article is to better understand the preconditions for policy-making processes in illiberal Poland and Hungary from the perspective of interest groups as important players in post-communist democracies. Due to our having no tools to properly examine the response of interest groups to illiberal tendencies in the form of adaptive advocacy patterns, in this article we focus only on the description of the new preconditions for interest representation through the eyes of the members of these organisations.

A framework of interest representation at the national level is defined by institutional environment and opportunity structures. In this paper, we pay special attention to factors such as the perceived policy coordination between state and interest groups, the density of interests, the frequency of consultations with governments, and the opportunity of gaining access to governing parties.

Illiberalism in Poland and Hungary

Prominent observers of democratisation processes in the CEE characterise the previous decade of 2010 to 2020 as a period of democratic recession, rollback, erosion, meltdown, setback, and even decline. Others would rather say that it is the flawed understanding of the early post-Cold-War transitions that generated overly optimistic expectations which, when not realised, produced exaggerated pessimism and gloom (Levitsky, Way, 2015). In 2015, Philippe Schmitter claimed that the developments in the CEE do not mean dismantling or destroying democracy, but rather a change in how it is practiced. This optimism was grounded on the assumption of better and better democratically educated citizens who have access to vast sources of independent and critical information. Simultaneously, the charm of the West as the "promised land" has faded away – the collapse of the Soviet-style "people's democracy" has deprived Western democracies of one of their main bases of legitimacy, that is the alternative and superior political system over their communist rivals. Yet transitory reforms, conducted in the spirit of neoliberalism, failed to produce the promise of continuous growth, fair distribution, and equality. Therefore, democracy is not in decline, nor is it backsliding, but it is rather in crisis and in the process of transition from one type to another, although it is not clear what the changes may bring (Schmitter, 2015).

Democratic backsliding in the region was not only expected, but also anticipated, as a side-effect of the elite-driven (permissive consensus) and incentive-driven (Europeanisation) post-1989 reform processes. Such fore-

casts rested on the assumption that post-communist elites and societies in general had not internalised liberal-democratic values and would stretch (or even violate) constitutional norms if they could. Now that the predicted democratic backsliding has actually begun, various analyses examine cross-national variations in the forms and extent of backsliding and alternative ways of motivating elites to preserve liberal institutions. Democracy needs democrats and predominantly democratic citizens. However, civil societies are traditionally weak in countries with a post-communist legacy (Howard, 2003). The observed low levels of citizens' democratic activism and engagement as well as the weakly embedded institutions in post-communist regions' democracies have been identified as the consequences of legacies of the previous system legacies (Dawson, Hanley, 2016).

Historical, empirical knowledge suggests that troubled democracies are now more likely to backslide. Democratic erosion is believed to be better than democratic cataclysm since it is less prone to prompting violence. Yet incremental decline still imposes important challenges to the democratic world. Democracy backsliding may be defined as the weakening or disassembling of a given set of democratic institutions and yet can, ironically, sometimes deepen rather than destroy democracy. Contemporary forms of backsliding are profoundly ambiguous – the new forms of democratic backsliding are legitimised through the very institutions that democracy promoters have prioritised: national elections, voting majorities in legislatures and courts, and the rule of the law that majorities produce (Bermeo, 2016).

Until EU enlargement, all CEE states (subject to the conditionality mechanism and Europeanisation pressures) moved in the same general direction of a market economy based on private ownership and liberal democracy with effective systems of checks and balances guaranteeing the rule of law. The coexistence of democratic transition and consolidation in the CEE while integrating into Western European structures brought about expectations that EU membership would bring about further democratisation. However, post-accession Poland and Hungary (and, to a lesser extent, also other post-communist countries) witnessed a democratic regression, proving the inefficiency of post-enlargement conditionality (Riedel, 2020). Viktor Orbán's Hungary desperately worked to be the first post-socialist democracy to join the club of autocracies (Kornai, 2015). Since 2015, it has been accompanied by Poland, which means that more than half of the citizens of Central Europe again do not live under the umbrella of liberal democracy any more (Sata, Karolewski, 2019).

In the space of a few years, the position of both countries in international rankings has fallen. According to the Transformation Index BTI

(Bertelsmann Index), both Poland and Hungary are "democracies in consolidation". The same report describes Polish democracy as "good" with Hungary's as "moderate". Both countries have also fallen in the Corruption Perception Index. Hungary scores 44/100 points, and Poland 58/100 (Transparency International Corruption Perception Index, 2019). Under the Orbán government, media freedom in Hungary has consistently decreased. He has also forced the closure of the Central European University (Amnesty International, 2018, p. 188). In Poland, Jarosław Kaczyński holds political control over the judiciary (Freedom House, Freedom in the World, 2019, p. 11). Furthermore, according to the Nations in Transit report, highlighting the state of democracy in post-communist states, in 2020, Poland became the second EU Member State to lose its full democratic status, joining Hungary (Freedom House, Nations in Transit, 2020, p. 3).

The existence of a legal framework for lobbying is perceived as a part of the institutional infrastructure for the development and stabilisation of liberal democracies (Laboutková, Vymětal, 2019), contributing to a more transparent inclusion of interest groups in the policy-making process (Rozbicka et al., 2021). Illiberal drift is accompanied by a rather weak and façade-like regulatory framework for advocacy, including lobbying. Surprisingly, some of the earliest efforts to regulate lobbying and establish official registers of lobbyists occurred in the post-transition CEE. These legal conditions have, recently, changed substantially. In Poland, the effectiveness of advocacy regulations, introduced in 2005, as well as the quality of their implementation are often criticised (Vargovcikova, 2017, p. 254). Since the right-wing government came into power, the number of lobbyists registered in the parliament has constantly fallen. Although the lobbying law is still in force, in 2019 Jarosław Kaczyński, the President of the Law and Justice party, forbade parliamentarians of this party from participating in lobbying-oriented meetings. Similar to the Polish law, a significant proportion of Hungarian lobbying activities remained invisible due to the narrow definition of lobbying and the lacking will of access-seekers to register. After Fidesz came into power, already-extant lobbying laws were replaced with new regulations in 2011. Essentially, comprehensive lobbying regulations and the register have been repealed. Lobbyists and lobbying organisations lost their privileges and obligations and had to return their lobbying licences (EPRS, 2019). Both in Poland and Hungary, as a result of illiberal drift, lobbying has been pushed into the shadows.

Theoretical Framework

Illiberalism in Poland and Hungary created new decision-making circumstances, characterised by such factors as highly centralised governance (Bartha, 2014; Transparency International, 2019), a lack of institutional control, an undermining of independent judiciaries and the overarching legal architecture of the EU thereby eroding the rule of law and legal certainty, clientelism (Kovacs, 2015), unfair political competition and opposition marginalisation (Batory, 2016), a decreasing of media freedom (Karolewski, Benedikter, 2017), the already-mentioned weak regulatory framework for advocacy together with stigmatisation of lobbying activity (Wiszowaty, 2018), de-parliamentarization (Fink-Hafner, 2011), a less-participatory attitude of government (Bertelsmann Poland, 2018), the curtailing of certain civil liberties and freedoms of citizens (Bertelsmann Hungary, 2018), and, last but not least, the downplaying of the role of expertise (Bartha et al., 2020).

Many dimensions shape interest intermediation models, of which pluralist or (neo)corporatist institutional arrangements seem to be one of the most important, as they create different patterns for organised interest inclusion (Fisker, 2013; Binderkrantz et al., 2014). Conceptualising an illiberal environment for interest groups' operations, based on existing scholarship, we can distinguish at least a few dimensions, such as a departure from pluralism (Bill, Stanley, 2020), a strengthening of an executive with a simultaneous weakening of other state institutions (Dawson, Hanley, 2016) resulting in an inability to exchange between the state and organised interests, preserving the procedural vestiges of democracy (Pirro, Stanley, 2021) such as formal consultations with simultaneous lowering the use of public consultations (Rozbicka et al., 2021), civil society repressions and unequal treatment (Huq, Ginsburg, 2018) which should lead to differentiated assessments of participation opportunities, a rather poor ability to influence the governing elites (Pospieszna, Vetulani-Cęgiel, 2021), and shrinking civic space which should lead to a lower ability to assert interests (Buyse, 2018).

Moreover, existing scholarship suggests that democratic backsliding created a challenging environment for interest groups' operations, therefore they developed adaptive advocacy patterns. According to Pospieszna and Vetulani-Cęgiel (2021), these patterns are determined by the interest group type. They use the classification of advocacy groups based on the differentiation between cause and sectional groups – by the nature of interest (Stewart, 1959). This is roughly in line with Olson's distinction between diffuse and concentrated interests (1965). Cause groups are ide-

alistic groups representing public interests, e.g., consumers' and patients' rights, etc. Sectional groups seek benefits for their supporters, which are generally well-organised business, professional, or trade associations. Two main scientific approaches exist in literature regarding the selected typology (Klüver, 2009; Klüver, Saurugger, 2013). The first group of academics argue that cause and sectional groups share similar organisational structures, and employ regular staff with a smaller level of engagement of members. The second group argues the opposite; cause and sectional groups vary substantially in terms of organisational structure as well as access-seeking strategies, developing different types of advocacy behaviour: cause groups are more likely to use outside lobbying with actions addressed at the general public (Binderkrantz et al., 2015), while sectional groups target decision-makers directly (inside lobbying). Pospieszna and Vetulani-Cęgiel argue that sectional groups in illiberal Poland are far more powerful than the cause ones, having more frequent consultations with the government, more intense focus on lobbying-skill development as well as international networking.

Research Design and Methods

To explore how interest groups perceive their position and opportunity structures vis-a-vis decision-makers, we rely on a fresh survey dataset created within a project entitled 'OrgIntCEE – The <Missing Link>: Examining organized interests in post-communist policy-making – OrgIntCEE'. The survey was conducted online between February 2019 and June 2020 by a German-Polish Team. It covered interest groups operating in the strategic policies of energy, healthcare, and higher education in four different CEE countries: the Czech Republic, Hungary, Poland, and Slovenia. In total, we have received over 400 responses with a total response rate of 34.4%. The survey included numerous questions on membership structures, interest group resources, the degree of professionalisation and interactions of organised interests with different political venues. In this study, we focus exclusively on the responses from Poland and Hungary.

In this paper, to study how interest groups perceive their position and opportunity structures *vis-a-vis* decision-makers, we look at various dimensions perceived by our respondents, at the same time aggregating results across the three politics. First, we asked the respondents to indicate the perceived level of policy coordination:

How would you rate the level of policy coordination/political exchange between the state and your interest group? (1 – very weak; 2 – weak, 3 – moderate, 4 – strong, 5 – very strong).

Then we asked about the evolution of the number of organisations:

In your opinion, is the number of interest organisations attempting to influence decision-making and legislation in your area increasing, decreasing, or stable over the past 10–15 years? (1 – strongly decreasing, 2 – decreasing, 3 – the same, 4 – increasing, 5 – strongly increasing)

For the next step, we explored the intensity and difficulty of contact between interest organisations and the government, asking:

In the last five years, approximately how many times did the government consult interest groups in your field of activity? (1 – never, 2 – annually, 3 – bi-annually, 4 – monthly, 5 – weekly)

How difficult is it to gain access to governing parties? (1 – extremely difficult, 2 – difficult, 3 – sometimes possible, 4 – easy, 5 – extremely easy)

We seek for additional explanation in interest groups' type variations, distinguishing between cause groups (mostly citizens' interests) and sectional groups (mostly business and professionals' interests). Our sample contains 44 Polish cause groups, 50 Polish sectional groups, 28 Hungarian cause groups, and 69 Hungarian sectional organisations.

Data Analysis

We start our analysis by checking for policy coordination/political exchange between the state and interest groups declared by the latter. Strong coordination is a precondition of a well-performing interest intermediation system, especially of a corporatist type (see Dobbins et al., 2021).

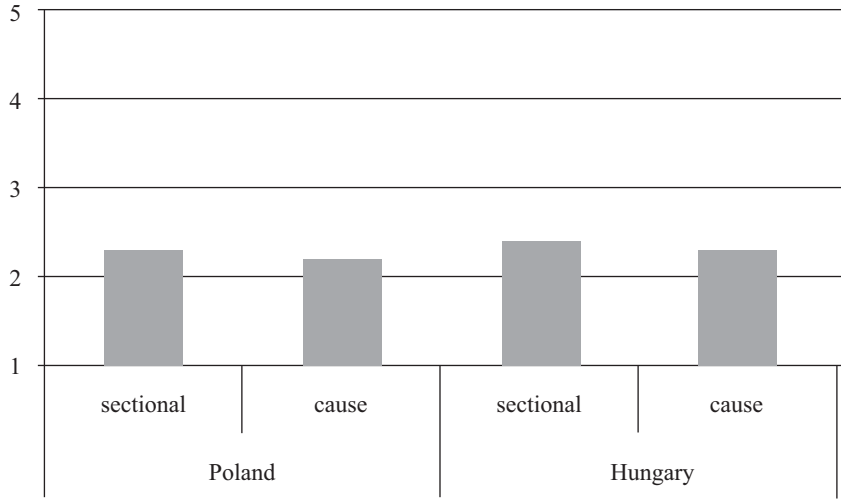


Fig. 1: The perceived policy coordination between the state and interest groups

Our results show that in both analysed countries, policy coordination is rather weak, which might suggest a rather pluralistic model. This, in turn, leads to an easier expansion of illiberalism, as the pluralist model is regarded as looser and less institutionalised, and therefore easier to destroy by illiberal arrangements (Pospieszna, Vetulani-Cęgiel, 2021).

The next analysed precondition is the perceived density of interests. The existing scholarship on Western democracies suggests that the more crowded the interest groups' system, the smaller the accessibility to the decision-makers. In other words, the competitive environment of interest groups' operations can negatively affect their influence. In the situation wherein a multitude of actors compete for resources and the attention of decision-makers, which is a natural domain of a pluralistic system (Sorurbakhsh, 2013), the political chances of interest groups to exert influence decrease (Lowery, Gray, 1996; Baumgartner et al., 2009; Berkhout, Lowery, 2011; Hanegraaf et al., 2020).

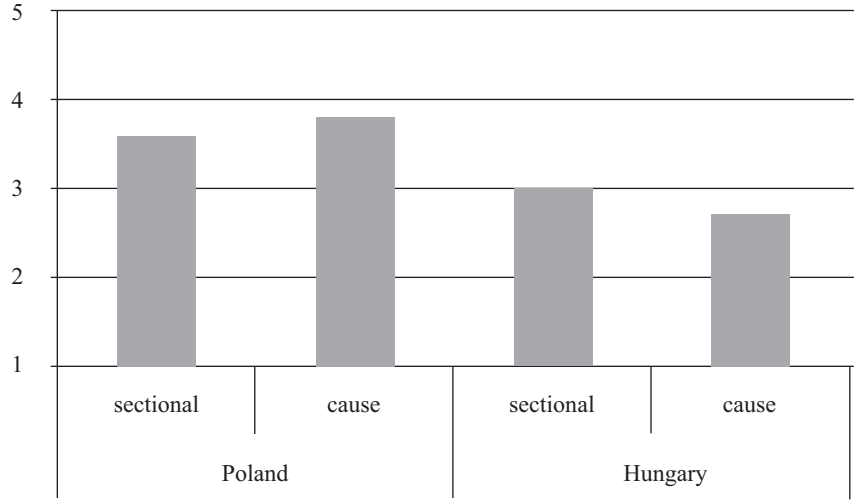


Fig. 2: The perceived density of interests

An overview of perceived growing density of interests suggests again a rather pluralist character of interest intermediation in Poland, while the number of organised interests in Hungary is perceived by them as being stable or even slightly decreasing.

Engagement in consultations is a key element of the pluralist model of interest intermediation. The division of power determines access points (Rozbicka et al., 2021). Meanwhile, in illiberal countries, this division is not evenly distributed, favouring the executive to a higher extent than in other democracies, practically making the executive the main access point

for interest groups. By asking for the perceived frequency of consultations of interest organisations with the governments, we found out that sectional groups in both countries established stronger positions. However, overall Polish results are higher, as Polish groups of any type seem to feel more privileged in the frequency of consultations with the government than their Hungarian counterparts.

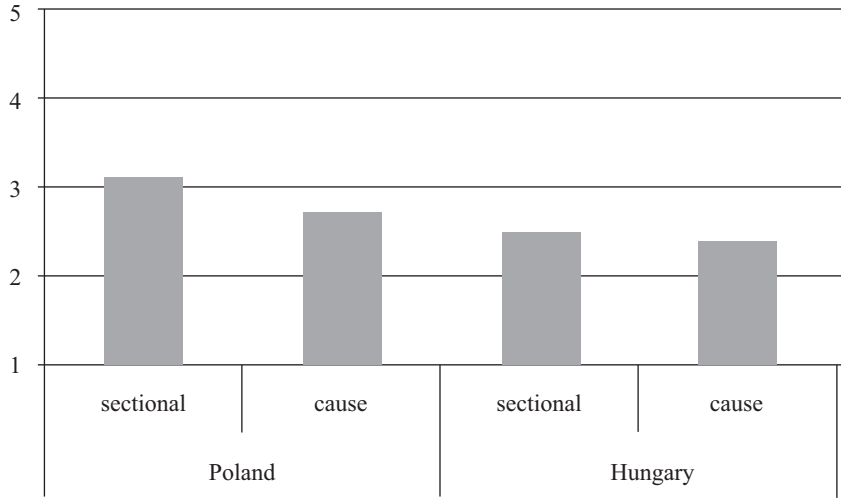


Fig. 3: The perceived frequency of consultations with the governments

None of the analysed groups experienced consultations more than once or twice a year, which proves a rather poor standard of consultation compared to other European countries (Rozbicka et al., 2021). In the case of this factor, we can also see the difference between group types, proving a stronger sectional position. This, in turn, may testify to the neocorporatist model of consultations which, according to Pospieszna and Vetulani-Cęgiel (2021), is dominant in illiberal Poland. This difference between group types is not as visible in Hungary.

The government is the main access point for interest groups – especially in the CEE, where the executive holds a dominant position (Meyer et al., 2017). According to Patrycja Rozbicka with the Team (2021), the relations of interest groups with the governments in the region are mainly based on strongly formalised contacts, and the contribution of the groups is not sufficiently appreciated by the authorities due to the structural weakness of the stakeholders. Our research shows that all analysed groups in both countries declared that such access is difficult, and in Poland's case – close to "sometimes possible". Again, we see that the Polish system seems to be slightly more open for input from organised interests.

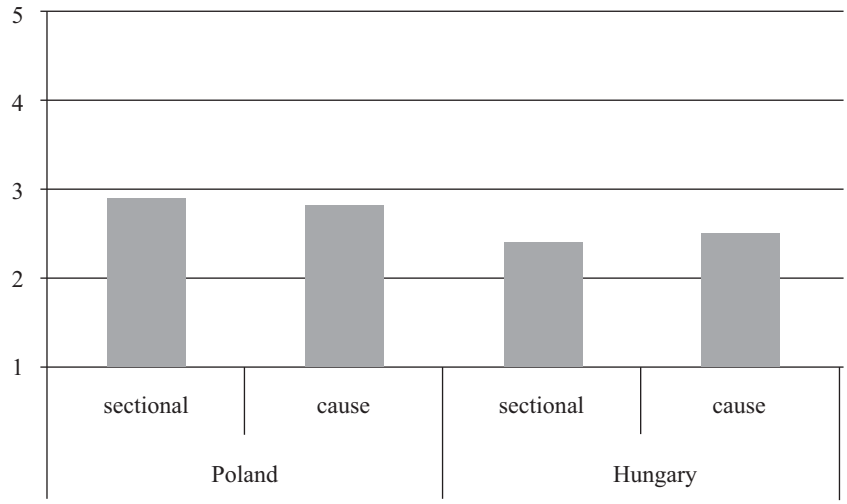


Fig. 4: The perceived difficulty in accessing governing parties

Conclusions

In this article we have provided a brief picture of interest representation preconditions and opportunity structures for organised interests as seen by Polish and Hungarian interest groups just before the onset of the COVID-19 pandemic. Not being able to show the causal relationships between illiberalism and the change in the advocacy behaviour of groups using the existing dataset, we rather focused on presenting how group representatives perceive the structures of their opportunities to participate in policy-making.

Confronting empirical data with existing scholarship, we found that the political systems of Poland and Hungary are still a mix of pluralist and corporatist features. Our results did not confirm a significant difference in terms of the stronger position of sectional groups over the cause groups, which sheds a different light on the findings regarding the neocorporatist nature of Polish illiberalism (Pospieszna, Vetulani-Cęgiel, 2021).

It may be concluded that both countries provide a different interaction infrastructure for organised interests. In Poland, political opportunity structures are still more open to input from civic society and interest groups have stronger positions than in Hungary. On the other hand, one cannot ignore the fact that the illiberal tendencies in Hungary began a few years earlier than in Poland. The self-perceived stronger impact, as well as better access to legislative and executive bodies in Warsaw, should be seen in this light. The Hungarian advocacy organisations are simply

"some time ahead" in their democratic backsliding-determined observations compared to their Polish counterparts.

Despite these wide-ranging findings, many questions still require further investigation. An anti-participatory model of policy-making, in which only selected interest groups enjoy good access to decision-making apparatus, probably compels excluded groups to seek other areas of operation. Therefore, they might tend to focus on outside strategies addressing the general public as an important means of accessing decision-makers (Berkhout, 2013). The importance of outside strategies may especially apply to cause groups (Binderkrantz, 2008). That creates a space for future research, in order to gain a full picture of advocacy patterns across illiberal democracies in the CEE.

Acknowledgements

This paper has been prepared with the support of a research grant entitled "The Missing Link – Organised Interests in Post-Communist Policy Making" / „Zorganizowane grupy interesów jako »brakujące ogniwo« w kreowaniu polityk w wybranych krajach postkomunistycznych" (OrgIntCEE). Projekt DFG-NCN Narodowe Centrum Nauki, decision nr 2016/23/G/HS5/01001.

References

Amnesty International Report 2017/18 (2018) Available at: https://www.amnesty.org/en/documents/pol10/6700/2018/en/ (Access 5.01.2022).

Bartha, A. (2014) *Lifting the Lid on Lobbying: National Report of Hungary*. Transparency International Hungary, Budapest. Available at: https://transparency.hu/wp-content/uploads/2016/03/Lifting-The-Lid-On-Lobbying-National-Report-of-Hungary.pdf (Access 5.01.2022).

Bartha, A., Boda, Z. and Szikra, D. (2020) "When Populist Leaders Govern: Conceptualising Populism in Policy Making", *Politics and Governance*. Vol. 8(3), pp. 71–81. DOI: https://doi.org/10.17645/pag.v8i3.2922.

Baumgartner, F. et al. (2009) *Lobbying and Policy Change: Who Wins, Who Loses and Why*. Chicago: Chicago University Press. DOI: https://doi.org/10.7208/chicago/9780226039466.001.0001.

Berkhout, J. and Lowery, D. (2011) "Short-term volatility in the EU interest community", *Journal of European Public Policy*. Vol. 18, pp. 1–16. DOI: https://doi.org/10.1080/13501763.2011.520868.

Bermeo, N. (2016) "On Democratic Backsliding", *Journal of Democracy*. Vol. 27(1), pp. 5–19. DOI: https://doi.org/10.1353/jod.2016.0012.

Beyers, J. (2008) "Policy issues, organisational format and the political strategies of interest organisations". *West European Politics*. Vol. 31(6), pp. 1188–1211. DOI: https://doi.org/10.1080/01402380802372654.

Bertelsmann Stiftung (2018a) BTI 2018 Country Report — Hungary. Available at: https://www.ecoi.net/en/file/local/2015267/BTI_2018_Hungary.pdf (Access 5.01.2022).

Bertelsmann Stiftung (2018b) BTI 2018 Country Report — Poland. Available at: https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2018_POL.pdf (Access 5.01.2022).

Berkhout, J. (2013) "Why interest organizations do what they do: Assessing the explanatory potential of 'exchange' approaches", *Interest Groups & Advocacy*. Vol. 2, pp. 227–250. DOI: https://doi.org/10.1057/iga.2013.6.

Binderkrantz, A.S. (2008) "Different Groups, Different Strategies: How Interest Groups Pursue Their Political Ambitions", *Scandinavian Political Studies*. Vol. 31(2), pp. 173–200. DOI: https://doi.org/10.1111/j.1467-9477.2008.00201.x.

Binderkrantz, A.S., Christiansen, P.M. and Pedersen, H. (2014) "A Privileged Position? The Influence of Business Interests in Government Consultations", *Journal of Public Administration Research and Theory*. Vol. 24, pp. 879–896. DOI: https://doi.org/10.1093/jopart/muu028.

Binderkrantz, A.S. et al. (2015) "Interest Group Access to the Bureaucracy, Parliament and the Media", *Governance*. Vol. 28(1), pp. 95–112. DOI: https://doi.org/10.1111/gove.12089.

Bustikova, L. and Guasti, P. (2017) "The Illiberal Turn or Swerve in Central Europe?", *Politics and Governance*. Vol. 5(4), pp. 166–176. DOI: https://doi.org/10.17645/pag.v5i4.1156.

Buyse, A. (2018) "Squeezing Civic Space: Restrictions on Civil Society Organizations and the Linkages with Human Rights", *The International Journal of Human Rights*. Vol. 22(8), pp. 966–988. DOI: https://doi.org/10.1080/13642987.2018.1492916.

Cianetti, L., Dawson, J. and Hanley, S. (2018) "Rethinking 'democratic backsliding' in Central and Eastern Europe – looking beyond Hungary and Poland", *East European Politics*. Vol. 34(3), pp. 243–256. DOI: https://doi.org/10.1080/21599165.2018.1491401.

Dawson, J. and Hanley, S. (2016) "What's Wrong with East-Central Europe? The Fading Mirage of the 'Liberal Consensus'", *Journal of Democracy*. Vol. 27(1), pp. 20–34. DOI: https://doi.org/10.1353/jod.2016.0015.

Dobbins, M. and Riedel, R. (eds). (2021) *Exploring Organized Interests in Post-Communist Policy-Making: The "Missing Link"*. London: Routledge. DOI: https://doi.org/10.4324/9781003049562.

Dobbins, M., Piotrowska, E. and Von Bronk, M. (2021) *Exploring interest intermediation in Central and Eastern European healthcare* in Dobbins, M. and Riedel, R. (eds.), *Exploring Organized Interests in Post-Communist Policy-Making: The "Missing Link"*. London: Routledge, pp. 95–123. DOI: https://doi.org/10.4324/9781003049562.

Ekiert, G. (2014) "Three generations of Research on Post Communist Politics – A Sketch", *East European Politics and Societies and Cultures*. Vol. 29(2), pp. 323–337. DOI: https://doi.org/10.1177/0888325414559052.

EPRS European Parliamentary Research Service (2019) Transparency of lobbying in Member States. Comparative Analysis. Available on: https://www.europarl.europa.eu/EPRS/Lobbying-transparency-comparative-analysis.pdf (Access 5.01.2022).

Fink-Hafner, D. (2011) "Interest representation and postcommunist parliaments over two decades", *The Journal of Legislative Studies*. Vol. 17, pp. 215–233. DOI: https://doi.org/10.1080/13572334.2011.574027.

Fisker, H.M. (2013) "Density Dependence in Corporate Systems: Development of the Population of Danish Patient Groups (1901–2011)", *Interest Groups and Advocacy*. Vol. 2, pp. 119–138. DOI: https://doi.org/10.1057/iga.2013.4.

Freedom House (2019) Freedom in the World 2019. Available at: https://freedomhouse.org/sites/default/files/Feb2019_FH_FITW_2019_Report_ForWeb-compressed.pdf (Access 5.01.2022).

Freedom House (2020) Nations in Transit 2020. Available at: https://freedomhouse.org/sites/default/files/2020-04/05062020_FH_NIT2020_vfinal.pdf (Access 5.01.2022).

Giannakopoulos, A. (ed.) (2019) *Media, Freedom of Speech, and Democracy in the EU and Beyond*. Tel Aviv: Daniel Abraham Center for International and Regional Studies, Tel Aviv University. Available at: https://europeanjournalists.org/wp-content/uploads/2019/07/Media-Freedom-of-Speech-and-Democracy-min.pdf. (Access 5.01.2022).

Hanegraaff, M., Vergauwen, J. and Beyers, J. (2020) "Should I stay or should I go? Explaining variation in non state actor advocacy over time in global governance", *Governance.* Vol. 33, pp. 287–304. DOI: https://doi.org/10.1111/gove.12427.

Howard, M.M. (2003) "The Weakness of Postcommunist Civil Society", *Journal of Democracy*. Vol. 13, pp. 157–169. DOI: https://doi.org/10.1353/jod.2002.0008.

Huq, A. and Ginsburg, T. (2018) "How to Lose a Constitutional Democracy", *UCLA Law Review.* Vol. 78, pp. 78–169. Available at: https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=13666&context=journal_articles (Access 5.01.2022).

Karolewski, I.P. and Benedikter, R. (2017) "Europe's New Rogue States, Poland and Hungary: A Narrative and Its Perspectives", *Chinese Political Science Review.* Vol. 2, pp. 179–200. DOI: https://doi.org/10.1007/s41111-016-0048-5.

Kornai, J. (2015) "Hungary's U-Turn: Retreating from Democracy", *Journal of Democracy.* Vol. 26(3), pp. 34–48. DOI: https://doi.org/10.1353/jod.2015.0046.

Klüver, H. (2009) "Interest group influence on EU policy-making: A quantitative analysis across issues", *Political Science.* Available at: http://aei.pitt.edu/33094/1/kluever._heike.pdf (Access 5.01.2022).

Klüver, H. and Saurugger, S. (2013) "Opening the Black Box: The professionalisation of Interest Groups in the EU", *Interest Groups & Advocacy.* Vol. 2, pp. 185–205. DOI: https://doi.org/10.1057/iga.2013.2.

Kovács, B. (2015) *Hungary 2015* in Habdank-Kołaczkowska, S. (ed.), *Nations in Transit 2015: Democracy on the Defensive in Europe and Eurasia*, Lanham: Rowman and Littlefield.

Laboutková, Š. and Vymětal, P. (2019) "A new approach in evaluation of transparent lobbying – the case of Visegrad group countries", *Administratie si Management Public.* Vol. 33, pp. 119–132. DOI: https://doi.org/10.24818/amp/2019.33-07.

Levitsky, S. and Way, L. (2015) "The Myth of Democratic Recession", *Journal of Democracy.* Vol. 26(1), pp. 45–58. DOI: https://doi.org/10.1353/jod.2015.0007.

Lowery, D. and Gray, V. (1996). *The population ecology of interest representation: Lobbying communities in the American states*. Ann Arbor: University of Michigan Press. DOI: https://doi.org/10.3998/mpub.14367.

Meyer, M. et al. (2017) *Patterns in Civil Society in Central and Eastern Europe: A Synthesis of 16 Country Reports and Expert Survey* in. Vandor, P. et al (eds.), *Civil Society in Central and Eastern Europe: Challenges and Opportunities*. Vienna: ERSTE Stiftung Studies.

Pirro, A. and Stanley, B. (2021) "Forging, Bending, and Breaking: Enacting the "Illiberal Playbook" in Hungary and Poland", *Perspectives on Politics*. pp. 1–16. DOI: https://doi.org/10.1017/S1537592721001924.

Pospieszna, P., Vetulani-Cęgiel, A. (2021) "Polish interest groups facing democratic backsliding", *Interest Groups & Advocacy*. Vol. 10, pp. 158–180. DOI: https://doi.org/10.1057/s41309-021-00119-y.

Riedel, R. (2020) *Undermining the Standards of Liberal Democracy within the European Union: The Polish Case and the Limits of Post-Enlargement Democratic Conditionality* in Fossum, J. and Batora, E. (eds.), *Towards a Segmented European Political Order The European Union's Post-crises Conundrum*. London: Routledge, pp. 175–198.

Rozbicka, P. et al. (2021) *Achieving Democracy Through Interest Representation. Interest Groups in Central and Eastern Europe*. London: Palgrave MacMillan. DOI: https://doi.org/10.1007/978-3-030-55521-4.

Sata, R. and Karolewski, I.P. (2019) "Caesarean politics in Hungary and Poland", *East European Politics*. Vol. 36(2), pp. 206–225. DOI: https://doi.org/10.1080/21599165.2019.1703694.

Stewart, J.D. (1959) "British Pressure Groups: Their Role in Relation to the House of Commons", *The Journal of Politics*. Vol. 21(1), pp. 142–144. DOI: https://doi.org/10.2307/2126656.

Sorurbakhsh, L. (2013) "Population ecology and European Interest Groups over time: A dataset", *European Political Science*. Vol. 13, pp. 61–77. DOI: https://doi.org/10.1057/eps.2013.36.

Schmitter, C.P. (2015) "Crisis and Transition, But Not Decline", *Journal of Democracy*. Vol. 26(1), pp. 32–44. DOI: https://doi.org/10.1353/jod.2015.0004.

Transparency International Corruption Perception Index (2019). Available at: https://images.transparencycdn.org/images/2019_CPI_Report_EN_200331_141425.pdf (Access 5.01.2022).

Vargovcikova, J. (2017) "Inside lobbying regulation in Poland and the Czech Republic: negotiating public and private actors' roles in governance", *Interest Groups and Advocacy*. Vol. 6, pp. 253–271. DOI: https://doi.org/10.1057/s41309-017-0026-9.

Wiszowaty, M.M. (2018) "Phantom regulation" or 13 years of the Polish law on lobbying and what did (not) result from it", *Istituzioni del Federalismo. Rivista di studi giuridici e politici*. Vol. 3–4. Available at: https://www.regione.emilia-romagna.it/affari_ist/rivista_3_4_2018/Numero.pdf (Access 5.01.2022).

DOI: 10.33067/SE.1.2022.4

*Katarzyna Strąk**

On Carrier Sanctions – A Voice from Poland. The Liability of Carriers in the Jurisprudence of Administrative Courts

Abstract

This article analyses carrier sanctions in light of Poland's membership of the European Union and its obligation to protect the EU's external borders. It offers an in-depth analysis of the scope of the carriers' obligations with regard to bringing third-country nationals to the Eastern external border of the European Union and explores ways how these obligations should be fulfilled correctly so that carriers are not obliged to pay administrative fines of as much as 3000-5000 euro per person. The research is based on an extensive review of the jurisprudence of Polish administrative courts and takes into account the specificity of this jurisprudence.

Keywords: Liability of Carriers, Administrative Fines, External Borders Crossing, Immigration Policy, Administrative Courts, European Union, Poland

Introduction

The liability of carriers (termed as natural or legal persons or organisational units without legal personality that, for economic purposes carry persons by air, sea or land) bringing third-country nationals who do not possess the required documents, to the Polish border - the EU's external border with Ukraine, Belarus, and Russia, which results in the imposition of financial penalties on carriers, dates back as a broader phenomenon as far as the 18th century (Bloom, Risse, 2014). It took its contemporary form in the 1980s, becoming a constitutive element of national legal orders of

* **Katarzyna Strąk** – Polish Academy of Sciences, e-mail: katarzyna.strak@inp.pan.pl, ORCID ID: https://orcid.org/0000-0002-4561-2815.

several European states. The liability of carriers in Poland was first introduced in 1997. It was not until 2011, however, when the first rulings were delivered by the Warsaw Regional Administrative Court (hereinafter: WRAC), the only regional administrative court which has jurisdiction in cases involving the liability of carriers, and the Supreme Administrative Court (hereinafter: SAC), to which cassation appeals can be lodged.

This article analyses the liability of carriers in the context of the obligations taken on by the Republic of Poland in light of its membership in the European Union, so as to protect the EU's external borders. It offers an in-depth analysis of the scope of the carriers' obligations with regard to bringing third-country nationals to the EU eastern external border and, at the same time, explores ways how these obligations should be fulfilled correctly so that carriers are not obliged to pay administrative fines of EUR 3000-5000 per person. The research is based on an extensive review of the jurisprudence of Polish administrative courts and takes into account the specificity of this jurisprudence.

Extensive research in the area of carrier sanctions is direct evidence of the importance and variety of the problems that arise from the application of relevant legislation to both carriers and their passengers (Sadowski, 2019). The relevant academic literature encompasses a broad range of approaches and aspects in this regard (Baird, Spijkerboer, 2019), and the picture that arises is unambiguously negative. International and European law doctrine has been highly critical in their assessment of the liability of carriers (carrier sanctions regime), considering it controversial from the point of view of the rights of both the carriers and the transported persons. The discussion – at its initial phase – focused mainly on the issue of possible non-compliance of carrier sanctions with the 1951 Geneva Convention, and many scholars held the view that carrier sanctions were aimed at the limitation of access to safe territory for persons seeking international protection. The reservation to "being without prejudice", made in European legislation in the case of submitting an application for protection, was interpreted as still allowing states to impose penalties on carriers (Peers, 2006). Authors generally placed emphasis on the fact that third-country nationals using international carrier services were obliged to possess all the required documents, including valid visas, and it was therefore commonly assumed that penalties imposed on carriers are intended not only to prevent illegal immigration but to enhance visa policy as well. This view is supported by the fact that at that initial stage, a number of EU Member States opposed including regulation of the specific situation of persons seeking international protection within their legislation on the liability of carriers,

justifying it with the fact that there might be an increased influx of economic migrants (Moreno-Lax, 2012).

Research followed on the privatisation and outsourcing of migration management to third parties, and on the externalisation of border controls in light of the carriers assuming more and more obligations, and this became predominant at the next stage (Rogala, 2020). The academic literature questioned the ability of carriers to properly perform these two new tasks imposed on them, emphasising the lack of both resources and knowledge in this regard, but additionally questioning the very idea of the state enforcing the obligation of carriers to perform the tasks of border guards.

Recently it has been argued that – in what could be considered the third phase – carriers should assume responsibility for remedying harms to which they contributed, in view of the role that carrier sanctions play in perpetuating harms, such as denial of refugee protection or even death, against migrants. The importance of conducting research on the intersection of migration, corporations, and human rights has already been emphasised (Baird, Spijkerboer, op. cit.). The latest research has also attempted to put carrier sanctions in perspective against the migration crisis in the European Union (Cesarz, 2019).

However, although extensive research on the liability of carriers has been carried out, no single study exists which would offer an in-depth analysis of the scope of the carriers' obligations and of the ways in which these obligations should be correctly met. Scholten's works, extremely valuable ones, seem to focus on Dutch law and policy rather than on reconstructing the standard of 'an obeying carrier' (Scholten, 2015). This article attempts to fill this gap by combining a short description of the existing European and Polish legal frameworks with an extensive analysis of Polish administrative courts' jurisprudence, and is an answer to Baird's conclusion that "empirical studies explaining the development of carrier sanctions, their implementation and their impacts suffer from limited data and small-n case studies" (Baird, 2017).

At this point however, three remarks concerning the content of this article should be made. Firstly, although the liability of carriers covers the activities of air, sea, and road transport carriers, the jurisprudence of Polish administrative courts is, in practice, limited to the activities of entities carrying out regular passenger transport by motor vehicles in international road transport. Secondly, as has already been mentioned, the first judgements were delivered in 2011, eight years after the entry into force of the new liability of carriers regime, mostly due to the inactivity of administrative authorities. Thirdly, this article is partly based on earlier re-

search which, however, hardly takes account of the case-law based on the latest Act on Foreigners of 2013 (Act on Foreigners, 2013), due to its entry into force only on 1 May 2014. This revised and updated text makes fuller and deeper use of the latest case-law, concentrating on legal and jurisprudential developments in the area of the liability of carriers in 2011–2021 in Poland. As a consequence, it may be of interest to other researchers as a useful source of information on Polish practice and – hopefully – inspiration and invitation to conduct research on liability of carriers in other EU Member States. To develop the standard of liability of carriers and the scope of the carriers' obligations arising from that standard, the Central Database of Administrative Courts' Rulings (Centralna Baza Orzeczeń Sądów Administracyjnych) was consulted.

EU and Polish Legal Framework on the Liability of Carriers

The introduction of the liability of carriers regime was rooted in an EU objective to prevent and combat illegal immigration, as provided for in Article 79 of the Treaty on the Functioning of the European Union (Treaty on the Functioning of the European Union, 2007). However, this issue was first included in the 1990 Convention implementing the Schengen Agreement (Convention implementing the Schengen Agreement, 1990), which was at that time still outside the EU legal framework. Article 26 of the 1990 Convention lays down two specific obligations for carriers bringing third-country nationals by air, sea or land to the territories of Member States; to assume responsibility for a person refused entry to the territory of a Member State and to ensure that a third-country national is in possession of travel documents required for entry into the territory of a Member State. The 1990 Convention furthermore provides the obligation for Member States to impose penalties on carriers transporting third-country nationals who do not possess the required travel documents necessary to be admitted to their territories.

Council Directive 2001/51/EC supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 was adopted, as its preamble points out, mainly due to the need to more closely harmonise the financial penalties imposed by Member States on carriers 'failing to comply with their control obligations'. The minimum and maximum amount of the financial penalties were set at EUR 3,000–5,000.

Regulation No 2016/399 of the Parliament and of the Council of 9 March 2016 establishing a Community Code on the rules governing the

movement of persons across borders (Schengen Borders Code), namely Article 6 therein, is also important as it lays down entry conditions for third-country nationals for stays not exceeding 90 days in any 180-day period and specifies in detail documents necessary to cross the EU external border (Regulation, 2016). Under Article 14 of Regulation 2016/399, a person who does not meet these conditions is refused entry. However, persons who do not fulfil one or more entry conditions laid down in Article 6 may be authorised to enter the territory of a Member State on humanitarian grounds, on grounds of national interest or because of international obligations.

Due to the legal nature of Regulation 2016/399 which – by definition – has general application and is binding in its entirety and directly applicable in all Member States, the Polish 2013 Act on Foreigners sets out in its Article 23 in connection with Article 30 the rules on border crossings exclusively with regard to persons to whom the EU regulation does not apply.

Both Article 26 of the Convention implementing the Schengen Agreement and Directive 2001/51 stipulate that their application shall be without prejudice to the obligations arising for the Member States from accession to the 1951 Geneva Convention relating to the status of refugees (Geneva Convention, 1951). It was thus agreed that financial penalties are "without prejudice to Member States' obligations in cases where a third-country national seeks international protection". This rule constitutes a direct reference to the prohibition of *non-refoulement* as defined in Art. 33 of the Geneva Convention as well as to the prohibition, enshrined in its Art. 31, of imposing penalties on applicants for refugee status due to entering or staying illegally on the territory of the State concerned directly from a State where their life or liberty was in danger, provided that they report immediately to the authorities of that State and present credible reasons for their illegal entry or stay. Among the provisions that strengthen the above are Article 3 letter b) (application without prejudice to the rights of refugees) and Article 4 (fundamental rights clause) of Regulation 2016/399.

The Polish Act on Foreigners of 2013 contains a special chapter which regulates the liability of carriers in Articles 459–463. The key provisions that are relevant for this study are Articles 459 and 462. Article 459 establishes the obligation to verify documents. Accordingly, a carrier that intends to transfer a third-country national to the border by air or sea, or a carrier that performs regular passenger transport services in international road transport (excluding border traffic), shall take all the necessary measures to ensure that a third-country national wishing to enter the territory of the Republic of Poland has a valid travel document authorising

him or her to cross the border, a required visa or another valid document entitling him or her to enter and stay within that territory, and/or a permit to enter another country or a residence permit in another country, if such permits are required. Article 460 lays down the obligation of the carrier, under certain circumstances, to immediately transport a third-country national back from the Polish border while Article 462 provides that, if a third-country national who does not possess the documents specified in Article 459, is brought to the border, the carrier is obliged to pay an administrative fine in an amount equivalent to EUR 3,000 to 5,000 for each imported person. The size of the fine reflects the provisions of Directive 2001/51. The Act on Foreigners introduces two exceptions where no administrative fines are imposed. The first case concerns a situation where a third-country national, after being brought to the border, has submitted an application for refugee status during border control, while the second case concerns the situation where a carrier, despite exercising due diligence, was not able to find out whether the third-country national possessed all the required documents.

As an administrative decision, imposing an administrative fine is issued by the commanding officer of the Polish Border Guard outpost where the third-country national was refused entry into Polish territory. This decision may be appealed against to the Commander in-Chief of the Polish Border Guard. A decision issued by the Commander in-Chief of the Polish Border Guard may be appealed against by lodging an appeal with the Warsaw Regional Administrative Court and, as a last resort, a cassation appeal with the Supreme Administrative Court.

Jurisdiction of Polish Administrative Courts

In 2011–2021, the Warsaw Regional Administrative Court and the Supreme Administrative Court issued several dozen judgements in which they examined complaints lodged by carriers established in the Republic of Poland, in EU Member States, or in non-EU countries, against decisions of competent Polish border guard authorities imposing administrative fines. In almost all cases that were analysed here, the administrative courts dismissed the complaints.

In all cases, the passengers – third-country nationals – used the services of road transport operators. In some descriptions of the facts of the cases, it was pointed out that these were so called "closed door" tours – services whereby the same bus is used to carry the same group of passengers throughout the entire journey. Passengers travelled from a third country to the territory of Poland, or transited through Poland from the

territory of a third country to the territory of another Schengen States, without the possibility to disembark their buses in Poland. In all cases, the administrative authorities found that the third-country nationals did not possess one of the documents specified in the Act on Foreigners or that one of the required documents was invalid at the time of arrival at the border crossing point.

According to Article 3 para 1 of the Act on Proceedings before Administrative Courts (Act on Proceedings before Administrative Courts, 2002), administrative courts exercise a review of the activity of public administration and employ means specified in that act. In the context of the liability of carriers, the only task of the courts in the course of administrative court proceedings was to verify whether administrative authorities were correct in their findings as to whether the third-country nationals were in possession of the relevant documents at the time of their crossing the border. The Polish border guard authorities found most frequently that the required documents – travel document (IV Sa/WA 1855/12, 2013), residence permit (V Sa/Wa 1794/11, 2011) or visa (V Sa/Wa 2920/10, 2011) – were lacking, or that the required document was invalid at the time of arrival at the border crossing point (IV Sa/Wa 2326/13, 2013).

Such findings made it reasonable for the courts to ascertain that the fine, imposed by the competent administrative authority in accordance with the Act on Foreigners, was justified. The court has repeatedly concluded that the liability of carriers is objective and the carriers' fault does not constitute a prerequisite for such liability. The Supreme Administrative Court found that the Act on Foreigners contains a sanctioning legal standard which combines liability with an objective infringement of the law, (which, in this case, consists in bringing a person without the required documents to the border). Consequently, the administrative authority is not obliged to examine the degree of culpability or harmfulness of carriers' acts (II OSK 885/13, 2014).

The Scope of Carriers' Obligations

The courts focused on the interpretation of the phrase "[A carrier] shall take all the necessary measures to ensure […]", used in Article 459 of the Act on Foreigners. In this context, the courts were able to clarify the scope of the obligations that arise for carriers, as well as to explain how these obligations are to be correctly performed. All of this assuming that these obligations cannot be objectively impossible for carriers to fulfil (Ibidem).

Consequently, such obligations come into existence at the moment of the conclusion of the contract of carriage and they last until the passenger is brought to the border (IV Sa/Wa 135/14, 2014). In fact, the scope of the carriers' obligations is relatively limited and it includes the requirements:

- to demand (Ibidem) from the passenger – before the conclusion of the contract of carriage (IV SA/Wa 2951/16, 2017) the presentation of all documents necessary for that person to be authorised to cross the Polish border, and
- to check whether these documents are valid on the date of entry (II OSK 80/16, 2017) into the territory of Poland.

The third-country national's obligation to possess valid documents results from Article 23 of the Act on Foreigners which makes the right of a third-country national to cross the border conditional on the possession of the required documents (IV SA/Wa 2951/16, 2017). The obligation of the carrier thus includes an examination of each of these documents in order to confirm, in particular, that the document is current or will still be valid on the date of entry into Polish territory, and that there are no visible signs of falsification or counterfeiting (IV SA/Wa 2117/17, 2017).

The above is a manifestation of an evolution of jurisprudence, as in its first judgements, the Warsaw Regional Administrative Court pointed to the carrier's mere "right to demand" under the previous Act on Foreigners of 2003 (Act on Foreigners, 2003). In its earlier case law, the WRAC held that that law contained a standard from which a carrier was able to interpret the right to demand that a passenger show a document authorising them to cross the border, and a visa prior to travel (V Sa/Wa 2920/10, 2011), while the administrative authorities applied the term "effective verification" when referring to the way in which the carriers should exercise their obligations. During the scrutiny of administrative decisions, the courts also assessed which activities may or may not be considered as effective performance of the carriers' control obligations. Eventually the WRAC concluded at a later date that the term "to ensure" as arising from the previous law implied the obligation to verify the documents in such a way as to allow the carrier to fully confirm the entitlement of the third-country national to cross the border. The court subsequently accepted the position represented by administrative authorities on how effective verification should be performed.

Generally, the judgements of the WRAC confirm the previous findings of the administrative authorities that carriers did not take sufficient measures to ensure that third-country nationals were in possession of required

documents. Consequently, a procedure whereby a bus driver merely asks passengers, without checking, whether they have the required travel documents (V Sa/Wa 2920/10, 2011), or where the passenger refuses to present a travel document to the driver (IV SA/Wa 2977/16, 2017), cannot be considered as effectively performed control obligations. Nor may the carrier rely on the subjective impression of passengers that they have documents authorising them to cross the border (IV SA/Wa 1189/16, 2017). It is the responsibility of the carrier to verify them, not the responsibility of the passengers. Furthermore, relying on a passenger's impressions is not acceptable and cannot in any way lead to binding conclusions that the third-country national is entitled to enter the territory of Poland (IV SA/Wa 1022/18, 2018). In any event, the conduct of the carrier should be characterised by a high degree of diligence. However, this degree is commensurate with the scope of the controls arising from the Act on Foreigners (IV Sa/Wa 1414/13, 2013). Therefore, in the Court's opinion, the control and check activities to be carried out by the carrier in order not to be subjected to a fine, are in fact limited to a thorough verification of whether a third-country national intending to enter the territory of Poland has valid documents as specified in the Act. A procedure whereby the carrier checks whether a passenger is in possession of a passport but no longer checks whether he or she is in possession of a valid visa, demonstrates that the carrier has failed to exercise due diligence in performing their duties, and fully justifies the imposition of a fine by the administrative authority (IV Sa/Wa 86/15, 2015). Due diligence on the part of the carrier would require them to record the absence of the required documents (Ibidem). According to the SAC, the legal instrument available to the carrier in such a situation is to refuse to conclude a contract of carriage to the border with a third-country national and to prevent them from boarding the vehicle (IV SA/Wa 2117/17, 2017). If the third-country national refuses to comply with a carrier's orders, the carrier may request the assistance of the security services, for example the police (II OSK 740/13, 2014). In any event, the very fact that a third-country national present on board the bus does not possess a required document proves the lack of the effective verification on side of the carrier (IV SA/Wa 1022/18, 2018).

Hence, the condition of being in possession of a valid document authorising the bearer to cross the border of the Republic of Poland must be met here. This condition is deemed to have been met if the third-country national possesses a physical document and is able to present it for a document check to competent Border Guard authorities. The term "possession" means that the third-country national disposes of the document in a way that they are able to present it to the carrier, the carrier

is able to ensure that the third-country national possesses the required document, and then the Border Guard officer is able to check and verify that document in the course of that officer's activities related to border traffic control. This is why an administrative decision granting a temporary residence permit does not in itself entitle a third-country national to enter the territory of Poland; they must have on their person, and be able to present, a residence card issued on the basis of such a decision (IV SA/Wa 2561/18, 2019). The term "required visa" means a valid visa, i.e., a visa authorising a third-country national to enter and stay in the territory of Poland. Consequently, the mere fact of having 'a' visa is not sufficient (IV Sa/Wa 554/14, 2014). A visa, the validity of which beginning after the date of arrival at the border, does not meet this requirement (IV SA/Wa 2792/18, 2019). An act which allows the carrier to determine the period of validity of a visa and whether it entitles the third-country national to enter and stay in the territory of Poland is the examination of the visa's sticker (IV Sa/Wa 86/15, 2015). In the view of the administrative authorities, it is the carrier's primary duty to check the starting and ending dates of visa validity and to compare them with the date of the planned border crossing, as well as to check the type of the visa. Such conduct constitutes a high measure of diligence (IV SA/Wa 2951/16, 2017). The Court, while reviewing administrative decisions, has repeatedly concluded that verifying the right to enter the territory of Poland does not require special skills and is relatively simple (IV SA/Wa 1022/18, 2018), yet it is not performed correctly (IV Sa/Wa 135/14, 2014). A carrier cannot justify their non-compliance with the Act on Foreigners by claiming that the departure took place late in the evening and there were more than a dozen passengers getting on the bus (IV SA/Wa 2951/16, 2017) or that during the verification of documents there was an atmosphere of nervousness and haste (IV SA/Wa 1189/16, 2017). Such circumstances, according to the Court, should be foreseen by a professional carrier. Moreover they do not constitute extraordinary events (Ibidem). The burden of proof of the compliance of the carrier with the Act on Foreigners provisions lies, in any event, not with the administrative authority (the Border Guard), but with the carriers (IV Sa/Wa 420/20, 2020).

The Warsaw Regional Administrative Court has repeatedly pointed out that carriers are not obliged to verify the authenticity of these documents. The Polish lawmaker has clarified in this respect the content of the carriers' control obligations and decided not to punish carriers when it is impossible for them to verify whether third-country nationals possess appropriate documents, despite exercising due diligence. This is the case where the carrier will be unable to identify, without expert knowledge or

appropriate equipment, a forged or falsified document which may be presented to them by a third-country national so that said documents can be checked (Rogala, 2020). However, the SAC requires that the carrier check whether the document shows any visible signs of alteration or forgery or not (II OSK 740/13, 2014). It is important to emphasise at the same time the fact that the WRAC has already allowed for the waiving of the imposition of the administrative fine in such a situation under the Act on Foreigners of 2003, where no such basis was provided for (IV Sa/Wa 554/14, 2014).

Consequently, the carrier's only obligation is to check whether a third-country national is in physical possession of documents which, at the moment of entry, will entitle them to cross the Polish border. Hence, the WRAC considered it unreasonable to invoke, in order to justify their conduct, the argument that the carrier has no competence or resources, like the Border Guard, to carry out document checks. Without doubt, as the Court ascertained, the Border Guard has broad competences to verify documents submitted by third-country nationals and, also, by assessing their authenticity and, inter alia, on the basis of information available in various registers, e.g., the register of foreigners whose stay on the Polish territory is undesirable and the Schengen Information System, it should however be highlighted that the scope of carriers' control activities is only one of many elements of the Border Guard's tasks (IV SA/Wa 2951/16, 2017).

At the same time, the Court points to the fact that only carriers engaged in regular passenger transport services in international road transport are within the personal scope of the notion of "road carriers". These entities are supposed to be characterised by a high level of professionalism of services, and are thus expected to meet the obligations related to the provision of such services.

The carriers should undoubtedly, therefore, have an appropriate knowledge of the catalogue of required documents. They must also be familiar with and follow Polish and international (EU) legal frameworks concerning border crossings by both their employees and by passengers using their services, as well as with the obligations imposed on the carriers in connection with conducting transport services in international road transport (V Sa/Wa 790/12, 2012). In addition, the carriers must entrust the performance of control duties to persons (staff) who know the scope of those duties and are able to perform them reliably. The Court found that this falls within the requirements of due diligence in running a business, since the carrier is aware of the rule that delivering a passenger to a border check without valid documents results in an administrative fine being

imposed on the carrier (V Sa/Wa 554/14, 2014). The risk of ignorance of the provisions in force in this respect is borne by the carrier and therefore, in order to avoid an administrative fine, the carrier should entrust the verification of documents to a person or to an external company (IV SA/Wa 1022/18, 2018) which has sufficient knowledge of the catalogue of documents entitling one to enter and stay in the territory of Poland. The WRAC has repeatedly emphasised in its jurisprudence that the risk of ignorance of these regulations is borne by carriers, and only by carriers (IV Sa/Wa 135/14, 2014).

An important issue referred to in both WRAC and SAC jurisprudence is the allegation that a decision imposing a fine is inconsistent with the objectives set by EU law. As previously emphasised, the legal act providing for the obligation to impose penalties is Article 26 of the Convention implementing the Schengen Agreement, further developed in Directive 2001/51. The imposition of administrative fines on carriers is therefore an expression of the implementation of Directive 2001/51. The directive states the objective of effectively combating illegal immigration, to be achieved through preventive measures. One such action is the imposition of fines on carriers, which are to be dissuasive, effective, and proportionate. The adoption of a penalty payment scheme within the EU aimed to ensure that carriers complied more effectively with their control obligations. An administrative fine should therefore, first of all, force the carrier to act more effectively in the future in performing their obligations (e.g., through better work organisation and/or additional training of the carrier's staff) (II OSK 2275/20, 2021) and not to constitute a sanction aimed at creating a state of discomfort for them. The aim is to prevent carriers from creating an environment conducive to illegal immigration (IV Sa/Wa 554/14, 2014). Therefore, if the financial penalty is intended to achieve a preventive objective, the migration risk (e.g., a situation where a visa was issued but the third-country national presents themselves for a border check before the visa becomes valid) related to a person who has been brought to the border without the relevant documents, as well as the possible threat related to the person concerned, remain irrelevant (IV Sa/Wa 2355/13, 2013).

The Nature of the Administrative Fine

As previously mentioned, the absence or invalidity of the documents necessary to cross the border leads to an imposition of a fine. Unless the exceptions specified in art. 462 of the Act on Foreigners apply, the financial penalty is imposed obligatorily, which is determined by the wording

of that provision: "The carrier [...] shall be obliged to pay an administrative fine". However, the administrative authority has a discretionary power to determine the amount of the fine, which also follows directly from the wording of that provision: "in an amount equivalent to EUR 3,000–5,000 for each imported person" (IV Sa/Wa 554/14, 2014). One should note, however, that the judgements of the WRAC do not practically explain how fines should be measured. The same applies to the decisions of administrative authorities referred to in the judgements. Only in one case did the WRAC express an opinion from which the conclusion may be drawn that the presentation of a visa which was not yet valid on the day of arrival at the border, justifies the imposition of the lowest estimated penalty (Ibidem). The fullest manner in which fines should be measured was expressed in 2014 by the Supreme Administrative Court in a judgement dismissing a cassation appeal. In the SAC's view, the amount of relatively marked penalties is determined by the circumstances accompanying the commission of an act prohibited under the Act on Foreigners or the harmfulness of that act. In any event, the severity of the penalty should be proportionate to the related infringement (II OSK 885/13, 2014). In Poland, it is a fact, however, that at that time the administrative authorities imposed the lowest possible fines. This conclusion does not, however, refer to fines imposed on air carriers. Because an air carrier may be subject to higher requirements as to professionalism when checking passengers and in view of the different scale of its turnover in relation to road transport carriers, the WRAC had no doubt about the legality of the imposition of a fine at a rate equal to its higher limit of EUR 5000 (IV SA/Wa 729/16, 2016).

In 2017, the Code of Administrative Procedure (Code of Administrative Procedure, 1960) was amended so that a new Section IVa (Art. 189a–189k) was added, regulating the proceedings in the area of administrative fines and both a definition of administrative fines and general conditions to apply administrative fines were introduced (Stankiewicz, 2021). It is important to highlight that Section IVa of the Code applies only when special provisions are silent about detailed rules on the application of administrative fines. When imposing an administrative fine, the administrative authority must take into account, inter alia, the gravity and circumstances of the violation of law. In 2019, two judgements of WRAC were delivered stating that Article 462 of the Act on Foreigners contains only the prerequisites for the imposition of a fine, its minimum and maximum amount, or rules on the enforcement of its payment, there is therefore no doubt that administrative fines have not been fully regulated in the Act on Foreigners. The Act lacks a regula-

tion concerning, among other things, the measurement of the amount of the fine or the conditions for the withdrawal from imposing an administrative fine, the imposition of a fine therefore depends on an assessment by the administrative authority of whether there are any grounds for waiving such imposition. As section IVa of the Code of Administrative Procedure provides for the obligation, and not only for the possibility for the administrative authority to assess the grounds for waiving the administrative fine, where there is lack of regulation in the Act on Foreigners, the provisions of Section IVa of the Code should be applied. Therefore, not taking into account the relevant provisions of Section IVa of the Code results in the setting aside of the contested decisions by the WRAC, and in returning the case to the relevant administrative bodies/authorities (IV SA/Wa 2561/18, 2018). However, in a judgement delivered in 2020, the WRAC rejected the existence of the automatic and absolute obligation to assess the grounds for waiving the administrative fines in each case (IV SA/Wa 420/20, 2020).

Interim Protection – Staying of Execution of the Contested Decision

Pursuant to Art. 61 § 1 of the Act on Proceedings before Administrative Courts, the lodging of a complaint to the Regional Administrative Court does not stay the execution of the act or action. However, the court may, pursuant to § 3, at the request of the complainant, issue an order staying in whole or in part the execution of the act or action, if there is a danger of serious damage or near-irreversible consequences. The issuance of such an order is also provided for in a situation in which a complaint to the Regional Administrative Court has been dismissed and the complainant files a cassation appeal to the Supreme Administrative Court.

As demonstrated above, fines are imposed in the amount of between EUR 3,000 and 5,000 for each person, which, when converted into PLN, is on average between PLN 13,500 and PLN 22,500 (compared to the average gross salary – as of November 2021 – of about PLN 5900) depending on the average exchange rate in force on the issue date of the decision imposing the fine. Hence proceedings before the WRAC are very often accompanied by requests to stay the execution.

Thus, the complainant must demonstrate circumstances which give rise to a danger of serious damage or near-irreversible consequences. The statement of reasons for the request should refer to the specific circumstances demonstrating that the stay of execution of such a decision is justified.

Hence, failure to state reasons for the request to stay the execution of a decision imposing a fine, makes it impossible to assess the merits of the request (IV SA/Wa 1189/16, 2017). The Court cannot act for the complainant, as it is incumbent on the complainant to prove that the decision, if executed, is likely to expose them to harm. Thus, a Court must refuse to stay the execution of the decision on the ground that there is no statement of reasons for the request (IV Sa/Wa 1433/12, 2012), but also – even if such a statement of reasons was provided in the request (e.g., a difficult financial situation, loss of financial liquidity leading to the inability to meet current obligations) – if the complainant does not provide adequate documentation showing the financial standing of the transport company (IV SA/Wa 2951/16, 2016). The complainant should present consistent arguments, supported by facts and documents that justify the stay of execution of the decision imposing the fine (IV Sa/Wa 709/13, 2013). Moreover, the request should be thoroughly substantiated so that the circumstances invoked in it demonstrate that the complainant meets the conditions specified in Article 61(3) of the Act on proceedings before Administrative Courts (IV Sa/Wa 897/15, 2015). Otherwise, those conditions will not be substantiated and the court will conclude that the complainant has not demonstrated them. On the other hand, for example, if the complainant shows that the damage referred to in Art. 61 consists of the amount of operating costs, together with interest, of a loan taken out on account of the payment of the fine imposed, the Court will accept such an argument (II OSK 1675/14, 2014).

Conclusions

The primary aim of this study is to reconstruct the scope of the carrier's obligations and the way in which these obligations should be properly fulfilled according to Polish administrative courts. This reconstruction encounters limitations, albeit for reasons independent of the author. Until now, the courts have not had many occasions to rule on the liability of air or sea carriers. The author is aware of the extent of problems resulting from the execution of the liability of air carriers only from private conversations.

The Polish example is also specific because of the fact that none of the situations concerned persons seeking international protection being brought to the border by a professional carrier. Personal data is redacted from the rulings, but it was straightforward to deduce from the context that most of the cases concerned the crossing of the Ukrainian–Polish border by third-country nationals for economic and tourist-based reasons.

It is evident, however, that as far as road carriers are concerned, a general conclusion should be drawn that both the courts' jurisprudence, and – above all – observations made in administrative decisions and statements of administrative organs, which the courts had to consider, have contributed to a better understanding of the scope of their obligations by the carriers. This is clearly visible when comparing how these obligations were performed and fulfilled and when analysing the arguments put forward by carriers in administrative and judicial administrative proceedings shortly after the introduction of the liability of carriers to Polish legal system and how they are fulfilled now. Considerable progress has been made in this regard. In the initial period of the application of these provisions, fines were imposed on carriers mainly due to their own negligence. It is now difficult to say whether, in this early period, it would not have been advisable to increase the State's involvement in familiarising the carriers with the liability system and with the consequences of failing to comply with carrier obligations. The findings of this study suggest that such actions would have been beneficial, because it is necessary to be aware of the fact that the addressees of decisions imposing fines were often – as can also be deduced from the courts' jurisprudence – entities of low economic power and poor financial standing.

References

Baird, T. (2017) "Carrier sanctions in Europe: a comparison of trends in 10 countries", *European Journal of Migration and Law.* Vol. 19(3), pp. 307–334. DOI: http://doi.org/10.1163/15718166-12340009.

Baird, T. and Spijkerboer, T. (2019) "Carrier sanctions and the conflicting legal obligations of carriers: addressing human rights leakage", *Amsterdam Law Forum.* Vol. 11(1), pp. 4–19. DOI: http://doi.org/10.37974/ALF.325.

Bloom, T. and Risse, V. (2014) "Examining hidden coercion at state borders: why carrier sanctions cannot be justified", *Ethics & Global Politics*. Vol. 7(2), pp. 65–82. DOI: http://doi.org/10.3402/egp.v7.24736.

Centralna Baza Orzeczeń Sądów Administracyjnych. Available at: http://orzeczenia.nsa.gov.pl/cbo/query.

Cesarz, M. (2019) "Carriers' liability in the European Union in the era of migration and the refugee crisis", *Pogranicze. Polish Borderlands Studies*. Vol. 7(1), pp. 7–24. DOI: https://doi.org/10.25167/ppbs678.

Convention implementing the Schengen Agreement (2000) *Official Journal L239*, 22 September, pp. 19–62. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A42000A0922%2802%29 (Access: 7.01.2022).

'Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985' (2001) *Official Journal L187*, 10 July, pp. 45–46. Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32001L0051 (Access: 7.01.2022).

Geneva Convention relating to the status of refugees (1951) Available at: https://www.unhcr.org/1951-refugee-convention.html (Access 6.07.2020).

Moreno-Lax, V. (2012) Carrier Sanctions in Peers, S., Guild, E., Acosta Arcarazo, D., Groenendijk, K. and Moreno-Lax, V. (eds.) EU *Immigration and Asylum Law (Text and Commentary): Second Revised Edition. Volume 2: EU Immigration Law.* Leiden–Boston: Martinus Nijhoff Publishers, pp. 363–384.

Peers, S. (2006) *Carrier Sanctions in Peers*, S. and Rogers, N. (eds.) *EU Immigration and Asylum Law. Text and Commentary*. Leiden–Boston: Martinus Nijhoff Publishers, pp. 799–808

'Regulation No 2016/399 of the Parliament and of the Council of 9 March 2016 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)' (2016) *Official Journal L77*, 23 March, pp. 1–52. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399 (Access: 7.01.2022).

Rogala, R. (2020) *Artykuł 459* in Chlebny, J. (ed.) *Prawo o cudzoziemcach. Komentarz*. Warszawa: Beck, pp. 837–848.

Rogala, R. (2020) *Artykuł 462* in Chlebny, J. (ed.), *Prawo o cudzoziemcach. Komentarz*. Warszawa: Beck, pp. 851–853.

Sadowski, P. (2019) *Wspólny Europejski System Azylowy – historia, stan obecny i perspektywy rozwoju*. Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika: Toruń.

Scholten, S. (2015) *The Privatisation of Immigration Control through Carrier Sanctions. The Role of Private Transport Companies in Dutch and British Immigration Control*. Leiden, Boston: Brill/Nijhoff. DOI: https://doi.org/10.1163/9789004290747.

Stankiewicz, R. (2021) *Dział IVA* in Hauser, R. and Wierzbowski, M. (eds.), *Kodeks Postępowania Administracyjnego. Komentarz*. Warszawa: Beck. Available at: https://sip.legalis.pl/document-view.seam?documentId=mjxw62zogi3damzxguydgmjoobqxalrvha3dkobqhe4a (Access: 7.01.2022).

Treaty on the Functioning of the European Union (2012) *Official Journal C326*, 26 October, pp. 47–390. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT (Access: 7.01.2022).

'Ustawa z dnia 14 czerwca 1960 r. Kodeks Postępowania Administracyjnego' (1960) *Dziennik Ustaw*. No. 30 pos. 168, 14 June, pp. 293–307. Available at: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19600300168/U/D19600168Lj.pdf (Access: 7.01.2022).

'Ustawa z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi' (2002) *Dziennik Ustaw*, No 153 pos. 1270, 30 August, pp. 9871–9897. Available at: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20021531270/U/D20021270Lj.pdf (Access: 7.01.2022).

'Ustawa z dnia 13 czerwca 2003 r. o Cudzoziemcach' (2003) *Dziennik Ustaw*, No. 128 pos. 1175, 21 July, pp. 1–75. Available at: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281175/T/D20031175L.pdf (Access 6.01.2022).

'Ustawa z dnia 12 grudnia 2013 r. o Cudzoziemcach' ('Act of 12 December 2013 on Foreigners') (2021) *Dziennik Ustaw*, pos. 2354, 20 December, pp. 6–196. Available at: https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210002354/O/D20212354.pdf (Access 6.01.2022). (English transaction at: https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/EN%20-%20Poland%20act_on_foreigners_en_0.pdf) (Access: 7.01.2022).

Judgments of Warsaw Regional Administrative Court (WRAC)

V SA/Wa 2920/10, judgment of the WRAC of 14 June 2011. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).

V SA/Wa 1794/11, judgment of the WRAC of 20 December 2011. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).

V SA/Wa 790/12, judgment of the WRAC of 29 June 2012. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).

IV SA/Wa 1433/12, order of the WRAC of 9 August 2012. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).

IV SA/WA 1855/12, judgment of the WRAC of 21 February 2013. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).

IV SA/Wa 709/13, order of the WRAC of 7 May 2013. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).

IV SA/Wa 1414/13, judgment of the WRAC of 3 October 2013. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).

IV SA/Wa 2326/13, judgment of the WRAC of 11 December 2013. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).

IV SA/Wa 2355/13, judgment of the WRAC of 11 December 2013. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).

IV SA/Wa 135/14, judgment of the WRAC of 16 April 2014. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).
IV SA/Wa 554/14, judgment of the WRAC of 27 May 2014. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).
IV SA/Wa 86/15, judgment of the WRAC of 28 May 2015. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).
IV SA/Wa 897/15, order of the WRAC of 23 April 2015. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).
IV SA/Wa 729/16, judgment of the WRAC of 29 September 2016. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 20.02.2022).
IV SA/Wa 1189/16, judgment of the WRAC of 26 January 2017. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).
IV SA/Wa 2951/16, judgment of the WRAC of 21 April 2017. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).
IV SA/Wa 2977/16, judgment of the WRAC of 21 March 2017. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).
IV SA/Wa 2117/17, judgment of the WRAC of 19 December 2017. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).
IV SA/Wa 1022/18, judgment of the WRAC of 2 August 2018. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).
IV SA/Wa 2561/18, judgment of the WRAC of 18 February 2019. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).
IV SA/Wa 2792/18, judgment of the WRAC of 15 February 2019. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).
IV SA/Wa 420/20, judgment of the WRAC of 24 November 2020. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).

Judgments of Supreme Administrative Court (SAC)

II OSK 740/13 judgment of the SAC of 2 October 2014. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).
II OSK 885/13, judgment of the SAC of 30 October 2014. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).
II OSK 1675/14, order of the SAC of 1 July 2014. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).
II OSK 80/16, judgment of the SAC of 17 February 2017. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).
II OSK 2275/20, judgment of the SAC of 14 April 2021. Available at: http://orzeczenia.nsa.gov.pl/cbo/query (Access: 19.01.2022).

DOI: 10.33067/SE.1.2022.5

Elīna Graudiņa⋆

Bringing the Latvian Youth Back to Political Participation

Abstract

After the collapse of the Soviet Union, and in the first democratic national elections of 1993, voter turnout in Latvia was 89.9 per cent. However, by the late 90s, participation levels had significantly decreased. Scholars have pointed out that this decrease was a result of people gradually learning the limits of democratic governance while tackling the feeling of political powerlessness and decreasing trust in politicians and political institutions – all of which have had negative effects on civil society and democratic ideals. Youths in particular were affected by the sum of all this, seeing, first-hand, income inequality, economic stagnation, corruption, and personal unemployment (or that of their parents). All this, combined with a lack of democratic traditions, has resulted in scepticism and political apathy. This paper shows that, since 2009, Latvia has seen a decrease in all forms of political participation, including a share of its youths who run as MP candidates in elections. The paper aims to clarify what would help bring Latvian youths back into politics.

Keywords: Civil Society, Political Participation, Democracy, Political Activism, Youth

Introduction

Few studies have been done on the role youth-based political participation plays in the formation of an active and knowledgeable civil society and in the development of democracy in Latvia.[1] Similarly to other West-

⋆ **Elīna Graudiņa** – Rīga Stradiņš University, e-mail: Elina.Graudina@rsu.lv, ORCID ID: https://orcid.org/0000-0002-8878-9071.

[1] Studies have been carried out on the participation of minorities in democratic processes in Latvia, which dealt with individual factors regarding the involvement of minorities in political processes. A study titled "Political and Political participation of Young People in Latvia: Myplace Policy Issues of the 7th Framework Programme" focused on the participation of young people in the context of the European Union.

ern countries, Latvia has seen a gradual decline in political participation, indicated by a drop in voter turnout in all elections. Several studies on political behaviour have been carried out over the decades, with mass political participation seen as an important element in a well-functioning democracy (LeDuc, Niemi, Norris, 2009). It is just as important that Latvia has a small proportion of the people involved in political parties – only 0.7% to 1% of Latvia's population is involved in political parties, while the EU average is 4.7% (Karlsone, 2017).

Robert Dahl once stated that the purpose of democracy is to reach a compromise between the power of the majority and the power of minorities in a balance between the political equality of all adult citizens, and a desire to limit their sovereignty (Dahl, 1967). In Latvia's case, young people, as well as issues raised by them, are often relegated to the sidelines, thus creating the minority mentioned by Robert Dahl; their problems are not taken into account, thus undermining their interest and involvement in civil activities. Those who are 50+ catch the attention of political parties, because of their numbers.

In order to change the current situation, and to promote the involvement of young people, it would require both a set of knowledge and skills that would allow the individuals to play an active part in democratic processes. The aim of this paper is to clarify the reasons that would help bring youths back into politics.

Democracy and Political Participation, and the Declining Civic Engagement of Youth

Political participation is one of the key conditions for the consolidation of democracy. According to research, a strong, well-functioning democracy is based on the assumption that citizens can participate in the decision-making process in various ways and that, in practice, they will also do so, thereby reviving the republican ideal of citizens actively engaged in public policy (LeDuc, Niemi, Norris, op. cit.). In a time and age, when political participation levels dwindle, it becomes a highly contested topic, so researchers try to focus on a variety of political behaviour norms that tend to increase political participation in hopes that it will become a fix for democratic societies struggling with political participation and

There was also a study carried out as part of the Latvian State Research Program project titled "The Culture of Trust: Politically Active Youth Perception of Trust in Democracy and Civil Society in Latvia", which looked more broadly at the core of a democratic society; trust, and how it is set up and what determines it. This study also focused on youth.

democratic values. Since there is no "normative" that says what constitutes a functioning democracy, increased levels of political participation point either to satisfaction or widespread discontent with the existing political regime. Conflicting demands on the part of society are becoming increasingly common and, in the long-term, political decision-making is becoming increasingly difficult, as politicians are confronted with the overload of public demands. It influences the prestige of the policy decision-makers' profession and does not create transparency by undermining young people's desire to engage in the policy agenda process (Ibidem).

A democratic society offers various forms of political participation, ranging from simple (voter turnout in elections) to difficult (membership in political parties), as well as from the conventional (debating and communicating with political representatives), to the unconventional (protests, riots). Voter turnout is, without doubt, the simplest and most common form of political participation, because it requires the least political input in terms of knowledge, finances, and effort. Studies show that voter turnout in elections is substantially higher among the better educated, although it must be pointed out that it is the amount of education that one has that seems to count, and not how rich or poor that person is (Dalton, Klingemann, 2009). And this remains true for most other forms of political behaviour. Those who are male, older, better educated, are financially better off, and who have a broad network of social acquaintances are politically more active than the young, uneducated poor who come from marginalised groups. And yet, these groups also tend to find their forms of political behaviour when pushed to the extreme. Poorly educated groups depend more broadly on the mobilisation processes, e.g., by trade unions, demonstrations, protests or riots. All these forms of civic engagement ensure the full functioning of a democracy. The majority of people tend to involve themselves in these specific civic activities less frequently, however said activities do allow individuals to express their views in a quick and effective manner. Unfortunately, these activists tend to fall prey to opinion leaders who are borderline or outright populists. In the long term, this divergent perception from different groups of society can have a significant impact on the results of the electoral process (LeDuc, Niemi, Norris, op. cit.).

Joint political action groups promoting political participation are equally important, such as associations, interest groups, political parties, non-governmental organisations (NGOs), etc. (Hooghe, 2014), but require considerable resources in terms of knowledge, finances, and time from those involved in them (LeDuc, Niemi, Norris, op. cit.). These may also be considered one step closer to membership in political parties. Ever

since the first systematic studies of political participation, research has shown that those who join political parties, like those who participate in most types of political activities, are not a demographically representative sample of the electorate (Ibidem). For one, party members tend to be male rather than female, and in general have above average levels of education and income. They also tend to be older than the population average (Dalton, Klingemann, op. cit.). The available research on political socialisation strongly suggests that experiences during childhood, youth, and adolescence – whether in the family, at school, or within peer groups – shape enduring patterns of social and political attitudes (Ibidem). Therefore, an individual's political behaviour is expected to be relatively stable throughout their lifetime (Ibidem). Studies carried out in Western democracies have even shown that these attitudes and behaviours can persist from one generation to the next insofar as youths acquire a party identification from their parents (Butler, Stokes, 1970). Theories of path dependence postulate that attitudes and behaviour persist because the costs in time, money, or emotions are greater than the immediately perceived benefits of changing one's behaviour and beliefs (Sewell, 1996). The stability of individual behaviour can also characterise political institutions. David Easton's (1965) seminal study postulated a regime in a steady state equilibrium due to a feedback process relating the input of citizens, the output of governors, and the response that citizens made to governmental output. In this way, democracies are expected to be "stable" or "consolidated" (Dalton, Klingemann, op. cit.). In post-communist countries there was none of that.[2]

The decline of youth-based participation in political processes is a malady that has affected most Western societies, as democracy is being taken for granted. For several decades now, there have been studies that have shown that people are becoming less and less involved in political processes, and youths in general are no exception to this (Rahn, Transue, 1998). At the same time, however, not all is doom and gloom. We have to remember that youths have never shown a particular interest in politics, and this age shows no particular difference. The latest research from this

[2] In post-communist countries, youths were not taught democratic values and practices, nor did they inherit party identification from their parents or grandparents, since after the collapse of the Soviet Union, new countries were formed with a different political regime and very unstable political party systems. Education and income were equally poor across the society, and there can hardly be any talk of class, racial or neighbourhood differences, as essentially everyone rose from the post-communist world on an equally poor footing in a homogeneous society. It has taken 30 years for education differences and class differences to start to emerge, but even now the differences are minute.

region (e.g., Allaste, Saari study of Estonian and Finnish youths in 2020) shows that today's young people are engaging in politicised activities and are more attuned to the concerns of their own generation, as opposed to issues more relevant to their parents. Youth-based political activism takes a less overt and more individualised approach, and young people today are enthusiastic about online participation and engaging in it in different ways (Allaste, Saari, 2019). That said, we should not dismiss the age-old qualities that increase political participation and stimulate political interest in youths. In order to change the current situation with the decline in the participation of young people, education should still be the first and most important factor that will affect the political participation of the whole of society. Communities of highly educated individuals tend to be more civic and political rectification among young people progresses more smoothly there (Blais, 2006; Tenn, 2007). Cognitive complexity, directly linked to high levels of education, means that highly educated citizens are clearly more inclined to the importance of the elections, seeing political regimes and the functioning of society in their entirety rather than divided (Blais, op. cit.).

Political Behaviour of Youths in Latvia

Political participation includes all forms of behaviour by which citizens wish to influence the setting of the political agenda and the decision-making process. It is voluntary, and covers wide-ranging activities. The lack of willingness of young people to engage in political-agenda setting is of great concern. Following the restoration of independence of the Republic of Latvia, 89.9% of voters participated in the first Saeima elections held in 1993 (Cvk.lv., 1993). However, this level of civic activity has gradually decreased. In 2018, in the 13th Saeima elections only 54.6% of the voting population participated (Ibidem). A study conducted in 2013 showed that only 2% of young people in Latvia are involved in youth organisations of political parties, and regularly involve themselves in political discussions (Daugulis et al., 2019).[3]

[3] Latvia has the lowest number of young people who engage in public activities among the Baltic States. According to Eurobarometer, in 2017 only 16% of young people participate in NGO activities, and just 4% were involved in political parties. In a study conducted by the OECD and PISA in 2018, Latvian youths show the lowest levels of civic competence among the democratic countries of the Baltic Sea region, as well as the third lowest level of competence among European countries. A survey from the Ministry of Education and Science entitled "Survey of young people in Latvia 2020", which highlights the views of political participation, the opportunities of the European Union, etc., shows that only 8% of young people highly assess their

The decline in voter turnout cannot be directly linked to the apolitical attitudes of young people, nor to the reluctance to participate in the political agenda. It is rather a result of multi-faceted factors, of which civic education is one aspect. The subject "Politics and Law" was introduced in secondary schools with the aim of promoting young people's awareness of politics and promoting political participation (Likumi.lv, 2013). But the subject is an elective course that pupils can choose from a list of other subjects that focus on social sciences, including philosophy, economics, geography, etc. Moreover, even if a pupil chooses "Politics and Law", the class is limited to one 40-minute class per week, in which the teacher must achieve the aim of the class, which is: "promoting the analytical skills of pupils regarding the society, state and socioeconomic and political processes" (Ibidem). In reality, schools often do not have the necessary capacity, and offer only specific lessons. Consequently, the number of pupils who will learn these nationally important issues is reduced dramatically. The lack of compliance with the "Sustainable Development Strategy of Latvia for 2030" shows that it should be mandatory to raise citizens' awareness of social and state processes in the field of social sciences (sociology, politics, anthropology and economics) (Pkc.gov.lv, 2021). This begs the question of what the problem is in achieving these objectives if the country's long-term strategy includes certain basic criteria, and why educational institutions do not indicate in the specific field that the stated education standard objective cannot be achieved as laid down by law.[4]

The share of young people against the general population in Latvia also decreases, having fallen from 16.6% in 2011 to 12.2% in 2020 (Ibidem). This data may appear to be of minor importance, but youth-based agenda issues are not included in political party platforms, because youths constitute a small portion of the society. Political parties have no incentive to do that because these issues are unimportant and will not secure enough votes in elections. Politicians are not interested in youths precisely because of their political passivity (Daugulis et al., 2019). Only

ability to influence the decision-making process at municipal level, with this indicator going up to 5% at the national level. Moreover, it should be noted that only 19% of Latvian pupils show civil competence according to the survey conducted by ICCS in 2016. According to Ireta Čakse, a researcher at the University of Latvia, the low level of civil society competence reflects how society understands democratic processes in general. The fact that less than only one fifth of Latvia's young people are politically and civically competent in will not enable the country to fully develop and realise all the opportunities for economic development and growth provided by a democratic government the long term.

[4] Cabinet Order No 256 on the "Implementation Plan for the Youth Policy 2016–2020".

19% of youths show civic competences – the number of young people entering the parliament decreased by 3.4% between 2010 and 2018, and in the European Parliament elections, the number of members of the youth category fell by 14.0%.[5] The sharp drop in youth candidates raises some concern about the interests, desire, and need for young people to engage in civic activities. An analysis of the ICCS survey results show that young people's understanding of democracy and its importance is low, which, in the modern era of information, is considered to be a necessity for them to be able to analyse and participate in political processes (Čakse, 2018). The popularity of collective petitions has increased, and this particular form of political participation is open to people as young as 16. The public initiative platform "Manabalss.lv" (MyVoice.lv) has had 1,759,019 votes cast on the platform since 2011 (Manabalss.lv., 2021).

Political agenda in Latvia focuses on the increase of political participation and development of civil society. This issue is addressed not only by those directly responsible, but also by NGOs, experts, the academia, and even various research projects funded by the EU. The problem identified by all concerned is a lack of continuity and feedback. Even though politicians in most cases manage to adopt various laws and regulations to achieve set objectives, in many cases they are not carried through, or they do not make sure that the objectives can be reached based on the available resources, both monetary and human. An analysis of party platforms form 2010 until 2020 show that parties have little interest in the topic. An analysis of four political parties that were represented in all four Saeimas that were elected from 2010 until 2020 (National Alliance, Union of Greens and Farmers, Unity/New Unity, Harmony) shows that all of these political parties provided only general information in their pre-election campaigns regarding education and the promotion of political participation

[5] Since the parliamentary 10th Saeima elections in 2010, which saw 21.3% of young people as party members, and 16.3% choosing to run for office, this number has gradually continued to decrease. In the parliamentary elections of 2011, the total number of young people in parties was 20.9%, however 18.0% ran for office. In the parliamentary elections of 2014, the number of young people in the parties decreased to 19.9%, of which 16.2% ran for office, and in the Saeima elections of 2018, the number of young people in parties fell to 16.7% and parliamentary candidates represented only 12.9% of young people in the elections. The situation was similar with the European Parliament elections, where the total number of young people in political parties in the 2009 elections was 21.6%, while the number of candidates in the youth category was as high as 24.2%. In the 2014 elections, the total number of young people in political parties was 19.9%, while the number of candidates decreased to 11.8%. Finally in the 2019 elections, the total number of young people in the political parties showed a total of 16.7%, while only 10.2% of young people ran in the elections.

– none of them provided a specific solution that could be reached within a certain time frame. This, in turn, was reflected in the agenda set by the Saeima - any debates on education and the promotion of political participation among young people were extremely rare.[6] It is hardly surprising that party platforms show no interest in the promotion of civic education among the young; few parties mention it, with even fewer support it with funding. In order to achieve the objective of increasing the participation of young people in civic life and politics, the responsible authorities should reach the agenda of political parties with an actual desire to implement these ideas to affect the policy of civil society in the long run.

Methods

In order to determine the political behaviour of youths, and what should be done to bring youths back into politics by increasing their participation, two methods were used – a quantitative online survey, and focus groups.

Young people covering the age group 18–30 were surveyed. The survey questionnaire was completed between 25th October and 7th November, 2021 by 200 respondents. The questionnaire had a non-probable sample due to geographical and epidemiological constraints because of the Covid-19 pandemic. These factors limited the sample of the study, so even though the results cannot be applied to the entire youth population, they show possible trends of political behaviour.

Respondents gave answers to 14 questions, 10 of which were closed questions, and four were open-ended questions. The survey focused on the political activities of youths, their interest in political and socioeconomic issues, as well as their trust levels in public institutions, relatives, and various famous people in Latvia. 55.8% of the surveyed were women, 40.2% were male, with 4.0% choosing not to disclose their gender. 18.7% had completed higher education, 11.6% had not completed their studies at university, 20.2% had finished high school or a vocational school, 45.5% had finished primary school and 3.5% of the respondents chose not to disclose their level of completed education.

Focus groups were held in a suburban school of Riga (High School No 41) on 20 September 2021, organising 12 focus groups. The average number of focus group participants in each group was 6–9, and they were

[6] Even though Saeima debates on education policy in Latvia have been held regularly, in 2010 none of the debates focused on education policy. In 2011, 2014, and 2016 there was only one debate, in 2012, 2013, and 2017 there were three, in 2015 none, and two in 2018.

aged 17–19 (grades 10–12). There were four groups of 10th grade students – they had not previously had the subject of "Politics and Law." 11th grade had studied the subject for one year; 12th grade pupils had studied the subject for two years. The length of each focus group session was 40 minutes, during which six questions were asked referring to internal Latvian politics, two questions referred to international news, one question determined their media consumption habits and one question was asked specifically to determine what in their opinion would help them get more involved in civic life, and increase their political participation levels.

Results

The next Saeima elections in Latvia will be held in October 2022. The results show that 50.5% of surveyed young people would choose to participate in the elections of the 14th Saeima in 2022, 41.5% would choose not to participate, with 8% not being able give a definite answer. According to the surveyed youths, fewer would participate in the 14th Saeima elections than actually participated in the 13th Saeima elections in 2018, when 54.6% participated. The political participation of young people is influenced by a number of factors, with the level of education being raised as one of the key factors. Chart No 1 summarises the results of the potential participation of young people in 14th Saeima elections with their level of education.

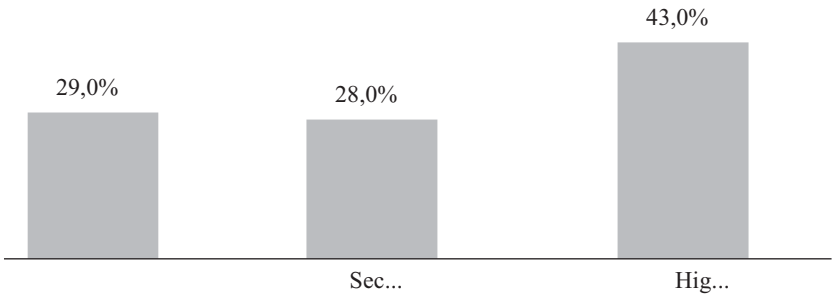


Chart 1: Planned participation of youths in the 14th Saeima elections and their level of education, 2021

Source: made by author according to the gathered data of a questionnaire that was completed between 25 October and 7 November 2021.

This shows how important education is – the higher the education, the higher the willingness to participate in elections; there is no real difference between those who have completed primary and secondary education. This suggests that there is no substantial change in the politi-

cal participation rates of young people following the acquisition of a basic education at secondary school and elective class "Politics and Law" (Visc.gov.lv, 2013). Mastering this subject ensures that knowledge acquired at the level of primary education is strengthened and that there is no gap of three years between theoretical knowledge in grade 9 and their first participation in one of the elections at the age of 18.

Young people were asked how often they discussed politics in their families. The results reveal that some young people discussed politics with family members on a regular basis; 44.0% of respondents said they discussed politics at least once a week, while a total of 67.5% do so at least a few times a month. At the same time, 24.5% of young people surveyed said they discussed political processes less than once a month, or never (see Chart 2).[7]

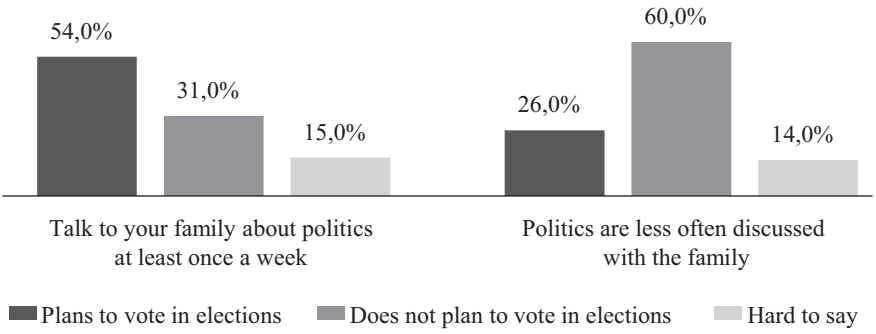


Chart 2: Planned participation of youths in the 14th Saeima elections and their discussions about politics with family members, 2021

Source: made by the author according to gathered data of a questionnaire that was completed between 25 October and 7 November 2021.

Media literacy is important for young people, given that information on political processes is mainly obtained via internet news portals (78.5%), social media (71.5%) and during conversations with relatives (56.0%).

[7] The results show that family plays an important role; young people who talk about politics at least once a week with their family members show higher potential participation in the 14th Saeima elections. Regardless of the content discussed, regular inclusion of political processes in discussions with relatives improves the prospects for the political participation of young people. The survey shows that 50.0% of young people watch or listen to the news at least once a week, 29.5% do this less frequently than once a week, 13.5% do not watch or listen to the news at all, with 7.5% not being able to give a specific answer. It appears that the proportion of young people who follow the news regularly (at least once a week) is almost the same as the percentage of young people who would participate in the 14th Saeima elections.

There is no "professional journalism filter" on the internet, particularly on social media, which provides information in an objective manner and covers all stakeholders, and therefore the skills of young people to distinguish between reliable sources of information and manipulative content are very important. Results of this study show a link between the potential participation of young people in elections and how often the family talks about policies.

The internet has contributed to the emergence of new forms of political participation, such as establishing contact with politicians via social media, the signing of initiatives, mobilising people for protests and expressing opinion, both publicly and in different groups. In Latvia, young people generally made very few attempts to establish communication with politicians – in the last year, 3.0% of respondents said they had attempted to contact a Saeima member on social media, while 4.5% had tried to contact a local government member. Over the past year, 38.0% of young people surveyed said they had signed up for some initiatives on manabalss.lv.

Since 1996, the highest figures for public trust in parliament and government were during the 8th Saeima in 2002, when the Cabinet was trusted by 51.4% of people and the parliament by 47.9% of Latvia's residents (Eglītis, 2021). Trust levels since then have fallen sharply – in early 2009, only 7.3% trusted the Cabinet, while 4.5% trusted the Saeima. After 2009, the situation improved slightly and in the spring of 2021, the Cabinet was trusted by 23.0%, and the Saeima by 21.0%. Trust indicators are summarised in Table 1.

Trust levels remain low for political parties – only 26.5% of the young people surveyed trusted political parties, but this is by 8.5 percentage points higher than the total population of Latvia. The relatively low level of young people's trust in political parties can be linked to family and media attitudes, since a large percentage of young people have not had direct links with political parties. This is confirmed by the results of various forms of political participation – only 2.0% said they were currently a member of a political organisation, 2.5% said they had donated money to a political organisation over the last year, 3.0% said they had tried to contact a Saeima member, while 4.5% had tried to contact a local government member. It should also be noted that young people trust the European Union (68.0%) more often. This means that young people have developed their attitudes towards political parties at least partly on the basis of discussions with their relatives and information available in the media.

Table 1: Youth levels of trust in public institutions and others, 2021

	Trust completely	Rather trust	Rather distrust	Distrust completely	Hard to say
Government (Cabinet of Ministers)	7.5%	35.0%	24.0%	17.0%	16.0%
Saeima	4.0%	33.0%	32.5%	14.5%	16.0%
President	5.5%	37.5%	23.5%	13.5%	20.0%
Political parties	2.0%	24.5%	38.5%	16.0%	18.5%
Judicial system	10.0%	46.5%	20.0%	8.5%	14.5%
European Union	17.5%	50.5%	11.5%	5.5%	14.0%
Teachers	14.5%	64%	11.5%	2.5%	6.5%
Relatives	49.0%	39.5%	2.0%	2.5%	6.0%
Mairis Briedis (boxer)	14.0%	15.5%	19.0%	22.0%	27.0%
Maija Armaņeva (influencer)	2.5%	8.0%	23.5%	31.0%	33.5%
Paula Freimane (influencer)	3.0%	12.0%	25.0%	27.5%	31.0%
Renārs Zeltiņš (influencer)	7.5%	15.0%	23.5%	22.0%	30.5%

Source: made by the author according to gathered data of a questionnaire that was completed between 25 October and 7 November 2021.

Young people are more likely to trust the Latvian boxer Mairis Briedis (14.0%) than the government (7.5%), the Saeima (4.0%), the President of Latvia (5.5%), political parties (2.0%), and the judicial system (10.0%).[8] They said they trusted the boxer almost as often as their educators (14.5%), but they did not show the same levels of trust in other famous people and influencers. A significant proportion of young people in a number of cases could not give a specific response to trust in national regulatory bodies or famous individuals.

The qualitative study in the focus group discussions strived to gain a deeper understanding on some of the issues covered in the survey. In response to the first group of questions regarding internal policy issues, pupils showed a reasonably good understanding of basic facts about in-

[8] Regarding confidence in the judicial system in Latvia, 56.5% of the young respondents said they tended to trust it, while at national level this rate is significantly lower standing at 39%. The lack of trust in political parties could be one of the explanations why only 2.0% of the young people surveyed are involved in political organisations or are members of party youth organisations.

ternal politics, i.e., how the parliament and the executive branch work.[9] Surprisingly, pupils showed an even better understanding about some foreign policy issues, most notably the European Union and the European Parliament.[10]

When discussing the importance of media in their lives, 10th grade pupils admitted that they had little interest in political news. They showed no interest in following politicians on social media, nor did they share or comment on the content online. All groups expressed their concerns about the objectivity of media and information that social media "imposes on users". Most had little interest in consuming political news on a daily basis, saying that they used news portals only to acquire information when necessary. Some pupils even said they were following foreign politicians on social media, but not Latvian ones. Contrary to 10th graders and 11th graders, 12th grade pupils said they discussed topics of interest with their friends rather than their family members.

In response to the question of what could improve their civic interests and political participation, the pupils revealed that the lack of informa-

[9] 10th grade pupils were able to define that the Saeima of the Republic of Latvia is the parliament that passes laws and consists of 100 members that are elected in open and fair elections; they were also able to determine that their actions are regulated by the Constitution, and the Saeima Order Roll. They also knew that in order to be elected to the Saeima, parties need to overcome the 5% threshold in the elections. 11th graders were more expressive in their views. Even though they knew many of the facts, they also expressed the opinion that the Saeima consists of "fools and money-grabbers". 12th graders demonstrated in general a much deeper understanding about how the Saeima works, knew in more detail the operations of coalition and opposition parties, when they meet, how sessions are organised and how laws are passed. They were aware of the fact that there are independent MPs. In response to a question about the Cabinet of Ministers, 10th grade pupils also showed general knowledge about its authority that it is the highest executive body, and that it is responsible for the government's policies. 11th graders said that the Cabinet of Ministers was the same as the Saeima's "crusaders", but were "slightly different fools working there". They were able to identify the Prime Minister and many of the ministers by name.

[10] When asked questions about the European Union, 10th grade pupils also showed extensive knowledge about EU history – in that it was initially created after World War II; that it consists of 27 Member States, and that now it attempts to set common development objectives, with human rights being mentioned as a key criterion. Pupils stressed that the European Union gave young people a wide array of opportunities, such as the freedom to travel, to use a single currency etc. 11th graders knew many facts about the EU in greater detail than the 10th graders, e.g., they knew more about commissioners, the European Parliament, the Council of Europe and the European Commission. In addition to what the 11th graders knew about the EU, 12th graders also could discuss EU issues in more detail, and knew the eight Latvian MEPs.

tion on the opportunities young people have to become more active is the most important aspect. They stressed the importance of civic education as it helps form "citizens", and that access to information on the opportunities young people have would certainly lead to more civic activities on their part. 10th graders stressed that they lacked an understanding on how political decisions are made, saying that they would be willing to engage in politics if their rights were reduced in some way, e.g., something was "banned", or access to information was reduced. They also proposed that a nationally designed phone application with information on laws, decisions, potential events, and statistics where information can be compared would help them understand politics.

11th grader political activity is shown in their regular use of Manabalss.lv. They said they would be more interested in politics if it affected their personal lives or focused on issues that are important to them. They stressed that they would be politically more active if a "secure atmosphere" was created by adults, and they were more forthcoming in explaining political issues. 12th graders were more assertive in their attitudes about political participation, saying they would definitely continue to follow political issues and participate in the elections. Some pupils stressed that they were politically passive because they did not want to face criticism from friends and family. Just as the 10th graders, they said they would become more politically savvy if democratic values were threatened and there were dangers of totalitarianism taking over.

Conclusions

The question as to what would help bring youths back into politics remains elusive, because there is a difference between what the young people feel would help them become politically more active, and what would really make them politically active as citizens. The study showed that the role of the family remains important in the process of shaping young people's beliefs. The unwillingness to be politicly active expressed by some young people is largely related to the political apathy of their family, where there is a clear sign of isolation and unwillingness to engage in civic activities. On a positive note, youth confidence in government institutions and political parties is generally higher than that of Latvian residents, although it could be explained by the fact that they have little first-hand experience with them.

The study showed that a large proportion of mass media consumption is obtained through social media, followed by news portals, family and

friends' views. The biggest worry is that young people can potentially get into a "bubble" of certain information flows, which will not allow a wider flow of information in the long term and will polarise their views. For this reason, civic education remains extremely important – the study showed that youths had satisfactory levels of knowledge about public administration, internal policy issues, the role of state institutions, and foreign policy. But they had more interest in foreign policy combined with international institutions. The European Union in particular had significantly higher levels of credibility among young people than national policies, which according to the focus groups had to do with better availability of information. It is remarkable that young people show an interest in politics following foreign politicians, at European and global levels, but such practices do not apply to Latvia's internal policies. The young people mention the lack of information as a reason for their lack of engagement in local activities, saying that if information was widely available, interpretative, statistically justified, and which allowed them to form an understanding of the nature of decisions and laws, they would participate more. Whether that would really help bring Latvian youths back into politics remains to be seen.

Acknowledgements

This article was written within the framework of the Latvian State Research project "Vērtības darbībā: atbildīgas, drošas un izglītotas pilsoniskās sabiedrības attīstība ar pētniecību un rīcības modeļu izstrādes palīdzību" *(Values in Action: the promotion of responsible, secure, and educated civil society in Latvia through research and model development)* project no. VPP-IZM-2018/1-0013.

References

Allaste, A. and Saari, K. (2019) "Social Media and Participation in Different Socio-political Contexts: Cases of Estonia and Finland", *YOUNG*. No. 28(2), DOI: https://doi.org/10.1177/1103308819828879.

Cvk.lv. (1993) *5. Saeimas vēlēšanas Centrālā vēlēšanu komisija*. Available at: https://www.cvk.lv/lv/velesanas/saeimas-velesanas/5-saeimas-velesanas (Access 10.10.2021).

Čakse, I. (2018) *Pilsoniski izglītoti iedzīvotāji ir valsts drošības jautājums – LV portāls*. Available at: https://lvportals.lv/viedokli/297506-pilsoniski-izglitoti-iedzivotaji-ir-valsts-drosibas-jautajums-2018 (Access 07.07.2021).

Dahl, R. (1967) *A preface to democratic theory Robert A. Dahl*. 50th ed. Chicago: University of Chicago Press.

Dalton, Russell J. and Klingemann, H.D. (2009) *The Oxford handbook of political behavior*. Oxford: Oxford University Press.

Daugulis, M., et al. (2022) *The culture of trust: perception of democracy, Europeaness and civil society in politically active youth in Latvia* in *The 26th Nordic Intercultural Communication (NIC) Conference*.

Eglītis, J. (2021) *Pētījums: 13. Saeimai iedzīvotāji uzticas ievērojami vairāk nekā Zatlera atlaistajai*. Available at: https://zinas.tv3.lv/latvija/politika/petijums-13-saeimai-iedzivotaji-uzticas-ieverojami-vairak-neka-zatlera-atlaistajai/ (Access 16.08.2021).

Ījabs, I. (2021) *Politiskā līdzdalība, vēlēšanu sistēma Latvijā*. Enciklopedija.lv. Available at: https://enciklopedija.lv/skirklis/25486-politisk%C4%81-l%C4%ABdzdal%C4%ABba,-v%C4%93l%C4%93%C5%A1anu-sist%C4%93ma-Latvij%C4%81 (Access 22.09.2021).

Karlsone, L. (2017) *Latvijā vismazāk iedzīvotāju Eiropā iesaistās politiskajās partijās*. Available at: https://www.lsm.lv/raksts/zinas/latvija/latvija-vismazak-iedzivotaju-eiropa-iesaistas-politiskajas-partijas.a246474/ (Access 23.08.2021).

Korpuss.lv. (2021) *Saeima AiLab*. Available at: http://www.korpuss.lv/id/Saeima (Access 14.11.2021).

LeDuc, L.N., Richard, G. and Norris, P. (2009) *Comparing Democracies*. 4th ed. London: Sage Publications.

LIKUMI.LV. (1998) *Izglītības likums*. Available at: https://likumi.lv/doc.php?id=50759 (Access 02.09.2021).

LIKUMI.LV. (2013) *Noteikumi par valsts vispārējās vidējās izglītības standartu un vispārējās vidējās izglītības programmu paraugiem*. Available at: https://likumi.lv/ta/id/309597 (Access 04.11.2021).

LIKUMI.LV. (2016) *Par Jaunatnes politikas īstenošanas plānu 2016.–2020. gadam*. Available at: https://likumi.lv/ta/id/281546-par-jaunatnes-politikas-istenosanas-planu-2016-2020-gadam (Access 12.10.2021).

Izm.gov.lv. (2020) Available at: https://www.izm.gov.lv/lv/media/6292/download (Access 14.08.2021).

Izm.gov.lv. (2021) Available at: https://www.izm.gov.lv/lv/media/12039/download (Access 15.10.2021).

Lvportals.lv. (2019) *Augsta līmeņa ekspertu konferencē spriedīs par politisko kultūru Latvijā un valsts ilgtspēju – LV portāls*. Available at: https://lvportals.lv/dienaskartiba/311307-augsta-limena-ekspertu-konference-spriedis-par-politisko-kulturu-latvija-un-valsts-ilgtspeju-2019 (Access 16.10.2021).

Lvportals.lv. (2020) Available at: https://lvportals.lv/wwwraksti/TEMAS/FAILI/EIROBAROMETRS_SAB_DOMA_ZIEMA_2020_2021_NACIONALAIS_ZINOJUMS_LATVIJA.PDF (Access 16.11.2021).

Manabalss.lv. (2021) *ManaBalss.lv – līdzdalības platforma*. Available at: https://manabalss.lv/pages/paveiktais (Access 01.08.2021).

Pkc.gov.lv. (2021) Available at: https://pkc.gov.lv/sites/default/files/inline-files/Latvija_2030_6.pdf (Access 24.10.2021).

Rahn, W. and Transue, J. (1998) "Social Trust and Value Change: The Decline of Social Capital in American Youth, 1976–1995", *Political Psychology*. No. 19(3). DOI: https://doi.org/10.1111/0162-895X.00117

Rīga, D., et al. (2021) *05.11.2021 Notikumu kalendārs Lursoft*. Available at: https://www.lursoft.lv/kalendars/2021/11/05 (Access 14.09.2021).

Visc.gov.lv. (2013) *Standarti un vadlīnijas*. Available at: https://www.visc.gov.lv/lv/standarti-un-vadlinijas (Access 30.09.2021).

DOI: 10.33067/SE.1.2022.6

Przemysław Dubel⋆

The Hurdles to Obtaining European Funds by Polish Beneficiaries – Quantitative Research

Abstract

The main objective for writing this article is to present the barriers to accessing EU funds at the stage of preparing an application for funding, as well as the barriers to executing project activities. The research objective, question, and problem as well as the statistical description of the research group and the measurement instruments have been highlighted in the article. The author attempts to answer the following questions: what are the main barriers/hurdles encountered by Polish beneficiaries of EU funds allocated under national and regional operational programmes; which of the identified barriers to accessing EU funds is perceived as the most hindering in the process of executing EU projects; and how is the impact of EU funds on regional development assessed from the perspective of those people executing projects and taking part in projects financed with EU funds?

The following barriers can be enumerated as the most significant: the withholding of subsequent funding tranches while maintaining the obligation to pursue project execution, the highly bureaucratic application process for a subsidy, the bureaucratic system of post-project accounting, and the long deadlines for transferring subsequent tranches of funding. An analysis of the findings confirms that the beneficiaries of EU funds primarily fear losing financial liquidity. Receiving a subsidy in the form of a refinancing of the incurred costs requires, on the one hand, efficient project management, and, on the other, a well-functioning institutional system that should support project recipients in their investment endeavours.

Keywords: European Union, European Funds, Barriers, Projects

⋆ **Przemysław Dubel** – University of Warsaw, e-mail: pdubel@wz.uw.edu.pl, ORCID ID: https://orcid.org/0000-0002-4658-6137.

Introduction

European structural funds, in conjunction with national funds, are currently one of the main financial factors supporting not only investment in the development of human capital – which directly improves citizens' standard of living – but also investment in the development of large and small infrastructure. Enhanced investment activity contributes to labour market recovery thus generating employment and wage growth, which, in due course, positively affects the volume of consumer demand. Investments implemented with the participation of EU funds also generate positive changes in the sectoral structure of the economy, which result in a surge in the dynamics of productivity growth (Bartkiewicz, Dębowski, 2010).

It is estimated (based on data from the PKO BP Economic Quarterly – 09.2020) that the executed projects contributed to an increase in the GDP level from 0.5 to about 1.0% per annum in relation to the GDP level Poland would have achieved had it not been for the investments from EU funds. It is therefore vital to effectively conduct the regional development policy with the application of structural funds to a great extent, since it enables the restructuring of rural areas, along with an improvement of the quality of infrastructure and the development of the SME sector. The problem of the absorption capacity of Polish regions with regard to the utilisation of EU funds is one of the biggest issues that always arises before the new programming period.

The actual level of fund utilisation is affected, *inter alia*, by the preparation of public institutions, especially as regards the knowledge and skills of administrative staff devising the rules and procedures for announced competitions, the efficiency of payment institutions and entities conducting supervisory activities, as well as the creativity of project recipients who are the main beneficiaries of this form of financing. Statistical data confirm that Poland is the largest net recipient of aid granted under the EU structural funds, but also records a high level of absorption under individual operational programmes (Eurostat, 2022, Fundusze, 2022) The foregoing became feasible owing to significant investor interest in this form of funding and the increased efficiency of the functioning of public institutions responsible for the distribution of structural funds.

The role that is currently attributed to this form of financing of Poland's economic development requires an apt diagnosis of the barriers/hurdles to accessing EU funds that have arisen which, on the one hand, will increase the level of absorption of the European funding, and, on the

other hand, will allow for the partial or complete elimination of impediments in the process of the application and execution of projects.

The research carried out by I. Bostan, C.M. Lazar, N. Asalos, I. Munteanu, and G.M. Horga constitutes a great example of how the accessibility level of EU funds and their impact on the economic development can be evaluated. The conducted research allows one to determine the direct relation between EU funds and the economic, social, and environmental effects and competitiveness of SMEs (Bostan et al., 2019, pp. 460–467).

Research Assumptions

An apt diagnosis of the barriers to accessing EU funds, on the one hand, enhances the capacity in the process of EU funding absorption, and on the other hand – enables the elimination or minimisation of hurdles arising in the process of the application and management of executed projects. In view of the foregoing, the author has decided to conduct a quantitative study with the application of *the Pencil and Paper Interview* (Ward, Clark, Zabriskie, 2014, pp. 84–105) so as to identify the barriers to accessing and utilising EU funds. The following factors had a direct impact on selecting the research tool: the standardisation of the place of research (Faculty of Management, University of Warsaw), and the possibility to provide explanations in the event a question is not understood.

Research Objective, Question, and Problem

In 2020, another programming period came to an end. An analysis of the implemented forms of support confirms that the European structural funds have been one of the main determinants supporting Poland's social and economic development. The **research objectives** have been presented on two levels – cognitive and practical. The **cognitive objective** is to examine the groups of the main barriers/hurdles that occur at the application and implementation stage of activities co-financed with EU funds. The **practical objective** is to identify the greatest barriers that, on the one hand, hinder the preparation and execution of projects co-financed with EU funds, and, on the other hand, directly affect the effectiveness of EU funding utilisation.

The research problem and research question have been formulated.

Research problem: *in what way do the identified barriers/hurdles affect the application process and the process of project implementation financed with EU funds?*

Research question: *what are the main barriers perceived by Polish beneficiaries of EU funds under national and regional operational programmes?*

A study of what future beneficiaries think about said barriers is significant since application activity is dependent upon the perception of difficulties. Among other things, a socially-shared belief that financial requirements constitute the greatest barrier while information factors – the least significant, has been empirically examined. Those who consider the application for EU funds to be too troublesome may, due to their beliefs, never undertake this form of funding their investment (Dubel, 2020).

Characteristics of the Respondents

The selection of people for the study was deliberate and was carried out as part of the projects implemented by the Faculty of Management of the University of Warsaw, which were co-financed by the European Social Fund. The participants were representatives from the national administration sector and employees of local government administration hired in municipal, district, and voivodeship self-government units at managerial and non-managerial positions, entrepreneurs, co-owners and owners of SMEs, as well as representatives of non-governmental organisations. The people taking part in the study can be divided into two main groups. The first are those who created their applications themselves and have experience in the preparation thereof. The second encompasses participants of various types of activities co-financed by the European Social Fund or the European Regional Development Fund.

277 people ($N = 277$) took part in the study. Men constituted 32.9% of the respondents ($N = 91$), with 67.1% of the respondents being women ($N = 186$). The majority of the respondents had a higher education of the second degree ($N = 234$), which constituted 84.5% of the respondents. 13% of the respondents were people with a higher education of the first degree ($N = 36$), while 2.5% of the respondents were people with a vocational and secondary education ($N = 7$). All the participants correctly completed the received questionnaires.

The majority of the respondents – 58.5% specifically – are employed in the public administration sector ($N = 162$), and 12.3% of the respondents work for large businesses ($N = 34$). A comparable number of respondents ($N = 36$) work in the sector of medium-sized enterprises and in the sector of micro and small enterprises ($N = 25$). There were two entrepreneurs/business owners in the group ($N = 2$), and the remaining group ($N = 18$) were employees of non-governmental organisations.

40.4% of respondents declared that they had applied for EU funds (N = 112), while the remaining respondents, i.e., 59.6%, declared that they had never applied for similar funds before (N = 165), but had, however, benefited from or utilised this form of support as project participants. In the group of people applying for EU funds, 70 people (N = 70) were administrative workers, 42 people (N = 42) were others – from outside the administration area (see Table 1).

Table 1 shows the number of applications for funding among respondents divided into type of operational programmes.

Table 1: The number of applications submitted for funding divided into type of operational programmes

Types of programmes	Number of applications submitted for funding	Percent
Human Capital Operational Programme (PO Kapitał Ludzki)	90	50.6%
Innovative Economy Operational Programme (PO Innowacyjna Gospodarka)	18	10.1%
Regional Operational Programme (Regionalny Program Operacyjny)	40	22.4%
Infrastructure and Environment Operational Programme (PO Infrastruktura i Środowisko)	11	6.2%
Development of Eastern Poland Operational Programme (PO Rozwój Polski Wschodniej)	2	1.1%
Former financial perspective 2004–2006	17	9.6%
Total	178	100.0%

Source: devised on the basis of author's own findings.

Description of Measuring Instrument

Based on an analysis of the evaluation studies devised, *inter alia*, by the Directorate General for Internal Policy of the EU (Tödtling-Schönhofer et al., 2012), Statictics Poland (Trzciński, 2018), consulting companies such as IMAPP (Ewaluacja, 2017), IBS (Antosiewicz et al., 2017), PAG Uniconsult (Zub et al., 2015) EVALU sp. z o.o. (Chojecki et al., 2017), BCC (Kwieciński, Kalamon, 2014) and reports on the second programming period 2007–2013, which were published by Managing Authorities and Intermediate Bodies (Ewaluacja, 2017), as well as the author's own observations from the perspective of over 15 years of preparing and man-

aging EU projects, a questionnaire of 25 questions has been developed to identify individual barriers. The study applied a traditional auditorium questionnaire (PAPI)[1] to identify the *barriers to accessing and utilising EU funds* (Table 2).

Table 2: Barrier categories and barriers

No.	Category/ group of barriers	Barriers
1.	Information	non-transparent website structure (e.g., no thematic archives regarding individual activities or project assessment stages) no information updates on the websites providing information that is incomplete or limited to formal documents only (e.g., a Detailed Description of Priorities document) lack of practical tools, e.g., in the form of FAQs, i.e., sets of frequently asked questions and answers lack of timely answers to inquiries lack of knowledge as regards obtaining funding and executing projects due to low quality of training organised by Managing Authorities
2.	Procedural	highly bureaucratic application process for subsidies (including excessively complex and overly detailed rules and regulations for competitions) excessively elaborate formal criteria providing relevant information as regards the competition shortly before the commencement of the process changes to the competition guidelines/criteria interpretation during the competition system instability – frequent changes to the rules of project execution insignificant credibility of means of appeal in the event of re-evaluation of an application by the same institutions

[1] PAPI's main advantages encompass: the unification of a place where the study is conducted, a high probability of filling in the questionnaire and the possibility to provide explanations by the person conducting the study in the event a question is not understood.

3.	Financial	the need to make one's own contribution withholding of subsequent funding tranches while maintaining the obligation to pursue project execution long deadlines for transferring subsequent funding tranches low flexibility of project budgets causing, *inter alia*, difficulties in adjusting the project to a current situation, which subsequently requires repeated amendments to the co-financing agreement lengthy verification period of applications for payment no information provided to beneficiaries regarding the scheduled payment date in the event payments are delayed bureaucratic system of project accounting
4.	Institutional	low service quality of applicants and beneficiaries insufficient knowledge of some public institutions' personnel to tackle assignments related to EU funding insufficient customer-orientation lack of or non-compliance with competition schedules (time-frame for announcing application intake) changes to deadlines for submitting applications scattered information regarding available funding instruments

Source: devised on the basis of the author's own findings.

The respondents' task was to provide answers to 25 statements on a four-point scale on how strong the impact of the indicated barrier is to accessing EU funds, both at the stage of submitting an application as well as project execution. The individual indexes consisted of a devised number of questions, with a fixed scale of answers from 0 to 3 points (0 – no influence; 1 – insignificant; 2 – moderate; 3 – strong).

Information Barriers

Each of the following statements (Table 3) is directly related to the decision of a future beneficiary of EU funds as regards their participation in an announced competition. Therefore, this is the stage when we assess our chances, possibilities, and threats related to the correct preparation of a grant application.

Table 3: Information barriers along with factor loading for individual determinants

No.	Barriers	Factor loading*
1.	Non-transparent website structure (e.g., no thematic archives regarding individual activities or project assessment stages)	0.341
2.	No information updates on websites	0.545
3.	Providing information that is incomplete or limited to formal documents only (e.g. Detailed Description of Priorities)	0.555
4.	Lack of practical instruments, e.g., FAQs, i.e., sets of frequently asked questions	0.469
5.	Lack of timely answers to inquiries	0.491
6.	Lack of knowledge as regards obtaining funding and executing projects due to the low quality of training organised by Managing Authorities	0.430

* Factor loading is a value of how well a question correlates with a scale; how well it fills/loads it. This is vital information since it shows that a given scale of a question is a good operationalisation of the measured feature. The value of factor loadings indicates that all questions (items) constitute a good operationalisation of the measured feature. In this case, it is the information barrier. It is assumed that below 0.3, questions are removed from the scale because they are insufficiently correlated with the measured feature.

Source: devised on the basis of the author's own findings.

In order to check how well a proposed research instrument measures, the uniformity (reliability) coefficient – *Cronbach's Alpha* (Wieczorkowska, Wierzbiński, 2011, p. 341) is applied. Reliability can be treated as a measure of the accuracy of a measurement made by a test. The higher the reliability, the greater the accuracy and the smaller the measurement error (Brzeziński, 2005, p. 458). *Cronbach's Alpha* adopts values from 0 to 1. Values above 0.7 are considered to be sufficiently reliable (see Churchill and Peter, 1984, pp. 360–375). The reliability of a coefficient composed of six items (Table 17) operationalised with the application of *Cronbach's Alpha* = 0.773 is sufficient.

Procedural Barriers

The procedural barriers have been presented in Table 4. These constitute the project recipients' most common problems as regards the application of program documentation, devised criteria, as well as the rules

and regulations of competitions related to the stage of submitting project applications and project execution.

Table 4: Procedural barriers with factor loading for individual determinants

No.	Barriers	Factor loading
1.	Highly bureaucratic application process for subsidies (including excessively complex and overly detailed rules and regulations for competitions)	0.782
2.	Excessively extensive formal criteria	0.661
3.	Providing relevant information as regards the rules of competition shortly before the commencement of the process	0.654
4.	Amendments to the competition guidelines/criteria interpretation during the competition process	0.716
5.	System instability – frequent changes to the principles of project execution	0.675
6.	Insignificant credibility of means of appeal in the event of re-evaluation of an application by the same institutions	0.536

Source: devised on the basis of the author's own findings.

An analysis of the reliability of the six items showed sufficient measurement uniformity operationalised by *Cronbach's Alpha* = 0.797. The values of factor loadings presented in Table 4 indicate that all of the barriers constitute a good operationalisation of the measured feature, in this case – the procedural barrier.

Financial Barriers

Financial barriers constitute the subsequent group of barriers (Table 5). The following statements are directly related to the possibility of co-financing project activities from the beneficiary's own funds and securing the project's financial liquidity in order to achieve the projected results. It is vital since the beneficiary guarantees that they will have the sufficient means to execute the project when signing a funding agreement.

A sufficient Alpha coefficient value of 0.775 was obtained. The values of factor loadings indicate that all of the barriers constitute a good operationalisation of the measured feature, in this case – the financial barrier.

Table 5: Financial barriers with factor loading for individual determinants

No.	Barriers	Factor loading
1.	The need to make one's own contribution	0.428
2.	Withholding of subsequent funding tranches while maintaining the obligation to pursue project execution	0.789
3.	Long deadlines for transferring subsequent funding tranches	0.705
4.	The low flexibility of project budgets causing, *inter alia*, difficulties in adjusting a project to a current situation, which subsequently requires repeated amendments the co-financing agreement	0.540
5.	Lengthy verification period of applications for payment	0.600
6.	No information provided to beneficiaries regarding the scheduled payment date in the event payments are delayed	0.545
7.	Bureaucratic system of project accounting	0.659

Source: devised on the basis of the author's own findings.

Institutional Barriers

The final group of barriers to accessing EU funds are institutional barriers (Table 6). The following statements apply to the cooperation between the EU funding beneficiary with the institutional system created for the service thereof e.g., the verification and ongoing updating of competences of persons employed by Intermediate and Implementing Bodies as well as the level of communication quality between project supervisors and the persons executing them.

Table 6: Institutional barriers with factor loading for individual determinants

No.	Barriers	Factor loading
1.	Low service quality of applicants and beneficiaries	0.503
2.	Insufficient knowledge of some public institutions' personnel to tackle assignments related to European funding	0.480
3.	Insufficient customer-orientation	0.401
4.	Lack of or non-compliance with competition schedules (time-frame for announcing application intake)	0.466
5.	Changes to deadlines for submitting applications	0.541
6.	Scattered information regarding available funding instruments	0.319

Source: devised on the basis of the author's own findings.

The reliability for this scale equals *Cronbach's Alfa* = 0.755, which means it is sufficient. As has been the case with information, financial, and procedural barriers, the obtained values of factor loadings indicate that all of the barriers constitute a good operationalisation of the measured feature.

Research Findings

According to the respondents, the greatest barrier is the *withholding of subsequent funding tranches while maintaining the obligation to pursue project execution.* This means that even though a tranche is not received on time, there is no possibility to postpone subsequent project activities. The project must be executed pursuant to the approved schedule. It is one of the most significant barriers that occur during project execution. A project recipient, on the one hand, is obligated to pursue project implementation. On the other, however, any delays may lead to a loss of financial liquidity since in such an event, the signed agreement obligates us to use our own financial means. The gravity of individual barriers as indicated by the respondents has been presented in Figure 1. Assuming that the adopted response scale range: 0 – no impact; 1– weak; 2 – moderate; 3 – strong is a continuous scale, we can compute the median for individual barriers pursuant to the number of indications and the gravity of the impact on a verified barrier.

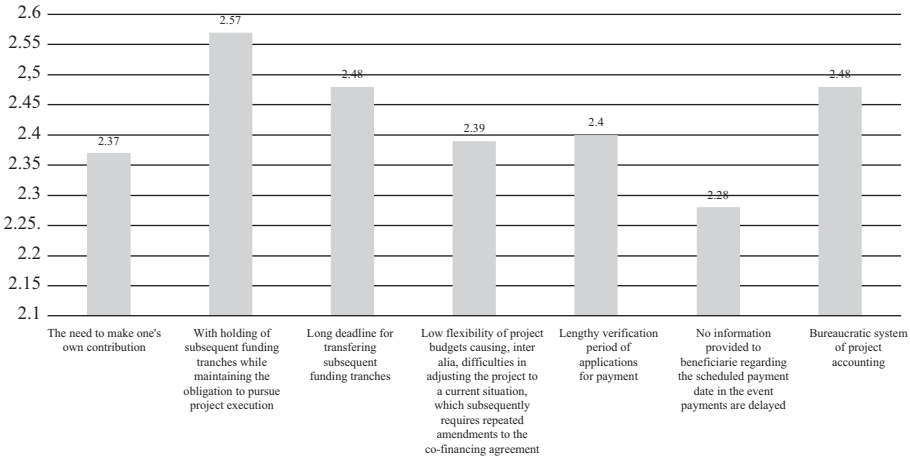


Figure 1: Median values from the financial barriers category

Source: devised on the basis of the author's own findings.

The subsequent group of barriers are procedural ones. As indicated by the respondents, the greatest barrier in this category is a *highly bureaucratic application process for subsidies (including excessively complex and overly detailed rules and regulations for competitions)*. The indicated barrier is directly related to the so-called preparation period of the project application. The time dedicated to devising a project application ranges from several to several dozen hours (depending on the size of the project), on which one cannot put an estimated price as the cost of project preparation. Therefore, the entrepreneur's own costs are generated, but more importantly – excessively complex administrative procedures force applicants to forego the application or to transfer it to consulting or advisory companies for preparation and execution, which is directly related to additional costs of project implementation (Figure 2).

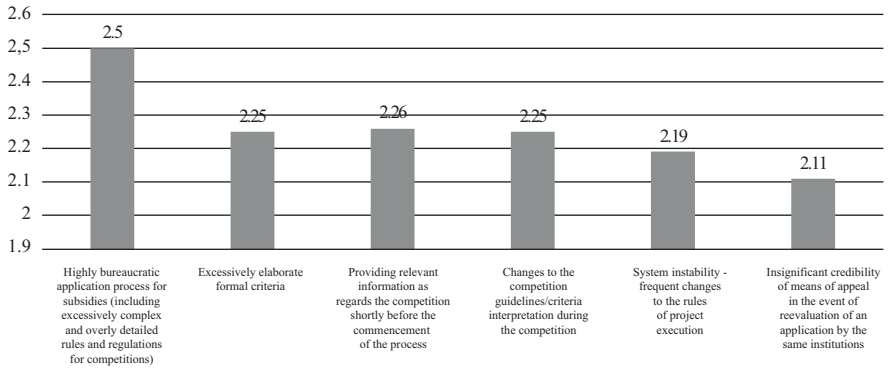


Figure 2: Median values from the procedural barriers category

Source: devised on the basis of the author's own findings.

According to the respondents, the greatest institutional barrier is the *insufficient knowledge of some public institutions personnel to tackle assignments related to EU funding*. This type of barrier occurs both at the preparatory stage of the application for funding and during the project implementation. The protracting procedures and the lack of experts at helplines of Intermediate and Implementing Bodies constitute a specific barrier in the process of project preparation, implementation and accounting for. The efficiency of the entire institutional system is one of the main determinants of not only the high level of application of EU funds, but also the minimisation of non-eligible costs, the "burden" of which is transferred to project teams. The gravity of individual barriers as indicated by the respondents has been presented in Figure 3.

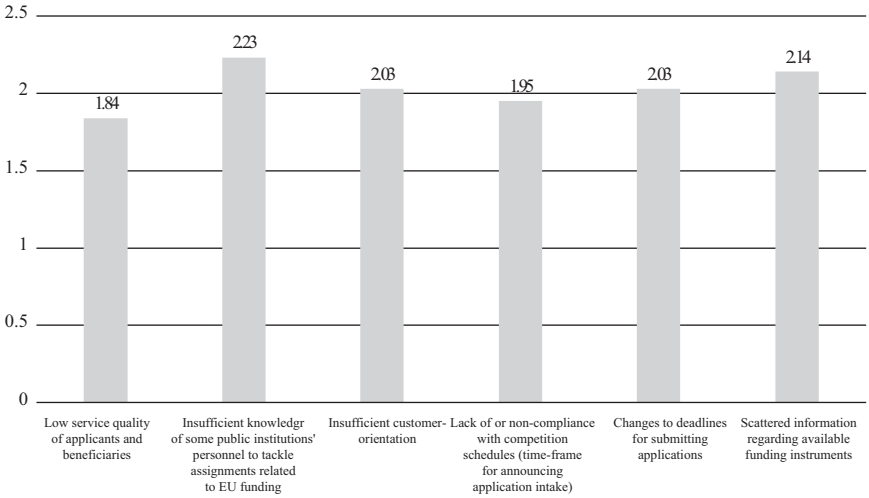


Figure 3: Median values from the institutional barriers category

Source: devised on the basis of the author's own findings.

The respondents indicated the *lack of timely answers to inquiries* as the biggest information barrier. The gravity of individual barriers as indicated by the respondents has been presented in Figure 4.

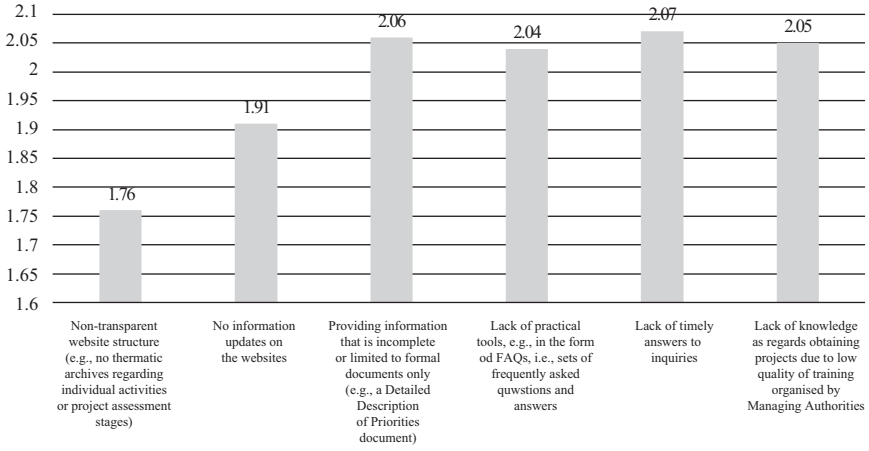


Figure 4: Median values for individual barriers from the institutional barriers category

Source: devised on the basis of the author's own findings.

The results indicate a significant information problem related not only directly to information as to *what?* and *for whom?*, but also as regards insufficient information that should be provided on an ongoing basis by the Implementing and Intermediate Bodies and project supervisors during the execution of project activities. Having up-to-date information is one of the main factors directly affecting the reduction of the scale of errors made by people executing projects.

The following have been indicated as the most significant barriers: *withholding of subsequent funding tranches while maintaining the obligation to pursue project execution and a highly bureaucratic application process for subsidies (including excessively complex* and *overly detailed rules and regulations for competitions), the bureaucratic system of project accounting* as well as *long deadlines for transferring subsequent funding tranches* (Figure 5).

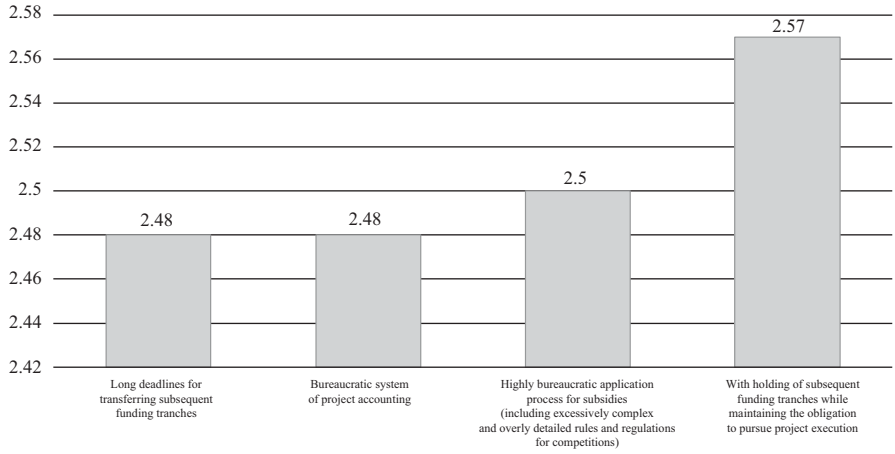


Figure 5: Median values of the greatest barriers to accessing EU funds

Source: devised on the basis of the author's own findings.

Within the group of the greatest barriers (figure 5), three are the financial barriers, and the second most hindering – *highly bureaucratic application process for subsidies* – is a procedural barrier. An analysis of the findings confirms that the beneficiaries of EU funds are primarily concerned with the loss of financial liquidity during a project's execution. Obtaining a subsidy in the form of "refinancing" of the incurred costs requires not only efficient project management, but also a well-functioning institutional system, in which ambiguously defined tasks and consequent competence confusion lead to the construction of a system that, instead of helping future beneficiaries of EU funds, often generates hurdles in each of the defined research areas.

Conclusions

Pursuant to the conducted research, one can conclude that the highlighted barriers translate into specific costs incurred by grant recipients. No report summarising the completed programming period hitherto has incorporated any attempts to calculate them, and yet they directly affect the financial condition of institutions and businesses applying for EU funds. Taking into account the presented barriers and their scale, one can inquire about their real impact on the decisions of future beneficiaries as regards entering announced competitions. A protracting waiting period for the assessment outcome of complex projects, an inadequate system of appeal (being overly lengthy and with no guarantee that the project will "return" to the ranking list), the obligation to conduct excessively extensive administrative activities, and the requirement to submit additional explanations for the frequently unprofessional substantive evaluation of the project not only increase the costs of the ongoing project assessment process, but also result, *inter alia*, in an applicant's withdrawal from the project.

Taking into account the subsequent programming periods and the scale of projects connected to the current financial perspective, the incurred financial outlays directly related to the identified barriers are far too excessive and unjustified. They most frequently stem from project beneficiaries' obligation to adapt to unreasonable financial and procedural requirements, and not from the need to improve the quality and durability of implemented activities. The highlighted research findings indicate that, despite the legal and procedural simplifications introduced following the first programming period (2004–2006), we still have to deal with a number of impediments that obscure the entire process of applying for EU funds, as well as affect the overall level of utilisation of the received funding. Exorbitant criteria that are practically impossible to meet (e.g. the criterion of project innovation at the national or world level) do not contribute to the selection of better projects for micro and small enterprises, since those businesses are unable to achieve that kind of level of innovation, and in the institutional system there are no experts who could competently assess these criteria.

One should remember that the majority of funds for social and economic development of regions are currently distributed under regional operational programmes, which means the barriers are perceived differently in various regions since it is directly related to the quality of the EU funding service system created at the level of Marshal's offices (pl. *urzędy marszałkowskie*), which should ensure unambiguous and clear procedures

as well as effective and publicly available tools, in particular – financial instruments.

The emphasised barriers directly affect the execution and selection of activities co-financed with EU funds. In view of the foregoing, the process of project management and selection becomes crucial in order to utilise the received funding as efficiently as possible. Theoretical assumptions, procedures, good project management practices, and the findings of the qualitative research have been discussed in subsequent chapter number four.

References

Antosiewicz, M. et al. (2017) *Ewaluacja ex-post wpływu funduszy unijnych w ramach perspektywy finansowej 2007–2013 na podstawowe wskaźniki innowacyjności i działalności R+R*, Warszawa: Imapp Sp. z o.o.

Bartkiewicz, P. and Dębowski, H. (2010) *Ocena wpływu polityki spójności na wzrost konkurencyjności i innowacyjności polskich przedsiębiorstw i gospodarki*. Warsaw: Instytut Badań Strukturalnych, Reytech Sp. z o.o.

Bostan, I. et al. (2019) "The Three-dimensional Impact of the Absorption Effects of European Funds on the Competitiveness of the SMEs from the Danube Delta", *Industrial Crops & Product*. Vol. 132. DOI: https://doi.org/10.1016/j.indcrop.2019.02.053.

Brzeziński, J. (2005) *Metodologia badań psychologicznych*, Warszawa: PWN.

Chojecki, J. et al. (2017) *Metaanaliza wyników badań ewaluacyjnych dotyczących oceny wsparcia z EFS – Raport cząstkowy I*. Warszawa: Ministerstwo Rozwoju.

Churchill, Jr. and Peter, J.P. (1984) "Research Design Effects on the Reliability of Rating Scales: A Meta-analysis", *Journal of Marketing Research*. Vol. 21(4). DOI: https://doi.org/10.2307/3151463.

Dubel, P. (2020) *Zarządzanie funduszami strukturalnymi Unii Europejskiej a polityka rozwoju regionalnego. Projekty i ich realizacja*. Warszawa: PWE.

Ewaluacja. Fundusze Europejskie (2017) *The impact of Cohesion policy 2007–2013 in Poland*. Available at: https://www.ewaluacja.gov.pl/strony/badania-i-analizy/wyniki-badan-ewaluacyjnych/badania-ewaluacyjne/the-impact-of-cohesion-policy-2007-2013-in-poland/ (Access 1.02.2022).

Portal Funduszy Europejskich (2022) *Analizy, Raporty, Podsumowania*. Availableat: https://www.funduszeeuropejskie.gov.pl/strony/o-funduszach/raporty (Access 1.02.2022).

Eurostat (2022) *All publication*. Available at: https://ec.europa.eu/eurostat/publications/all-publications (Access 1.02.2022).

KE (2014) *Inwestycje na rzecz wzrostu gospodarczego i zatrudnienia. Promowanie rozwoju i dobrego rządzenia w regionach UE i miastach. Szósty raport na temat spójności gospodarczej, społecznej i terytorialnej*, Dijkstra L. Bruksela: KE, Dyrekcja Generalna ds. Polityki Regionalnej i Miejskiej.

Kwieciński, J. and Kalamon, B. (2014) *Stan wykorzystania funduszy europejskich VIII raport*. Warszawa: Business Centre Club.

Trzciński, R. (2018) *Ustalenie wartości wybranych wskaźników ekonomicznych dla odbiorców pomocy, udzielanej za pośrednictwem PARP w ramach POIR i POPW, oraz dla dobranych grup kontrolnych*. Warszawa: Centrum Badań i Edukacji Statystycznej GUS.

Tödtling-Schönhofer, H. et al. (2012) *Bariery dla podmiotów ubiegających się o środki z funduszy strukturalnych*. Bruksela: European Parliament's Committee on Regional Development.

Ward P., Clark, T. and Zabriskie, R. (2014) "Paper/Pencil Versus Online Data Collection An Exploratory Study", *Journal of Leisure Research*. Vol. 46(1), DOI: https://doi.org/10.1080/00222216.2014.11950314.

Wieczorkowska, G. and Wierzbiński, J. (2011) *Statystyka od teorii do praktyki*. Warszawa: Scholar.

Zub, M., et al. (2015) *Badanie skuteczności wsparcia realizowanego w ramach komponentu regionalnego PO KL 2007–2013*. Warszawa: Policy & Action Group Uniconsult Sp. z o.o.

DOI: 10.33067/SE.1.2022.7

Krystyna Gomółka

Petro Kurmaiev

The Business Environment of Georgia and Ukraine: Approaches to a Comparative Analysis

Abstract

The formation of a favourable business environment and the intensification of entrepreneurial activity on this basis is one of the priorities of economic policy of governments around the world. The aim of this article is to conduct a comparative analysis of some of the characteristics of the business environment of Georgia and Ukraine. The theoretical basis of the study is the understanding of the business environment as a necessary prerequisite for the implementation of entrepreneurial initiatives in a particular country. In the process of our research, the following methods were used: comparative analysis, generalisation, content analysis, correlation, and regression analysis. The authors studied the business environment of Georgia and Ukraine on the basis of an analysis of the following components; that of general economic, political and legal, financial, and fiscal. The results of the study show that Georgia's business environment is more favourable than Ukraine's. It is noted that between 2011–2020, Georgia made significant progress in the fight against corruption, in simplifying the procedures for starting a business, and bettering access to finance. Both countries are reforming their tax systems towards liberalisation and democratisation, and they declare the functioning of special tax regimes. According to the Paying Taxes indicator, which is calculated within the Doing Business rating, Georgia improved its result from 61st position in the ranking in 2011 to 14th position in 2020, while Ukraine improved its result from 181st place in 2011 to 65th place in 2020. It is indicated that between 2011–2020, Ukraine showed significant positive dynamics in in-

* **Krystyna Gomółka** – Gdańsk University of Techonology, e-mail: kgom@zie.pg.gda.pl, ORCID ID: https:orcid.org/0000-0002-7046-0729.

** **Petro Kurmaiev** – The Independent Agency for Education Quality Evaluating (Ukraine), E-mail: petrol09@i.ua, ORCID ID: https:orcid.org/0000-0001-9464-0380.

flation targeting. The authors note that the weakest elements of the business environment in Ukraine are its efforts to ensure the independence of the judiciary and the fight against corruption. In conclusion, the authors note that the policy of the governments of Georgia and Ukraine should be aimed at the further democratisation of relations with businesses in order to increase the level of a favourable business environment.

Keywords: Business Environment, Entrepreneurship, Macroeconomic Indicators, Inflation, Democratisation, Market Factors

Introduction

The modern history of Georgia and Ukraine has many common features. Both countries were part of the USSR, and almost simultaneously embarked on the path of the democratisation of society and economic reform. Since gaining independence, Georgia and Ukraine have recognised the development of entrepreneurial initiative as one of the main elements of economic policy, which was itself reflected in the regulations of the early 1990s. At the same time, under the influence of internal and external factors, the processes of economic reform and the creation of a favourable business environment were rather declarative in nature and did not acquire priority status until the mid-2000s. At the same time, the practice of creating a favourable business environment in many post-socialist countries, first of all, Slovenia, along with Estonia and Poland, indicates its significant positive impact on economic development and improving the welfare of their populations. In this context, it is interesting – from a scientific point of view – to study certain business environment characteristics of the Eastern Partnership countries, namely Georgia and Ukraine.

Methodology

The aim of the article is to perform a comparative analysis of some characteristics of the business environment of Georgia and Ukraine.

The theoretical basis of the study is the understanding of the business environment as a necessary prerequisite for the implementation of entrepreneurial initiative in a particular country. When comparing the indicators that characterise the business environment of Georgia and Ukraine, the comparative analysis method was used. The generalisation method was used in the study of the general features of the business environment of Georgia and Ukraine. The processing, systematisation, and interpretation of information from reporting documents and survey results was

carried out using the content analysis method. The correlation and regression analysis method was used to study the degree of interdependence between indicators. Calculations were performed using EViews 6.0 from IHS Markit.

The study used reporting information and the results of surveys organised by the Organization for Economic Co-operation and Development, Transparency International, the American Chamber of Commerce in Ukraine, Bertelsmann Stiftung, The World Economic Forum, and The World Bank Group.

Literature Review

The issue of the business environment, its impact on the pace of development of both individual companies, and countries as a whole is the subject of research for many scientists. For example, the general principles of the business environment and its individual elements are considered in the work of Worthington and Britton (Worthington, Britton, 2009).

The influence of the business environment on entrepreneurs' choice of organisational forms of doing business depending on the level of economic development of countries has been covered by a team of authors (Demirguc-Kunt, Love, Maksimovic, 2006). The authors' study covered 52 countries, and the results of the study showed that in countries with an effective legal system and a developed financial sector, companies choose the corporate organisational form. It is interesting to note that in countries with a favourable business environment, the corporate form of business is more efficient than other forms due to easier access to financial resources, fewer cases of corruption, and the mitigation of legal barriers to doing business.

The team of authors (Ward et al., 1995) propose the business environment be considered as a set of elements: the local labour market, the cost of doing business, and the level of competition and dynamism (market volatility). Each of the elements of the business environment is detailed and described by the authors in the example of Singapore. The results of the study revealed a strong relationship between elements of the business environment and options for operational strategy, determined by competitive priorities. The authors emphasise that, under the influence of the same factors of the business environment, economically successful companies choose other competitive priorities than companies that are less efficient.

Practical issues of improving the business environment are discussed in an article by Albaladejo (Albaladejo, 2001). The author analyses, in detail, the economic situation and business practices in Latin America.

On the one hand, this allowed him to identify the main obstacles to the development of business initiative; currency devaluation, hyperinflation, import restrictions, and the complexity of the registration procedure. On the other hand, the generalisation of information allowed the author to formulate a list of areas that will contribute to the formation of a favourable regulatory framework for business structures.

A study by Huang (Huang, 2005) examines the advantages of foreign companies over local ones in the country of doing business. The author analysed the following elements of the business environment; business licensing procedures, the procedure for conducting foreign trade operations, the rules of currency regulation, the tax system, environmental regulations, and fire safety rules. The results of the study showed that foreign companies have regulatory advantages that depend on the level of corruption in the country. Thus, Huang (Ibidem) found that in more corrupt countries, regulatory benefits for foreign companies are more significant.

The business environment at the regional level is discussed in an article by Brixiova and Ncube (Brixiova, Ncube, 2013). The authors analysed the statistics contained in the World Bank Doing Business Report (World Bank Doing Business Report, 2013), the Africa Competitiveness Report and others, and on this basis identified the main obstacles to doing business, especially at the start-up stage. Among the most significant are the following; access to finance, corruption, ineffective government regulation, and ineffective mechanisms to protect property rights. Thus, the authors draw our attention to the existence of a positive correlation between the number of regulatory requirements for starting a business and the number of newly formed companies. The authors substantiate the thesis that improving the business environment will contribute to the creation of highly productive companies.

Djankov, La Porta, Lopez-de-Silanes & Shleifer (Djankov et al., 2002) present the results of an analysis of the conditions for starting a business in 85 countries, noting that there are significant barriers to such endeavours. In countries with less democratic governments, the regulation of business start-ups and market entry are important, while in countries with governments that promote competition and enforce rights, there is less regulation at the entry level.

Quite an interesting issue is considered in an article by Laeven and Woodruff (Laeven, Woodruff, 2007). The authors explore the relationship between the effectiveness of the legal system and company size. The results showed a disproportionate distribution of the employed population in companies depending on their size, and the authors found that increasing the quality and efficiency of the legal system

leads to a 10–15% increase of the average size of companies in a given country.

The impact of elements of the business environment on the labour market in Europe and Central Asia is disclosed in an article by Lopez-Garcia (Lopez-Garcia, 2006). After analysing the indicators of 28 countries, the author substantiates the thesis that the most significant factor is the indicator reflecting access to finance. In addition, the costs of starting a business, tax, and market regulation also have a significant impact on employment.

A trio of authors (Papiashvili, Saksonova, Rupeika-Apoga, 2017) proposes assessing the favourable investment environment using three indices: the Index of Economic Freedom, the Corruption Perceptions Index, and the Ease of Doing Business Index. In addition, in their opinion, it is important to take into account the specifics of a particular country. The authors note that this approach is useful for determining the degree of liberalisation of investment activity.

Agreeing in general with the conclusions of the authors, it should be noted that the use of only generalised indices allows one to form a general idea of the degree of a favourable business environment in a particular country, which should be supplemented by an analysis of a set of socio-economic indicators.

In support of this, the team of authors (Pinheiro-Alves, Zambujal-Oliveira, 2012) investigated how sufficient it is to use EDBI (the Ease of Doing Business Index) to make investment decisions. The authors, using the methods of factor analysis and the scientific approach of (Cronbach, 1951), concluded that EDBI does not fully describe the state of the business environment in a particular country. According to the authors (Pinheiro-Alves, Zambujal-Oliveira, 2012), improving the reliability of EDBI will require an improvement of its components.

Results and Discussion

We propose studying the business environment of Georgia and Ukraine on the basis of an analysis of the following components; general economic, political and legal, and financial and fiscal.

A study of these components of the business environment allows one to form an idea of the degree of a favourable business environment and to conduct a comparative analysis of individual indicators that characterise it. We additionally propose supplementing a comparative analysis of the components of a business environment by calculating the correlation coefficient. The effective indicator in this case may be the number of registered organisations by year.

Calculations of correlation coefficients showed a very strong correlation only between the number of registered organisations in Georgia and the unemployment rate (R = -0.94). The calculated value of the coefficient of determination indicates a strong relationship between the indicator Number of registered organisations and the indicator Unemployment rate (R-Squared = 0.89). The correlation with the Consumer Price Index is not characterised by the required closeness.

Table 1: The dynamics of separate macroeconomic indicators of Georgia and Ukraine

Year	*GDP per capita, USD*		Consumer Price Index, %		Unemployment rate, %		Number of registered organisations by year – total cumulative, thousand	
	Georgia	Ukraine	Georgia	Ukraine	Georgia	Ukraine	Georgia	Ukraine
2011	4021,7	3569,7	8.5	4.6	27.2	8.6	370,9	1701,6
2012	4421,8	3855,4	-0.9	-0.2	26.7	8.1	497,9	1600,1
2013	4623,7	4029,7	-0.5	0.5	26.4	7.7	533,5	1722,0
2014	4739,1	3104,6	3.1	24.9	23.0	9.7	570,6	1932,1
2015	4014,1	2124,6	4.0	43.3	21.9	9.5	595,7	1974,3
2016	4062,1	2187,7	2.1	12.4	21.7	9.7	633,2	1865,5
2017	4358,5	2640,6	6.0	13.7	21.6	9.5	678,6	1805,0
2018	4722,0	3096,8	2.6	9.8	19.2	8.8	722,4	1839,5
2019	4696,2	3659,0	4.9	4.1	17.6	8.2	765,5	1350,6
2020	4274,6	3725,2	5.2	5.0	18.5	9.5	802,5	1395,4

Source: Consumer Price Index Georgia (2021), Consumer Price Index Ukraine (2021), Unemployment rate (2021), Unemployed population (2021), GDP per capita in Ukraine (2021), Gross Domestic Product (2021), Business Register (2021), Entities in the Unified State Register (2021)

The general economic component of the business environment indicates the existence of basic macroeconomic prerequisites for the implementation of business projects.

A data analysis of table 1 shows that during 2011-2020, the GDP per capita indicator in both countries increased, in Georgia by 6.2%, and in Ukraine by -4.3%. The Consumer Price Index in Ukraine was characterised by significant volatility: from deflation of 0.2% in 2012 to inflation of 43.3% in 2015. In Georgia, the fluctuations were much smaller and ranged from -0.9% to 8.5%. The unemployment rate in Georgia was much higher than in Ukraine, but had a downward trend, decreasing by 8.7% during 2011–2020. In Ukraine, the maximum unemployment rate was observed

in 2014 and 2016 and was 9.7%.

The average salary in Georgia for the period 2011-2020 increased by about 4 US dollars and amounted to 389 US dollars (per month) at the end of 2020. During the same period, the average wage in Ukraine increased by approximately 99.2 US dollars and in 2020 amounted to 429.9 US dollars. Market factors (productivity, competition) were dominant for Georgia. The main factor that determined the growth of the average wage in Ukraine is the increase of state social standards. Thus, the minimum wage in Ukraine during 2011–2020 increased by 59.3 US dollars and amounted to 185.4 US dollars at the end of the period. At the same time, market factors are now beginning to more actively influence the process of labour cost formation in Ukraine. This is due to the liberalisation of the labour movement in Europe, and also as a result of visa-free travel to EU countries.

In our opinion, the general economic situation in Georgia is more favourable for starting a business than in Ukraine. This is due to the fact that lower average wages and a lower inflation volatility level create more favourable starting conditions for business projects.

The degree of a favourable business environment directly affects the dynamics of business start-ups in a particular country.

Confirmation of this is the dynamics of the number of business entities given in Table 1. Thus, during 2011–2020, the number of business entities in Georgia increased by 216.3%, whereas in Ukraine it actually decreased by 18%. In 2011, the ratio of business entities in Georgia and Ukraine was 1 to 4.5, and in 2020 it was 1 to 1.7.

We propose considering the political and legal component of the business environment in the context of the regulatory framework of entrepreneurial activity, the state of corruption, the effectiveness of judicial procedures and the political situation.

The legal framework that governs doing business in both countries is based on their Constitutions, codes, laws, and regulations. Georgia, in the second half of the 2000s, more radically reformed its legal framework for business, leaving virtually nothing of the Soviet legacy. Legislation still applies in Ukraine, which regulates certain aspects of entrepreneurship formed before independence, in particular, the Labour Code of 1971, the Commercial Procedure Code of 1991, the Law of Ukraine "On Consumer Rights Protection" of 1991, and others. Given the dynamism of civilisational development, the legislation of the former USSR can not effectively regulate social relations in the economic sphere. For example, only in early 2021 was there a law passed that would regulate the issue of telework to replace the 1981 normative act.

Overall, the general approaches to the standardisation of business activity in Georgia and Ukraine are similar. Thus, Articles 6 and 26 of the Constitution of Georgia provide freedom of enterprise and promotion of competition. Similar provisions are contained in Articles 42 and 91 of the Constitution of Ukraine. Almost simultaneously, Tax Codes were adopted in both countries, and business ombudsmen began work. Also, the similarity of approaches can be traced in the interpretation of the essence of entrepreneurial activity by the legislation. The Law of Ukraine "On Entrepreneurship" (On Entrepreneurship, 1991) defines entrepreneurship as a directly independent, systematic, at-one's-own-risk activity for production, doing work, and the provision of services for profit, which is carried out by individuals and legal entities registered as business entities in a manner prescribed by legislation. According to the Law of Georgia on Entrepreneurs (Legislative Herald of Georgia, 1994), entrepreneurial activity shall be a legitimate and repeated activity carried out independently and in an organised manner to gain profit.

The stability of the provisions of the main legislative acts on business in Georgia is higher than in Ukraine. Thus, in particular, the basic Law of Georgia on Entrepreneurs was amended on the basis of 24 regulations, the Law of Ukraine "On Entrepreneurship" – on the basis of 63 regulations. The situation is similar with regard to legislation on guarantees to investors.

The Georgian Law on Promotion and Guarantee of Investment Activity (On Promotion and Guarantee, 1996) protects foreign investors from changes in legislation for 10 years. A similar rule is contained in the Law of Ukraine "On the Regime of Foreign Investments" (On the Regime of Foreign Investments, 1996), but the practice of its application does not favour investors.

Along with the general positive practice of reforming the legal system in Georgia, experts note (OECD, 2020) that legislation in the field of competition protection is underdeveloped. In particular, it lacks effective tools for investigations and sanctions, which are in line with international best practices (Ibidem).

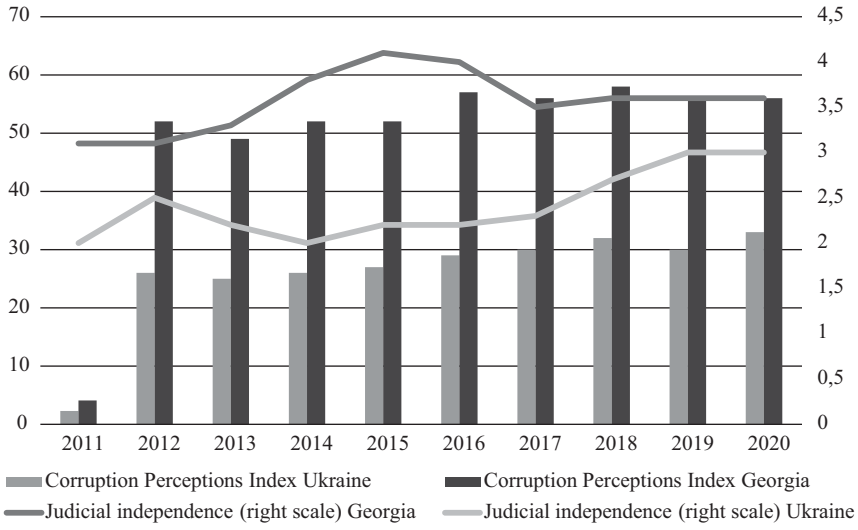
Taking into account that businesses protect their rights in the courts, analysing the effectiveness of the judiciary is critical to understanding the business environment in a particular country.

It is hard to disagree with Van Dijk and Vos (Van Dijk, Vos, 2018) in that the independence of the judiciary is the basis for the proper functioning of this system. It creates the preconditions for judges to make impartial decisions based solely on the rule of law and evidence, protecting them from outside influence from other branches of government, the

public, or the private sector. Van Dijk and Vos (Ibidem) note that dispute resolution using only the rule of law is a critical component of the rule of law and is important for a prosperous and democratic society.

Analysing the dynamics of the Judicial Independence index (World Economic Forum, 2018, Schwab, 2019), one can note that Georgia, over the last decade, has made significant progress on this indicator (Fig. 1). Thus, in 2011 the value of the Judicial Independence index was 3.18, and at the beginning of 2020 it was 3.6. Although Ukraine has also shown progress, its pace has been much slower, with the Judicial Independence Index rising from 2.08 in 2011 to 3.0 in early 2020.

The level of corruption in Ukraine has a significant impact on the state of the business environment. The results of the analysis of the dynamics calculated by the Transparency International Corruption Perceptions Index, reports, and surveys of international experts and entrepreneurs (Gurkov, 2020) show a significant gap between Georgia and Ukraine (Fig. 1).



The indicator for estimated Judicial Independence 2020

Figure 1: Dynamics of judicial independence and corruption perceptions index for Georgia and Ukraine

Source: World Economic Forum (2018), Schwab (2019), Transparency International (2021).

For example, a survey of top managers conducted in October 2019 by the American Chamber of Commerce in Ukraine (Results of the AmCham

Ukraine Business Climate Survey, 2019) indicated that 41% of respondents had faced corruption in Ukraine, and 42% believed that the level of corruption itself had not decreased between 2017–2019. At the same time, 54% positioned the fight against corruption as one of the top areas that could improve the investment environment in Ukraine.

Research on corruption in Georgia prepared by the Bertelsmann Stiftung (Gurkov, 2020) points to the country's success in tackling domestic corruption, which has declined significantly, but measures put in place to reduce political corruption are not always effective.

The political situation in both countries is quite similar. The political steps of the governments of Georgia and Ukraine are aimed at deepening cooperation with the United States and the EU.

The next elements of the business environment are the financial and tax components. Generalised information on the financial component of the business environment can be obtained by analysing the relevant indicators of international indices, for example, Getting Credit (Doing Business, 2021), and supplementing it in consideration of other indicators (interest rate, basic tax rates).

Considering the financial component of the business environment, it is advisable to start with an analysis of the basic parameters of the tax system of countries.

The Tax Code of Georgia defines 6 taxes, 5 of which have the status of national taxes. The Tax Code of Ukraine defines 7 national and 4 local taxes and fees, with 1 fee being temporary (the military fee).

Table 2: Basic taxes and their rates

Country	Corporate income tax, standard %	VAT, standard %	Personal income tax, %	Social contribution, %
Georgia	15	18	20	4 (2 + 2)*
Ukraine	18	20	18	22**

* % of the employee's salary;

** % of the *minimal wage.*

Source: Ukraine. Corporate (2021); Georgia. Corporate (2021)

A data analysis of table 1 shows that the tax burden on businesses in Georgia is lower than in Ukraine. Both countries declare the functioning of special tax regimes, including on a territorial basis. For example, in Georgia there are 4 free economic zones: Kutaisi FIZ, Poti FIZ, Hualing Kutaisi FIZ, and Tbilisi FIZ. An FIZ Enterprise is liable to pay the following taxes (Free Industrial Zones, 2019):

- in case of the supply of goods to Georgian companies (except for FIZ Enterprises), an FIZ Enterprise is liable to pay tax at a rate of 4% on income;
- in case of the purchase of goods from Georgian companies (except for FIZ Enterprises), an FIZ Enterprise is liable to pay tax at a rate of 4% on the market value of goods (Free Industrial Zones, 2019).

In Ukraine, the regulatory framework for the functioning of free economic zones was established in 1992. However, the experience of free economic zones in Ukraine is rather controversial and ambiguous. At the peak of its rapid formation in the late 2000s, Ukraine had 11 free economic zones and 71 priority development areas. As of 2009, foreign investors invested 815.9 million US dollars (Lutsenko, 2009), which constitutes 7.4% of total foreign investment in Ukraine. After the abolition of special investment regimes in free economic zones and territories of priority development, a question arose regarding the expediency of their existence, as the implementation of new investment projects had virtually ceased. In December 2020, the Parliament of Ukraine adopted the Law on State Support of Investment Projects with Significant Investments, which provides the exemption from taxation of separate taxes on investment projects worth 20 million euros. However, today, the practice of its application does not exist, and therefore determining its impact on the business environment is not possible.

According to the Paying Taxes indicator, which is calculated within the Doing Business rating, Georgia improved its ranking, rising from 61st place in 2011 to 14th in 2020. During 2011–2018, Ukraine demonstrated progress in reforming the tax system, as a result of which it improved its positioning from 181st place to 43rd place, but slipped back down the ranking to 65th place in 2020 (Doing Business, 2021). In order to determine the availability of credit resources, we used the Getting Credit indicator, which is also part of the Doing Business rating. The authors of the Doing Business rating (Doing Business, 2019) noted that this indicator covers two aspects of access to finance; the strength of credit reporting systems and the effectiveness of collateral and bankruptcy laws in facilitating lending. An analysis of this indicator shows consistently high values in Georgia; from the lowest ranking of 15th place in 2011 and 2020 to the highest of 3rd place in 2014. According to this indicator, during 2011–2020, Ukraine had the best result in 2014 – making its way to 13th place, and its worst result – 37th place in 2020.

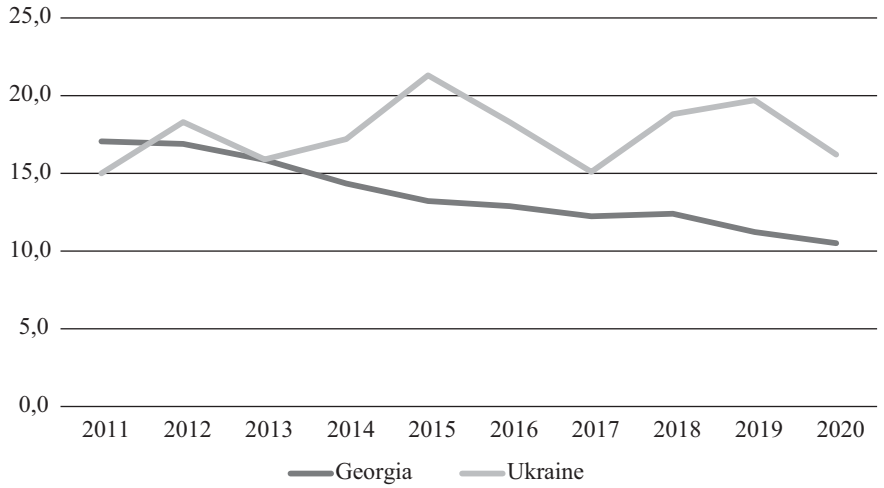


Figure 2: Annual weighted average interest rates on commercial banks' loans

Source: Cost of loans (2021), Annual Weighted Average Interest Rates (2021).

The dynamics of interest rates on loans to business entities in Georgia during 2011–2020 is downward, and in Ukraine it is characterised by significant fluctuations. The cost of credit resources in Georgia at the end of 2020 was 5.7% lower than in Ukraine.

The calculated value of the correlation and determination coefficients indicates a strong relationship between the indicator Number of registered organisations and the indicator Paying taxes ($R = -0.92$, R-squared = 0.85).

The correlation coefficient calculated on the basis of data for Ukraine showed a strong connection only between the indicator Number of registered organisations and the indicator Getting Credit is 0.8, and the coefficient of determination is 0.65.

Calculations of correlation and determination coefficients for other indicators for Georgia and Ukraine did not reveal a statistically significant relationship.

Conclusions

In the early 2010s, Georgia and Ukraine had fairly similar starting conditions for building a business environment. The results of the study show that Georgia has managed to create a more favourable business environment than that of Ukraine's. The most tangible steps taken to create a favourable business environment in Georgia have been the fight against corruption, a significant reduction of bureaucratic barriers to the implementation of business

ideas, and access to finance. Between 2011–2020, Ukraine demonstrated significant positive dynamics in improving the tax system and inflation targeting. The weakest elements of the business environment in Ukraine are the independence of the judiciary and the fight against corruption.

Calculations of correlation coefficients showed a strong correlation between the number of registered organisations in Georgia and the amount of taxes paid along with the unemployment rate, whereas for Ukraine, it is between the number of registered organisations and the Getting Credit indicator.

In the context of the formation of the business environment, it is necessary to take into account the currently "frozen" military conflicts and socio-political uncertainty of the situation in eastern Ukraine and northern Georgia. The policy of the governments of Georgia and Ukraine should be aimed at further a democratisation of relations with businesses in order to increase the business environment's favourability.

References

Albaladejo, M. (2001) "Determinants and policies to foster the competitiveness of SME clusters: Evidence from Latin America", *QEH Working Papers*. Vol. 71, pp. 1–17.

American Chamber of Commerce in Ukraine (2019) *Results of AmCham Ukraine Business Climate Survey*. Available at: https://chamber.ua/wp-content/uploads/2020/01/business_climate_en.pdf (Access 14.05.2021).

Brixiova, Z. and Ncube, M. (2013) "Entrepreneurship and the business environment in Africa: An application to Ethiopia", *IZA Discussion Papers*. Vol. 7553, pp. 1–21.

Cronbach, L. (1951) "Coefficient alpha and the internal structure of tests", *Psychometrika*. Vol. 16, pp. 297–334.

Demirguc-Kunt, A., Love, I. and Maksimovic, V. (2006) "Business environment and the incorporation decision", *Journal of Banking & Finance*. Vol. 30(11), pp. 2967–2993. DOI: https://doi.org/10.1016/j.jbankfin.2006.05.007.

Djankov, S. et al. (2002) "The regulation of entry", *The quarterly Journal of economics*. Vol. 117(1), pp. 1–37.

Doing Business (2019) *Getting credit*. Available at: https://www.doingbusiness.org/en/data/exploretopics/getting-credit/what-measured (Access 14.05.2021).

Doing Business (2021) *Global report 2020*. Available at: https://www.doingbusiness.org/en/reports/global-reports/doing-business-2020 (Access 14.05.2021).

Free Industrial Zones (2019) Tbilisi: Deloitte legal.
Gurkov, A. (2020) "Fight against corruption in Georgia: Germany assesses successes, but sees failures", *Deutsche Welle*, 24.10, Available at: https://www.dw.com/ru/borba-s-korrupciej-v-gruzii-v-frg-vidjat-uspehi-i-neudachi/a-55340387 (Access 14.05.2021).
Huang, Y. (2005) "Are foreign firms privileged by their host governments? Evidence from the 2000 world business environment survey", *Sloan Working Paper.* Vol. 4538-04, pp. 1–43. Available at: http://hall.handle.net/1721.1/18076 (Access 14.05.2021)
Laeven, L. and Woodruff, C. (2007) "The quality of the legal system, firm ownership, and firm size", *The Review of Economics and Statistics.* Vol. 89(4), pp. 601–614. DOI: https://doi.org/10.1162/rest.89.4.601.
Legislative Herald of Georgia (1994) *Entrepreneurs Law of Georgia*. Available at: https://matsne.gov.ge/en/document/download/28408/49/en/pdf (Access 14.05.2021).
Legislative Herald of Georgia (1996) *On Promotion and Guarantee of Investment Activity*. Available at: https://matsne.gov.ge/en/document/download/33304/12/en/pdf (Access 14.05.2021).
Lopez-Garcia, P. (2006) "Business Environment and Labor Market Outcomes in Europe and Central Asia Countries", *Policy Research Working Paper.* Vol. 3885, pp. 1–38.
Lutsenko, N. (ed.) (2009) *Statistical Bulletin "Inflow and Development of Investments in Special (Free) Economic Zones and in the Territories of Priority Development of Ukraine for Investment Projects in 2008"*. Kyiv: SSK.
Minfin (2021a) *Consumer Price Index. Ukraine*. Available at: https://index.minfin.com.ua/ua/economy/index/inflation/ (Access 14.05.2021).
Minfin (2021b) *GDP per capita in Ukraine.* Available at: https://index.minfin.com.ua/ua/economy/gdp/ (Access 14.05.2021).
National Bank of Georgia (2021) *Annual Weighted Average Interest Rates on Commercial Banks' Loans*. Available at: https://www.nbg.gov.ge/index.php?m=306 (Access 14.05.2021).
National bank of Ukraine (2021) *Cost of loans pursuant to statistical reporting data of Ukrainian banks*. Available at: https://bank.gov.ua/ua/statistic/sector-financial/data-sector-financial#2fs (Access 14.05.2021).
National Statistics Office of Georgia (2021) *Business Register*. Available at: https://www.geostat.ge/en/modules/categories/64/business-register (Access 14.05.2021).
National Statistics Office of Georgia (2021a) *Consumer Price Index*. Available at: https://www.geostat.ge/en/modules/categories/26/cpi-inflation (Access 14.05.2021).

National Statistics Office of Georgia (2021b) *Unemployment rate*. Available at: https://www.geostat.ge/en/modules/categories/683/Employment-Unemployment (Access 14.05.2021).

National Statistics Office of Georgia (2021c) *Gross Domestic Product. Georgia*. Available at: https://www.geostat.ge/en/modules/categories/23/gross-domestic-product-gdp (Access 14.05.2021).

OECD et al. (2020) *SME Economic Policy Index: Eastern Partnership Countries 2020: Assessing the Implementation of the European Small Business Act*. Paris: OECD Publishing. DOI: https://doi.org/10.1787/23da87c6-ru 514.

Papiashvili, T., Saksonova, S. and Rupeika-Apoga, R. (2017) "FDI attraction: comparative analysis of the Baltic States and Georgia", *International Journal of Economics and Business Administration*. Vol. 5(3), pp. 81–93. DOI: https://doi.org/10.35808/ijeba/137.

Parliament of Ukraine (1991) *On Entrepreneurship*. Available at: https://zakon.rada.gov.ua/laws/show/698-12#Text (Access 14.05.2021).

Parliament of Ukraine (1996) *On the Regime of Foreign Investments*. Available at: https://zakon.rada.gov.ua/laws/show/93/96-%D0%B2%D1%80#Text (Access 14.05.2021).

Pinheiro-Alves, R. and Zambujal-Oliveira, J. (2012) "The Ease of Doing Business Index as a tool for investment location decisions", *Economics Letters*. Vol. 117(1), pp. 66–70. DOI: https://doi.org/10.1016/j.econlet.2012.04.026.

PwC (2021a) *Georgia. Corporate*. Available at: https://taxsummaries.pwc.com/georgia/corporate/other-taxes (Access 14.05.2021).

PwC (2021b) *Ukraine. Corporate*. Available at: https://taxsummaries.pwc.com/ukraine/corporate/taxes-on-corporate-income (Access 14.05.2021).

Schwab, K. (ed.) (2019) *The Global Competitiveness Report 2019*. Geneva: World Economic Forum.

State Statistics Service of Ukraine (2021) *Unemployed population, by age group, sex and place of residence*. Available at: http://www.ukrstat.gov.ua/ (Access 14.05.2021).

State Statistics Service of Ukraine (2021) *Entities in the Unified State Register of Enterprises and Organizations of Ukraine*. Available at: http://www.ukrstat.gov.ua/edrpoy/ukr/EDRPU_2017/zmist_EDRPU.htm (Access 14.05.2021).

Transparency International (2021) *Corruption Perceptions Index*. Available at: https://www.transparency.org/en/cpi/2020/index/ (Access 14.05.2021).

Van Dijk, F. and Vos, G. (2018) "A Method for Assessment of the Independence and Accountability of the Judiciary", *International Journal for Court Administration*. Vol. 9(3), pp. 1–21. DOI: http://doi.org/10.18352/ijca.276.

Ward, P.T. et al. (1995) "Business environment, operations strategy, and performance: an empirical study of Singapore manufacturers", *Journal of operations management*. Vol. 13(2), pp. 99–115. DOI: https://doi.org/10.1016/0272-6963(95)00021-J.

World Economic Forum (2018) *Judicial Independence Index*. Available at: https://tcdata360.worldbank.org/indicators/h5ebaeb47?country=UKR&indicator=669&countries=GEO&viz=line_chart&years=2011,2017&indicators=944 (Access 14.05.2021).

Worthington, I. and Britton, C. (2006) *The business environment*. Edinburgh: Pearson education.

DOI: 10.33067/SE.1.2022.8

Salihe Salihu⋆

The Post-Communist State Era and Its Impact on Sovereignty: A Case Study of Kosovo

Abstract

Many theoretical perspectives have touched on the concept of sovereignty, but the need for more sovereignty-based discussion in relation to the post-communist era still exists. The question of sovereignty and its survival in the post-communist era touches on some general features such as the attributes, signs, properties, and conditions of the concept of sovereignty that have evolved. In the case of Kosovo, the issue of sovereignty can be linked to two distinct features, namely democracy and human rights. For Kosovo to be a sovereign state, it had a mandatory prerequisite to fulfil these two features. These features implied the fulfilment of two criteria, in the forms of legality and legitimacy and, in reality, these two criteria stem from the will of the people. This reflection shows that sovereignty in the post-communist era had to be in line with respect for human rights as a feature of the principles of democracy. However, the transition from the communist system to democracy was not an easy one. In this regard, Kosovo has come a long way in achieving sovereignty and managed to be declared a sovereign state in 2008. The conditioning of Kosovo's sovereignty by the above criteria represents the influence of the post-communist era, and its earlier form differs from the prevailing form of absolute sovereignty as it existed, for example, in the former federations of Russia and Yugoslavia. Kosovo's sovereignty is reflected in accordance with the will of the majority of over ninety-five percent of the country's population. Moreover, in Kosovo, minorities have privileges, such as positive discrimination and the special right that constitutional changes on vital issues pertaining to those minorities cannot be made without their vote.

⋆ **Salihe Salihu** – Department of Research in the Parliament of Kosovo, e-mail: salihe.salihu@hotmail.com, ORDIC ID: https://orcid.org/0000-0002-7068-0342.

However, in the post-communist era, it was not possible to democratise all sovereign states. Some states focused on the power and manner of expanding power in their respective territories and fought for the recognition of reconfigured sovereignty at the expense of justice and rights. Therefore, since the post-communist period, the definition, content, and character of sovereignty has been in debate, with a new dimension of respect for human rights as a major talking point and as an essential mark of the principle of democracy.

Keywords: Sovereignty, Post-Communist, Disintegration, Former Yugoslavia, Kosovo

Sovereignty in Transition

We can firstly point to sovereignty as a concept dating back to ancient times, known as having the characteristic feature of an absolute power which was used by the leaders of states. Now, the meaning of the concept has taken a broader stance and has since been addressed by many theorists who aspire to give some further clarification about its content and role. By illuminating the historical part of the role of sovereignty, it is possible to easily see its character in the present day. From the beginning, we must say that the sovereignty that stemmed from the Westphalian model has changed its form and ties to power because its character was challenged, especially after the post-communist period. The hallmark of the changes therein is the demand for respect for the rights of the people as a precondition to preserve or build state sovereignty. According to the Westphalia model, the requirement for state-building was to meet the criteria of the Montevideo Convention, while in the post-communist era there are new criteria such as assisting the spread of democracy and respect for human rights. However, it is impossible to deny that the basis of the former Westphalian model of sovereignty is still of great importance because it has a fundamental role to regulate relations between states. Even in modern and post-modern times, sovereignty still has plenty of power and shows its indispensable role for the nation-state. It is believed that only by relying on the capacity of sovereignty would the nation-state survive, as there are still risks regarding the stability of the sovereign state. Alternatively, the power of the sovereign state may transpose its sovereign power by contractual agreement or in some other way to another body elsewhere.

Sovereignty as absolute power, as mentioned above, has changed, but in itself has never lost its capacity to survive from one era to another and

therefore sovereignty is very well known and discussed. Through these discussions, it has often become clearer and more comprehensible on which component sovereignty is based and how it stands both in relation to the state and international order (Shinoda, 2000, p. 3).

The concept of sovereignty in contemporary development has a central difference, namely an aspect of authority, which is already more similar to other forms of power as sub-state, supranational or non-state. In this view, the difficulties that arise relate to the fragmentation of legal authority and political authority, as well as the possibility of reconciling this division. Another well-known problem is mediation or reconciliation between the sovereignty of rulers and ruled sovereigns. To overcome these issues, sovereignty has also been seen to change even in the model of the Westphalian system. The issue of sovereignty is now characterised as a temporary and indefinite transition and is therefore considered as something which needs a clearer framework in the future (Walker, 2003, pp. V–VI).

In addition, sovereignty at the present time is considered as something which lives under the threat of globalisation due to the expansion of cosmopolitan idea, which directly harms the nation-state. This threat is directly felt by those states which have had the utmost primacy in utilising the sovereign concept. This connection with sovereignty and the nation-state comes from Jürgen Habermas, who underlined that the nature of sovereignty is, for example, going into a war situation which ensures an affecting of a part of the sovereignty of the state, thus losing that state all sovereignty. Despite this, sovereignty remains a coherent concept because it continues to play an important role within political and legal engagement. Therefore, the framework of sovereignty continues to be formed in contemporary discourse on the legal-political scope (Ibidem).

The treatment of the issue of sovereignty may be different depending on scientific theories. Dependence on an approach is related to argumentation and can offer understanding in relation to scope and time. An explanation already exists for the relationship of sovereignty between scope, time, and the impact it has. The possibility of different sovereignty content due to its scope and time has been pointed out by well-known theorists such as Bartelson and Weber. They explain that sovereignty can take several different forms based on its articulation or justification. But at the same time, sovereignty can take different forms in other countries affected by circumstance, which means that there is a connection between scope and time (Malving, 2006, p. XXI). This clarification gives us to understand that the form of sovereignty is dependent on different factors.

Sovereignty During Communist Times

Sovereignty was key for dealing with major issues within a country. First of all, according to sovereignty as a norm during communist times, national borders were controlled in an incredibly strict manner, so none could pass without permission, nor breach the line of said boundary. A breach of geopolitical border during communist times didn't simply entail a one-way encroachment of a territorial boundary, but in fact involved two other aspects. One aspect had to do with physical boundaries, the other mental. The sanctioning of these two aspects were painful measures against the people. In other words, the absolute control extant during communist times was a hindrance for those who wanted to live or to move freely to countries with democratic systems.

After World War II, sovereignty itself was challenged, since it dealt in consonance with International Conventions. It was affected by the development of international norms which, in turn, were to uphold the international system. On the back of these International Conventions, other norms were settled which relied on equal sovereignty among nations and people than just an absolute sovereignty. With that goal in mind, the Atlantic Charter (1941) and the Convention on the Prevention and Punishment of the Crime of Genocide were signed. The states' willingness to sign these international conventions arose as a result of atrocities committed during World War II, which was a lesson for the whole world and is why demands started being made to look at the concept of sovereignty once again. The entering into force of many Convention or Charts and even Declarations, on one hand, guaranteed people's right to live freely and on other, has had a direct influence on the concept of state sovereignty which weakened the absolute power of sovereignty (Dal Tatum, 2010, pp. 60–61).

Despite all these developments, many states with communist systems did not apply international norms. A goal of communist ideology was to achieve a homogeneous society; a goal which has been spread in communist countries and federations. But this kind of society, imaginary at best, was very obviously against democratic principles and did not respect others' affiliation. That aside, the communist ideology was against any religious confession. In order to unify communist culture, they tended to do try and do away with all ethnic groups' (religious) preferences. With this aspiration in mind, they committed many atrocities and tended to change, by imposition, people's minds and desires. Hence, the implementation of homogeneous policies were by force and without any confirmed agreement of vulnerable ethnic groups. The former Yugoslavia

was a ready home for such happenings, and constituted the bulk of what it was. There, for example, the competitive space between some ethnic groups was dominated by the Serbian ethnic group and it appeared openly that they were more privileged than other ethnic groups, especially the Albanian ethnic group.

In this context, Yugoslavia's regime has never been deemed legitimate by the Albanian ethnic group because that regime stole this territory from the Albanian state and severed links with family and, much worse, had not given any permission for them to hold or maintain contact with family members. In this way, an iron wall was placed between Albanian family members by the Serbian regime in the former Yugoslavia. However, that was just beginning of injustices against the Albanian people which, unfortunately, continued with their being treated poorly. As a consequence of these events, the Albanian people felt their existence to be in danger and, subsequently, the majority of them called for their "….borders to revert to where they were at the exact time when their empire had reached the zenith of its ancient medieval expansion" (Bahchelli et al., 2004, p. 2).

In looking again at the construction of communist countries, it was apparent that the powers that be were more frightened of the disseminated influences of democratic systems and went to great lengths to halt these influences. The communist countries started using obstruction methods, such as impeding the spread of the democratic perspective. So, their governments' policy was to suppress those people who had differing attitudes and by doing so, affected a part of the individual's sovereignty in those who refused to be part of communist system. These is some proof regarding the physical and mental boundaries mentioned above. The absolute sovereignty in communist countries was similar in non-modern times; it had very primitive elements but was very refined for masquerading their despotic rule. Indeed, it was a disjunctive sovereignty and had strong dominion over rulers. This dominion, as a supreme authority in communist countries, had forgotten the essence of sovereignty, whose primary duty to this day is to the "salus populis" (the safety of the people) which is the highest and most supreme law over all others (Loughlin, 2003, p. 58).

Instead, a point of priority during the times of the communist system was proclaimed to be the collectivist doctrine of collective rights which came first and suppressed individual rights. Although they trumpeted for collectivist rights, in reality – in their dominion's mindset – there did not exist a sincere attempt to respect collective nor individual rights. For example, in the former Yugoslavia, a stratum classification between ethnic groups was developed by classifying ethnic groups either as nations or na-

tionalities. It was asserted that in order to fulfil the classification of a nation or a nationality, the size of an ethnic group would be the determining factor. It was declared that a crucial criterion was that the largest ethnic group should be recognised as a nation. However, this declaration was roundly ignored. The Albanians were a group who, by number, were the third largest group in the former Yugoslav federation, and were a larger group than the Slovenian, Montenegrin, and Macedonian ethnic groups, but weren't recognised as nation. So, in the classification of nations, there were some ethnic groups who were smaller in number and did not fulfil the set of criteria, but nevertheless were categorised as nations, while the ethnic group of Albanians was discriminated against and categorised as a nationality only. There was even a known governmental policy with an open tendency to change the demography of a population, which was actually an attempt to decrease the size of the Albanian population, and was through their deportation from the territory (Salihu, 2020).

Eventually, the former Yugoslav Federation, not unlike the Soviet Union, was ruined. After its collapse, many ethnic groups found themselves in complex circumstances with mixed populations and with the desire to build their own states. Actually, some of the eventually newly-built states had few difficulties in view of the fact that they were already politically organised entities in which lived homogeneous ethnic groups in comparison to other states which had more mixed ethnic groups in their territories. Good examples of this are the former Lithuanian Soviet Socialist Republic in the Soviet Union, and the Socialist Republic of Slovenia in the former Yugoslav Federation, for whom it was easier to build their own state compared to others who had difficulties due to the need to craft a political system and then to transform itself into a democratic, sovereign state. To achieve this transformation in the former Yugoslavia, one was faced with fierce fights (except in Slovenia which saw relatively little fighting), in the Croatian and Bosnian Republics until Yugoslavia's disintegration. Even Kosovo declared itself independent in 1990, but has never been recognised as such elsewhere, apart from the Albanian state. At the end of the federation, the last to secede was Kosovo, which happened after the end of the war in 1999, and which declared its sovereignty in the first decade of 21st century, on February 17, 2008.

Some authors have stated that the Yugoslav disintegration derives from hateful sentiment between the Serbs and Albanians. But, in reality, that's not entirely true. If we look at the pages of history, it is known fact that the final marked border between Kosovo and Albania was from 1912 which was decided upon without any agreement of the Albanian state and without the consent of the Albanian population in Kosovo.

After the Second World War ended, the Albanian population in Kosovo hoped to be reunited with the state of Albania. During this period, Albanian and Serbian leaders had come to the agreement that they should fight together against the Nazi forces and, after the end of the war, would respect the principle of self-determination of the peoples. With this agreement, the Albanian people of Kosovo fought side by side with the Serbian people and hoped after the end of the war they would be able to decide their own destiny. They had expressed their will according to the principle of self-determination at the Bujan Conference in 1944. In this Conference of Bujan, the Albanian people of Kosovo demanded reunification with the mother country. However, Serbia was simultaneously planning a way to suppress Albanian's demands and didn't respect the Bujan Resolution. Instead, just one year later, Serbia called another meeting by gathering a number of Albanian deputies who were then placed under pressure and had death threats levelled against them. Under such adverse circumstances, one other resolution in Prizren was issued through which Kosovo remained under the rule of the Serbian people in the former Yugoslav federation. By doing so, in an environment in which they were surrounded by the army and threatened with death, the will of the Albanian people – which had been expressed in the decisions of the Resolution of Bujan – was falsified in an undemocratic manner (Salihu, 2020, p. 18).

Even darker happenings were going on behind the scenes. The Yugoslav communist party initiated an idea which was to swallow not just Kosovo's territory, but the whole Albanian state through a unification project which was proposed to be named 'the Balkan Federation'. This idea, however, was met with huge resistance from the Albanian state. During that time, terror and inhuman treatment was being perpetrated against the Albanian population in Kosovo; the Yugoslav regime, as an example, persecuted anyone if they simply uttered the name of Albania's president or had any contact with people who lived in the Albanian state. These policies were in place for a half century during communist times and, after communism fell, were continued until the war in Kosovo ended in 1999 (Curis, 2005, p. 195).

Some discussions are still ongoing which have raised the question as to whether the war in Kosovo caused Yugoslavia's disintegration. The fact is that the country's disintegration happened in 1991 when two republics, Slovenia and Croatia, seceded from the federation. Therefore, the thinking that Yugoslavia's disintegration was result of old hatred between Albania and Serbia is not accurate. The main and crucial component of disintegration was the failing of the former Yugoslav regime to govern

with proper principles. The Yugoslav regime, quite simply, exacerbated their poor treatment of the Albanian population in Kosovo. It was, of course, met with extreme displeasure, and the government never went on to improve their treatment of the Albanian population in Kosovo, but instead were guilty of such actions as detaining them without any consent, and very much against their will. Many attempts by the Albanian people in Kosovo were made in order to reach out to the world about the horrendous treatment to which they were subjected and sought help to stop it. One of many of their attempts came in the form of a massive demonstration in Kosovo during the spring of 1981, but even that effort was quashed by armed forces operating under governmental orders.

During the communist era, any and every ethnic group which opposed to being mistreated was fought by all means by the communist government in the name of maintaining the status quo. Therefore, it was very hard to change the system or to abandon communist rule in a peaceful way despite the fact that the majority of the people desired to live safely and to build a successfully democratic system. In the end, seceding came at a high cost in the form of wars and the killing of many people in the former Yugoslavia. The communist regimes had no concerns and never took into account the demands for the recognition of the rights of ethnic groups, but instead tightened measures and took military action against innocent peoples. Examples of such heinous regimes are the Russians in Chechnya, and the Serbs in Kosovo. These, then, are some examples of the state using power simply for its own benefit regardless of the suffering of the people (Bahcheli, 2004, p. 5).

During the post-communist era, some states tried to change their old systems. But, even in those states, the transformed systems did not bring about better living standards for their peoples. Inequalities and discontent were present in Romania, Hungary, and Bulgaria. In Poland, one aspect apparent in the post-communist transition was connected to religion. There, the Roman Catholic Church offered up terms on abortion and attempted to incorporate them into the country's constitution. Another problem in the post-communist transition was an increasing of the crime rate during the years 1989–1995. Criminal activity was organised in form, and prevalent in Poland, Hungary, Slovakia, the Czech Republic, Serbia, Bulgaria, North Macedonia, and Albania. Such criminality created an insecure environment for the people, resulting in their uncertainty and being frightened to live in their own countries (Ramet, 1997, p. 55).

Sovereignty in a Post-Communist Country

After the ending of the communist system, a new epoch called the 'post-communist era' started. In its prelude, expectations were huge and some hoped that there would be a distancing from the previous system and the manner in which states had been governed. Ethnic groups raised the sovereignty question as a method of transformation; they wanted the new government to treat them as equal sovereigns in the new governance. Therefore, the question was important during the transformation process because the concept of sovereignty was subject to different interpretations. These new sovereignty perspectives were now what could be categorised as modern secular sovereignty, and this new iteration was to focus on other aspects, especially on individualised and contractual issues along with the preservation of autonomy and rational thought. In addition, secular sovereignty would include dimensions such as the ambition and the will of the people. These aspects had appeared in post-communist states with the hope that it would offer the strong possibility of legal warranty to everyone's lives. These assertions were derived from the thinking which supported self-confirmation as a tool for legitimation. Actually, if these transformations happened peacefully, it would then maintain and strengthen the relations between a population and a state's authority (Prokhovink, 2007, p. 2).

Unfortunately, the above-presented beliefs were not accepted by many states. Instead of finding a way to support modern secular sovereignty, they chose a very different path – by blocking the new perspective which then incited conflict. The foremost reason for conflict was the capture of the state by one nation. This nation misused power, and combined it with bad policy and damaged other ethnic communities by trying both to assimilate or expel them, and, finally, wiping all those out who belonged to other ethnic groups. Consequently, many ethnic groups, after the fall of three communist federations, namely the Soviet Union, Yugoslavia, and Czechoslovakia, seceded from their respective federations and became independent nation-states. Hereupon, these new states, as sovereign states, joined the international community on a number of conditions (McGarry, 2004, p. ix).

Not unlike that of the former Yugoslavia and even the former Soviet Union, many new states have appeared which indicates that the people's will is supreme and which – whenever and whenever – should be taken into consideration. In other words, such happenings served as a lesson to all powers that they should never ignore the people's will. From the Soviet Union alone there were 15 republics which claimed their right to

sovereignty and became independent nation-states. It has confirmed that the substance of people's individuality should be considered in any place and at any time. These occurrences have also showed that when bad treatment is levelled against other groups, it eventually prompts a revivification of national sentiment among peoples (Bartmann, 2004, p. 23).

After the communist era, the development of the states wasn't quite as brusque as had been expected. The desired governance was according to democratic principles, but did not achieve a particularly high level because there still existed mindsets from the old system. Some of these hangover-like remnants still exist in countries such as Bulgaria, Romania, Serbia, North Macedonia, and Albania and which maintain control over the many public institutions found therein. Control is held even at TV channels through the electing of trusted persons as the heads of those channels, thereby managing to censor free media expression. By doing so, the governments have the possibility to remove a program which is considered politically inconvenient and instead broadcast something which serves and furthers their own interests (Ramet, op. cit., p. 2).

The expected results from the installation of the democratic system did not produce any positive effects on the well-being of ethnic groups. For example, the fall of the communist system was not particularly beneficial to Albanians living in the former Yugoslav Federation, because they did not receive any fair treatment. Also, after the Republic of North Macedonia became an independent state, the new regime there did not treat Albanians in accordance with the new norms according to democratic principles. The new regime committed a number of breaches on human rights against minorities, especially towards Albanians; systemic discrimination against them was the norm. Unsurprisingly, the Albanian people, dissatisfied with such treatment, eventually demanded to be treated equally. The Macedonian political system had sadly missed a huge opportunity to create a civil society. The content of its policy harboured discriminatory elements while maintaining political control over all vital sections of society; control over spheres such as language, education, the right to vote, residences etc (Smooha, 2005, p. 142).

As in North Macedonia, even some places of the former Yugoslavia had generally missed the chance to build institutions in a democratic manner and to govern well in the post-communist era. That failure in the former Yugoslavia sparked nationalist sentiment which then was exploited by governments, and, finally, the situation worsened and escalated into serious inter-ethnic conflicts. Regarding the conflict situation, it can be concluded that after the fall of communism, the roots

of many problems were revealed and showed that they had existed for a long time, but were covered up during the communist era. Among the highlighted problems was the disregard for any existing rights for ethnic groups and that their national issue had remained unresolved. As a direct result of the counter-democratic policy, members of ethnic groups felt like second-class citizens.

Consequently, it becomes clear that the riots caused after the fall of the communist system are a torrent of accumulations of injustices of that time. Smootha and Järve also spoke about these violations by arguing that despite the proclamation of the communist system for a cultural homogeneity at the state level, there was a legacy of nationalism which was embodied in the body of the institutions. But the origins of this legacy were covered up and silenced as were penetrative effects of this legacy. Yugoslavia was also built in bad faith and completely ignored national feelings and, instead, tried to bury those feelings from the new ideology, namely the communist ideology. Additionally, the very obvious nationalist ideology was given rise to by the Serbian intellectual and political elites who promoted nationalist movements. Due to this, Serbia began to misuse the power for its own aim, and tried to capture an entire regime's power within one federation. This act of nationalism especially targeted the Albanian population in Kosovo which, of course, was a dangerous policy for them under which to live. Sadly, this discourse against the Albanians continued even in the post-communist era (Ibidem, p. 170).

The Case of Kosovo and Its Impact on the Sovereignty Concept

After the fall of the communist system, the issue of sovereignty and democracy was linked to human rights as absolute sovereignty itself fluctuated. Therefore, the most important issue became the adjustment between sovereignty and democracy, and to be in compliance with the norms of democracy after the fall of the old system. Yugoslavia was one of those countries that did not meet democratic norms. Although the previous party system was replaced by a pluralist system, it did not, however, resolve many of the essential issues that had remained from the past and lived silently under the rug. But one of the biggest issues that emerged was the status quo of ethnic groups that were oppressed and continued to be oppressed. This issue had to be addressed by the political elite within state borders. It was necessary to change the existing norms of the state institution and the need to fix this issue was urgent. The essential requirement for transformation was to improve the conditions of the peoples liv-

ing there and to take everybody into account and treat all with the utmost care, regardless of affiliation. This demand was a legitimate and essential part of democratisation, and fundamental regarding the protection of human rights. Normative transformation had to start in state institutions and be implemented during the activities of social services. For example, the secret service, which was obviously considered a highly secretive institution, had to transform the way it worked, and even the army and police had to be depolarised and operate on the basis of democratic principles. In the case of Kosovo, the most substantial transformation that had to take place was with regard to the stereotypes and negative attitudes against the Albanian population. This particular type of transformation had to begin in state institutions and required their employees to perform their professional duties in accordance with democratic principles. The first point that had to be eliminated from their opinion was that Albanians were to be considered rather not as enemies, but as equal, fellow citizens.

In addition to this transformation, yet another was also needed, this time in the electoral system in order to install a pluralist party system. There were myriad obstacles to progress in this regard, as the new system unfortunately operated under the mindsets of the previous system.

The remnants of the structures of the previous system both during and after the transition process were evident in the former Yugoslavia, and were the source of issues and challenges when it came to progressing the transformation process in accordance with the principles of democracy (Ramet, op. cit.).

Although formally referred to as 'the new political system' and as a 'multi-party system', in practice it continued to act in the same style as before, hindering the progress of expanding democratic values (Smooha, op. cit., p. 175).

As a result of the aforementioned obstacles, the system of pluralism was not as widespread as it should have been. Other countries also had difficulties during the transition. For example, Romania and Croatia faced some obstacles, whereas Albania made some progress, but after the failed 1996 national elections and pyramid schemes, the process was hindered and, consequently, led to civil unrest. But, in a comparison between Montenegro and Serbia, it seemed that Montenegro was more open to a plural system (Ramet, op. cit., p. 52).

Serbia, in reality, acted differently during the transition of the democratisation process compared to other surrounding countries, because ultranationalist political groups was set up and every change was according to their program. Their plan was to change the demographics of the population in Kosovo by reducing the Albanian population, and increasing the

Serb population (Pavlakovic et. al., 2004). With this plan, the Serbian authorities decided to use any means or measures necessary just to achieve this goal. Some of these methods included an idea to expel Albanians from Kosovo and reduce the birth rate of Albanians. Finally, in order to carry out the plan, the Serbs began carrying out acts of genocide by, inter alia, poisoning Albanian children in schools by placing chemical substances in the classrooms wherein they were learning during the 1990s (Göran, 2009). Another tool was the threat of discontinuing the provision of food from the employment relationship. The vast majority of Albanian workers were eventually fired. More than seventy percent of Albanians were affected by these measures and were unable to earn money to buy food or to make a living (Calic, 2000). Other methods employed included mass persecution and the killing of people to spread the feeling of fear as a psychological motivation to emigrate. The aim of these means was to stimulate the emigration process and to create a hostile environment between the Serbian and Albanian people. To fulfil the plan of ultra-nationalism, special assistance was provided by Serbian scientists who had prepared the Memorandum, which was approved by the Serbian Academy of Sciences and Arts and implemented by political leader Slobodan Milosevic and his associates, such as Aleksandar Vučić who today is president of Serbia (Salihu, 2020, pp. 40–43).

During the transition period, the evidence of the results of the first post-communist election process in Serbia showed that, once again, it had been won by the old party but under the banner of a new name. The League of the Communist Party was the predecessor of the Socialist Party which emerged victorious.

As a result of their victory, nothing improved. Quite to the contrary; things worsened and the issue of nationalism returned to the agenda for a long time. Another significant problem worth mentioning is the lack of cooperation between different national and ethnic parties during the transition. Serbia ruled out co-operation with ethnic Albanian-created parties in Kosovo and, due to this, the Albanian parties in Kosovo stayed away from the new government created in the former Yugoslavia, i.e., Serbia, which dominated and came to power even after the former Yugoslavia's dissolution.

On the other hand, the entire political activity of the Albanian party in Kosovo (the Democratic League of Kosovo) was left without any real opportunity, despite the usual registration in the political system, and was consequently without any competence of government power in the transformed system. The rights of Albanians to be an equal part of the new system were denied. Therefore, the former Yugoslavia, during the 1990s, is ranked bottom of the scale for political rights and civil liberties accord-

ing to Freedom House. For these violations, in a comparative analysis of the democratic development of the Yugoslav regime, the country was assessed in line with countries with lesser democratic development and was ranked as being on par with countries such as Azerbaijan and Tajikistan (Smooha, op. cit., pp. 178–179).

With the above data, we see that even the post-communist system did not bring the necessary transformations for lasting stability. Particularly problematic was the lack of equal treatment of all ethnicities and respect for human rights. The new system that claimed to be and was called a democratic system should have recognised all human rights and protected all citizens without any affiliation. But deviations from democratic features appeared from the beginning of the installation of the new system and the election campaign was largely based on chauvinistic policy (Ramet, op. cit., p. 62).

As a result of this policy, riots and fires broke out in Yugoslavia as did much conflict. As it is known, the armed conflict started in the former Yugoslavia by contesting this federation sovereignty during the post-communist era. For this, we must remember the fact that in the former Yugoslavia only two of the six republics remained, in the form of Serbia and Montenegro. These two entities together pursued the same policy against other nations or ethnicities. What characterised their policy was that after the first election phase, a clear line of demarcation was used between the citizen and the non-citizen. Among those who were considered non-citizens were the Albanian people and their party, leaving them sidelined and excluded from the new system, both in government and opposition. The new government, led by the Serbian political party, excluded Albanians as citizens in the country even though the Albanian population lived in its territory and made up the majority of the population in the territory of Kosovo. By committing to this exclusion, Serbia showed the ugly side of governing and maintaining an anti-democratic system. To understand how that anti-democratic system was exercised and how it continued, we give a brief description of the use of some mechanisms that Serbs put in their policy system at the expense of the Albanian people.

Mechanisms that were dominant within Serbian politics: 1) centralisation; 2) ethnationalist discourse; 3) engineering and procedural manipulation; 4) criminal prosecution; 5) constitutional nationalism.

The following is a more detailed description of some of the dimensions of the above-mentioned mechanisms and which were standard tools in Serbian politics. Here are some examples:

1. Centralisation as a first step was made possible by the abolition of the autonomy of the two provinces, Kosovo and Vojvodina during 1989

and 1990, which resulted in a reduction of minority rights in these two territories.

2. Ethno-nationalist discourse spread to the political system as well. The means of sustaining the ethno-nationalist discourse was propaganda as its source. Throughout its exercise as a mechanism, there was an increased reaction of nationalism, and the relations between the two ethnic groups in the Serbs and Albanians in Kosovo broke down even further.

3. Procedural engineering and manipulation as a third mechanism emerged from the regime as a method which was widely used. Throughout this procedural engineering, minority parties were excluded from any opportunity to share power in the new government not only in the central district but also at the local level, even though at the local level, minorities made up the majority of the population.

4. Prosecution was the last preliminary part of the mechanism which was used extensively. Indeed, prosecution was justification, albeit highly camouflaged, to fight those who disagreed with the system. They were usually referred to as separatist minority groups, especially the ethnic Albanian group, which has been accused of and persecuted for 'being a secessionist group'. That methodology of false justification has been used for a long time against the Albanians in Kosovo.

5. Finally, constitutional nationalism was employed as a method to marginalise minorities from the institutional and constitutional framework. This mechanism was approved by the regime and was followed by numerous legal provisions. In reality, the entire judicial framework was entirely marginalising and discriminatory.

6. In summary, the former Yugoslavia, which was led by Serbia during the 1990s, did not meet the basic conditions as set out in the definition of the basic principles of democracy (Smooha, op. cit., p. 189).

These methods clearly highlight the lack of the development of democratisation of society after the post-communist period resulting in an inter-ethnic war in the former Yugoslavia. Under these circumstances, the concept of sovereignty was directly influenced and, as a result, the sovereignty of Yugoslavia fluctuated. The remnants of Montenegro, as the last part of the territory in the former Yugoslavia, were divided after the Kosovo war. But the partition of Kosovo took place after the armed conflict and at a high cost; the expense of the Albanians.

The issue of sovereignty was very sensitive at the highest international diplomatic level until sovereignty in Kosovo became a reality. Kosovo, as a new state in the European territory, has shown that sovereignty is a highly important part of a state.

However, the case of Kosovo has influenced the concept of sovereignty, sparked debate in the world, and now the issue of sovereignty has passed another new challenge with demands for the reduction of absolute power and for wider democratisation. In this context, the essential aspect related to the respect of human rights has been raised. With this aspect of human rights in mind and its historical background, the concept of sovereignty was controversial in the former Yugoslavia. Historically, Yugoslavia's sovereignty has been contested from the beginning and has never been legitimised by Kosovo Albanians, who made up more than ninety percent of Kosovo's population. However, the concept of sovereignty suffered the loss of absolute power and changed the side of preferences by choosing and respecting human rights and prevented the continued abuse of power. Under these circumstances, new sovereign states of the former Yugoslavia were established, among which, as we have pointed out, is the sovereign entity of Kosovo.

Conclusions

In the analysis of the transformations of the post-communist era, it turns out that the concept of sovereignty has been faced with many questions as to who created it and who may have the right to be sovereign. These questions are especially important with regard to how the former Yugoslavia was built, because there were some nations that did not get the same status quo when the federation was created. The ethnic Albanian group, which was numerically large, and as the third group in the federation, was mistreated regarding their status quo, and was constantly discriminated against. The Albanian population was not recognised as a nation, but rather as a nationality, despite the fact that other groups that were of a smaller numerical population, received a higher status-quo *as a nation*.

After the post-communist period, the sovereignty question became more prevalent when the demand for democratisation and respect for human rights became a central issue. After half a century of coexistence, many ethnic groups tried to secede from the federation of the former Yugoslavia and build their own sovereign state. During the post-communist period, Yugoslavia disintegrated and new states were born that were declared sovereign states. One of these states is Kosovo, as a sovereign and independent state.

From the above facts, it can be seen that the post-communist period itself also had an impact on the issue of sovereignty. The post-communist phase was followed with many new sovereign national states being pro-

claimed. With the birth of these sovereign states, it has been proved again that the concept of sovereignty is still current for every state, but with different conditions. Requests for new and improved national conditions are connected with peace and stability. The maintenance of a stable, sovereign state after the post-communist era can be ensured by taking these new conditions into account, especially in the field of human rights.

The changing of standards on the sovereign concept are well known in post-communist era. The concept of sovereignty in the time of communism was misused and, consequently, could not stand as the basis for a stable, sovereign state or federation. During the communist era, it was promised that the state should respect collective rights within a sovereign territory, but instead a tendency to articulate the selective nation and to destroy other ethnic groups came to the fore. Therefore, in the post-communist era, sovereign power has been adapted in accordance with the respect of human rights which is considered as a crucial standard in the post-communist period.

In conclusion, as shown by the above description, the model of Westphalia sovereignty has changed over time, yet the foundations of the previous model are still being used in the world. Assessing its capacity is especially important in fundamental aspects, because sovereignty holds power and it plays a necessary role for a state. However, a very noticeable change after the post-communist era has to do with sovereignty's absolute power, and that power should be focused on protecting human rights. Today, there are many international treaties and international laws which should be binding on all sovereign states as well as on Kosovo which has, in particular, the highest priority for the respect for human rights. Kosovo's sovereignty is conditional and enforces positive discrimination against minorities. This condition is incorporated in the Constitution of Kosovo, and perhaps the Constitution of Kosovo will be a good example in the world of a sovereign state of the post-communist period.

References

Bahcheli, T., Bartmann, B. and Srebrnik, H. (eds.) (2004) *De Facto States – The quest for sovereignty*. London–New York: Routledge. DOI: https://doi.org/10.4324/9780203485767.

Bartelson, J. (1995) *A Genealogy of Sovereignty*. Cambridge: Cambridge Univeristy Press. DOI: https://doi.org/10.1017/CBO9780511586385.

Bartmann, B. (2004) *Political realities and legal anomalies* in Bahcheli, T., Bartmann, B., and Srebrnik, H. (eds.) *De Facto States – The quest for sovereignty*. London–New York: Routledge.

Calic, M-J., (2000) *Kosovo in the twenty centry: A historical account* in Schnabel, A. and Thakur, R. (eds.) *Kosovo and the challenge of humanitarian intervenetion: Selective indignation, collective action and international citizenship*. United Nations University UNU Press.

Curis, R. (2005) *A Model in Making: The Case of Kosovo* in Smooha, S. and Järve, P. (eds.) *The Fate of Ethnic Democracy in Post-Communist Europe*. Budapest.

Loughlin, M. (2003) *Ten Tenses of Sovereignty* in Walker, N. (ed.) *Sovereignty in Transition*. Oregon. Malmvig, H. (2006) *State, Sovereignty and Intervention*. London: Routledge. DOI: https://doi.org/10.4324/9780203969458.

McGarry, J. (2004) *De facto states and the international order* in Bahcheli, T., Bartmann, B. and Srebrnik, H. (eds.) *De Facto States – The quest for sovereignty*. London–New York: Routledge.

Pavlakovic, V. and Ramet, S.P. (2004) *Albanian and Serb rivalry in Kosovo* in Bahcheli, T. Bartmann, B. and Srebrnik, H. (eds.) *De Facto States – The quest for sovereignty*. London–New York: Routledge.

Prokhovink, R. (2007) *Sovereignties – Contemporary Theory and Practice*. New York.

Ramet, S.P. (1997) *Whose Democracy*: *Nationalism, Religion, and the Doctrine of Collective Rights in Post-1989 Eastern Europe*. New York: Rowman & Littlefield Publishers, Inc.

Salihu, S. (2020) *Sovraniteti dhe Legjitimiteti i shtetit të Kosovës*. Prishtina: Kosovar-Swedish Scientific Institute. Prishtinë.

Shinoda, H. (2000) *Re-examining Sovereignty*. London: Palgrave Macmillan. DOI: https://doi.org/10.1057/9780333981764.

Smooha, S. and Järve, P. (2005) *The Fate of Ethnic Democracy in Post-Communist Europe*. Budapest: Local Government and Public Service Reform Initiative.

Tatum, D.C. (2010) *Genocide at the Dawn of the Twenty-First Century – Rwanda, Bosnia, Kosovo, and Darfur*. New York: Springer. DOI: https://doi.org/10.1057/9780230109674.

Walker, N. (2003) *Sovereignty in Transition*, Oxford: Bloomsburg.

Wassenius, G. (2009) *Den mystiska sjukdomen*. Kosovo: Recito.

Zajmi, G. (1997) *VEPRA 1*. Akademia e Shkencave dhe Arteve e Kosovës, Prishtinë.

DOI: 10.33067/SE.1.2022.9

Faton Shabani⋆

Insurance: Trends of Use in the Republic of North Macedonia

Abstract

Insurance supports a healthy and prosperous society, enabling businesses and individuals to protect themselves, property, and their finances against risk. As such, insurance today is not just important for the individual consumer, business client or businesses; it also has consequences for the entire economy, restoring businesses to health after natural disasters, acts of war, riots, strikes, fluctuations or financial crises, and state measures to dictate the import or export of goods. The aim of this paper is to examine the part played by insurance in the economy of the Republic of North Macedonia. This paper introduces and summarises an argument and outlines the nature of the exploration to follow. For this introductory purpose, referencing in the paper is kept deliberately light; aiming to find discussion points of relevant sources in the course of the argument as it unfolds. We argue that insurance operates not at the periphery, but also at the core of development, in both practical and conceptual terms. Research of the space that insurance occupies and the role that insurance has in general welfare is performed by using the legal platform that insurance has in place, including the Law on Obligations, the Law on Insurance Supervision, and the Law on Compulsory Traffic Insurance. Through the method of analysis, synthesis, and statistics, the author processes the official data of the Ministry of Finance presented by the National Bank, in order to provide a clear overview of the trends in the use of insurance in the Republic of North Macedonia. The results from the study show that in the time period analysed, the insurance sector is classified as the third most important segment in the financial system, and that life insurance prevails over other types of insurance.

Keywords: Insurance, Individual Consumer, Business, Economy, Development, Welfare

⋆ **Faton Shabani** – University of Tetova, e-mail: faton.shabani@unite.edu.mk, ORCID ID: https://orcid.org/0000-0002-1246-3526.

Introduction

The risk of harmful consequences of various events that may occur, while being unpredictable as to when they will happen or whether they will happen at all, has forced people to think about creating mutual funds which will be used to compensate for the damage of those who have suffered from such events. As such, insurance represents the institute for protection from the risk of the occurrence of harmful events, even though those events are unpredictable, and it is uncertain whether they will happen or not, when they will happen, to whom they will cause harm, and what kind and in what amount of harm will be caused to their victims (Shabani, 2021).

Insurance is a transaction of risk allocation, where one party (the insurance company) undertakes to insure the other party (the insured) against possible losses. The arrangement is manifested through a contract, i.e., an insurance policy. The insurance contract obliges the insurance contractor (the insured), based on the principle of reciprocity and solidarity, to invest a certain amount of money in an insurance company, respectively, in an insurance company against risks (the insurer), while the company is obliged to pay the insured or any third party a contracted amount or to do something else upon a specified loss, damage, illness, or death occurring (Law on Obligations, 2001).

Insurance activity has seen an evolutionary development. While insurance can be traced back millennia, only in the middle of the last century has a shaping of the comprehensive and profound meaning of this complex economic institution been achieved (Zweifel, 2012). Individuals seek to protect themselves against irregular and largely unexpected 'shocks'; those which have a high potential to affect their lives, health and property, by using one or more risk management tools, such as renewing or, in particular, buying insurance. Therefore, the importance of insurance increases in proportion to the increase in the value provided. Unlike in the past, the insurance activity of today serves not only to protect the interests of individuals who are insured, but, often, also the interests of third parties who do not participate in the creation of the mutual fund. There is a strong aspiration in modern law to ensure the protection of a certain circle of persons who are exposed to certain risks which arise as an inevitable consequence of general development (e.g., in public transport) and who, through no fault of their own, can suffer harm to their life, health, personality or property. Therefore, insurance is of great importance not only for the social community, but also from various aspects, primarily economic and social, in which case, increasing the use of insurance

is closely associated with increased well-being within society (Merkin, Steele, 2013). This importance has led to the growth of insurance activity from that of private work to a kind of public service. Through insurance, large capital is formed, which is part of the state savings reserved to deal with unforeseen circumstances. In addition to the function of repairing any damage caused, the common function of insurance is also prevention. An important activity of the insurer is also the undertaking of measures for prevention and the prevention of risk which threatens an insured person and property (Perović, 1995).

Approaches to insurance can be grouped into two 'poles' of analysis, which highlight different key features as typical of the insurance phenomenon. One approach has given rise to more sociological attitudes, rather than legal ones. This model highlights the collective nature of insurance. The other has been prevalent in insurance economics studies, but is also in line with the regulatory definitions of the insurance business. This defines insurance primarily in relation to the ratios in which the risk is transferred from one party to the other. The second approach, by emphasising the relationship created by insurance, actually deserves wider attention (Merkin, Steele, op. cit.).

Scope of Insurance

According to the Law on Insurance Supervision, insurance activity includes insurance (life and non-life insurance), reinsurance, insurance representation, and insurance-brokerage. As part of the work in question, insurance companies may also carry out the following work directly related to insurance brokerage (Law on Insurance Supervision, 2002):

- Mediation during insurance or reinsurance contracting;
- Operations with futures contracts, options and other specific instruments, if they are not used as insurance against the risks presented as a result of exchange rate movements and interest rates; the recording of risks;
- The recording and assessment of damage;
- Mediation during the sale and sale of waste from insured items that have suffered damage;
- Establishment of measures to prevent, reduce, and eliminate damage and risks which pose a risk to non-life insurance;
- Providing legal assistance in insurance and reinsurance;
- The provision of other intellectual and technical services related to insurance and reinsurance work.

The Legal Platform for Insurance Regulation in the Republic of North Macedonia

Insurance activity in the Republic of North Macedonia is regulated in legal terms, mainly based on the legal provisions of three laws: the Law on Obligations, the Law on Insurance Supervision, and the Law on Compulsory Traffic Insurance. From these and other laws that indirectly deal with insurance issues, a number of regulations, ordinances, guidelines, and instructions for the smooth implementation of the insurance institute in practice have been produced and are being implemented.

The Law on Obligations regulates the central insurance instrument – the insurance contract expressed through the document known as the insurance policy; the elements of the contract, the conclusion of the contract, the cases excluded from insurance, the rights and obligations of the contracting parties, the duration of insurance, as well as forms of insurance (property insurance and personal insurance) with all the features that characterise them (Law on Obligations, 2001).

The Law on Insurance Supervision regulates: the conditions under which life insurance, non-life insurance, and reinsurance activities can be performed, insurance representation activities, insurance brokerage operations, establishment, operation, supervision and termination of operation of insurance companies and reinsurance, insurance brokerage companies and insurance representation companies as well as the establishment and operation of the Insurance Supervision Agency (Law on Insurance Supervision, 2002).

Finally, the Law on Compulsory Traffic Insurance regulates the compulsory insurance of: passengers on public transport due to the consequences of an accident; owners, i.e., users of motor and trailer vehicles; passengers, luggage and items on air traffic as well as air carriers, i.e., aircraft operators; and owners, i.e., users of ships, i.e., motor-powered boats, from liability for damage caused to third parties in traffic, and other issues of importance for the mandatory traffic insurance (Law on Compulsory Traffic Insurance, 2005).

Although there is a set of legal norms that deal with insurance regulation, they not only do not exclude each other, much less provide for something that contradicts each other, rather the prevailing harmony is seen in the fact that the provisions of laws expressly instruct in the implementation of the provisions of the other law.

Trends in the Use of Insurance in the Republic of North Macedonia

In 2015, the growth of the insurance sector continued, expressed through the movements of gross written premium, which is significantly greater compared to the most of the countries in our environment. The increase of the assets of the insurance companies is mostly due to the increased sales activities and, partially, from capital growth. In conditions of increased net costs for the implementation of insurance, the amount of transferred risks from reinsurers, and the profitability of the insurance companies have all improved due to a slower increase in claims and increased premiums. The solvency of the sector is extremely high, which is one of the factors for its stability. The liquidity of the sector has also improved. The threat of spillover of the risks from the banking sector to the insurance sector through the use of insurance policies in banking products is still low. The most important factors for the uninterrupted function of the insurance sector are the stability of the banking system (due to invested deposits), and of the government (due to the investment in securities). The risk of change in interest rates in insurance companies registered a mild increase (Financial Stability Report in the Republic of Macedonia, 2016).

In millions of Denars

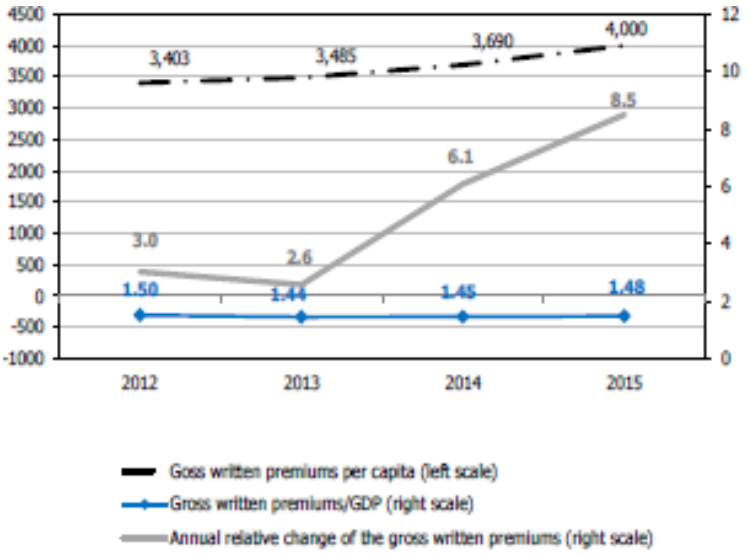


Chart 1: Insurance sector development indicators

Source: Insurance Supervision Agency and National Bank of Republic of North Macedonia's internal calculations, 2016.

Looking at 2015, the increase in the insurance sector is evident, with a significantly higher annual growth rate of the gross written premiums. The density degree (gross premiums written per capita) increased by 8.5% (up from 6.1% in 2014), and the degree of penetration (share of gross premiums written in GDP) registered minimal changes. Thus, the dominant contribution to the growth of the total gross written premium is that of non-life insurance with 67.2% (mostly the class of compulsory MTPL), while life insurance is today slowly penetrating the North Macedonian insurance market. The increase of the insurance sector in the Republic of North Macedonia, measured according to the movements of the gross written premiums, is constantly high compared to most countries in our environment, as well as compared to the countries of Central and Eastern Europe (the average rate in 2015 is 1.5%) (Financial Stability Report in the Republic of Macedonia, 2016).

As percentages:

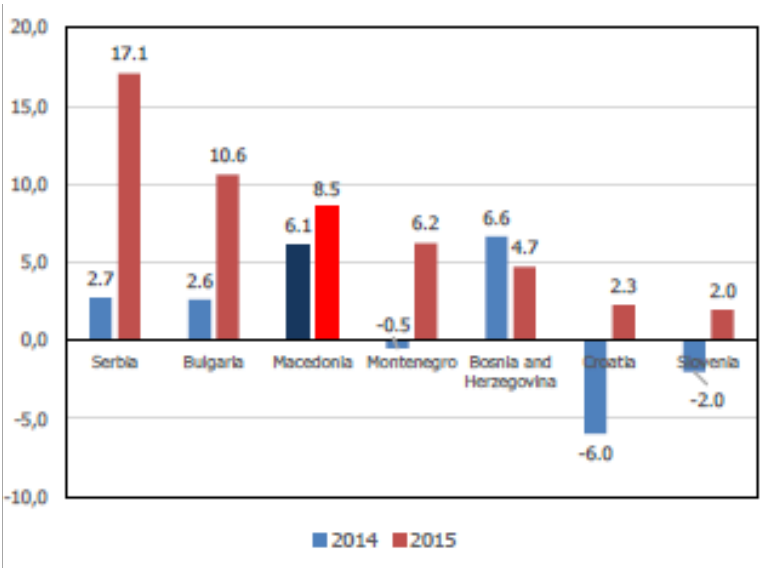


Chart 2: Annual relative change in the total gross premium written in the countries of the region

Source: Insurance Supervision Agency and National Bank of Republic of North Macedonia's internal calculations, 2016.

The insurance market is moderately concentrated in terms of shares of the insurance companies in assets and gross written premiums. Non-life insurance companies contribute to the moderate concentration, i.e., dispersion. Due to the small number of companies (four) which perform

life insurance activities, there is a high concentration in life insurance, whereby almost 84% of the gross written premium is concentrated in two companies (Financial Stability Report in the Republic of Macedonia, 2016).

The total activity of the insurance sector in 2016 increased due to the growth of gross written premiums, thus maintaining third position in the overall financial system. The insurance sector continues to have high coverage of the technical reserves and maintains profitable operation, albeit reduced in volume compared to the previous year and has strengthened a high solvency position. The threat of creating and spreading risks to the financial system of the Republic of North Macedonia is small, primarily due to the weak links of the insurance sector with other segments of the system, but also due to the absence of complex financial instruments and services in this sector and domestic financial markets in general. The low level of development in this sector enables further growth through the constant enrichment of the products' supply, for which the economy's recovery and increase of households' disposable income shall have an adequate impact.

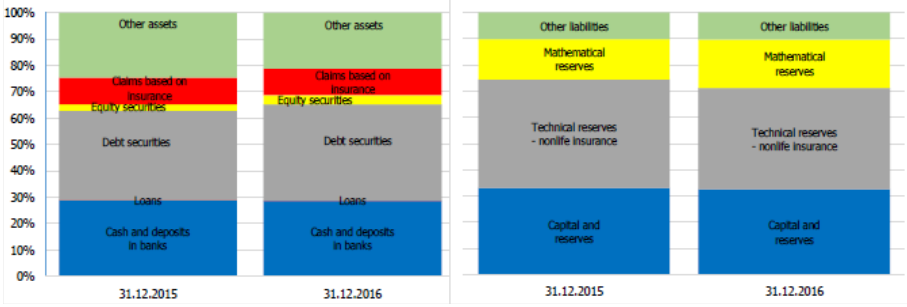


Chart 3: Structure of insurance companies' assets (left) and liabilities (right)

Source: Insurance Supervision Agency and National Bank of Republic of North Macedonia's internal calculations, 2017).

Setting an efficient premium rate is the key aspect of insurance, i.e., a premium which, on one hand, will attract and persuade a potential client to invest in this financial instrument, and on the other hand will guarantee the possibility of fulfilling the obligations of the insurance companies and their profitable operations. Insurance companies should be able to pay claims at any time, even if the cost is higher than expected. In this regard, the most significant risks of the insurance companies are the risks

at the premium level and the risk of insufficiently allocated technical reserves. The risk level of the premium level, i.e., the risk that premiums being paid by insurance companies might not cover future costs, measured through the claim coefficient (the ratio between net claims in the year and net written premium) decreased by 1.2 percentage points in 2016. Technical reserves coverage also increased. Namely, at the end of 2016, the assets of insurance companies which covered technical reserves are 106.2% of the total technical reserves (in 2015, 105.4%) (Financial Stability Report in the Republic of Macedonia, 2017).

In years

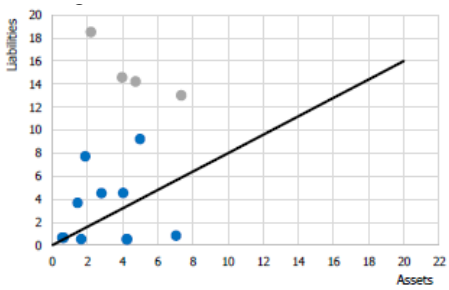


Chart 4: Gap between assets and liabilities' positions, according to their residual maturity, by insurance company

In million Denars As a percentage

Chart 5: Insurance companies' investments in debt and equity securities

Source: Insurance Supervision Agency and National Bank of Republic of North Macedonia's internal calculations, 2017.

It is important to note that in 2016, insurance companies registered a positive financial result, which decreased by 7.47% year on year. That is due to the high amount of liquidated claims which increased by 13.3% in 2016. Despite the higher increase of gross paid claims in life insurance (62.2% or, in Denar, 80 million more compared to 2015), gross paid claims in non-life insurance which increased by 11.2% or 342 million Denar, have a greater influence on the growth of liquidated claims and on the decreased positive financial result. The main incomes of the insurance sector come from gross written premiums which, in life insurance, increased by 17.3%, whereas in non-life insurance, the increase was 3.5% (Financial Stability Report in the Republic of Macedonia, 2017).

In 2017, the sector's assets registered an intensified growth which reached 8.4% (5.2% in 2016). Around one-third of the growth of insurance sector assets is due to the capital positions of a newly-formed life insurance company (which started operations in 2017), while half of the

growth is due to larger activities in the life insurance domain. Non-life insurance continues to prevail in the insurance market of the Republic of North Macedonia, which, by the end of 2017, accounted for 69.9% of the total assets of the insurance sector. However, life insurance registers a continuous growth, whereby its share in the assets of the overall insurance sector in the last five years has increased by 11 percentage points (from 19.1% in 2013 to 30.1% in 2017). Life insurance expansion is perceived through a number of newly-concluded contracts (an increase of 25.1%). This growth, however, is not accordingly accompanied with the growth of the contract values, for which macroeconomic factors, primarily the volume and growth of household disposable income, play a key role (Financial Stability Report in the Republic of Macedonia, 2018).

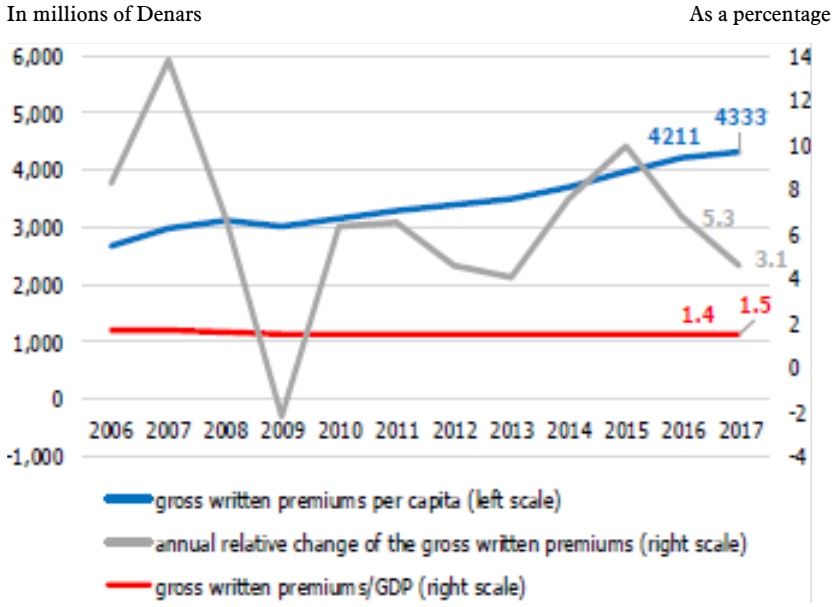


Chart 6: Insurance market development indicators

Source: Insurance Supervision Agency and National Bank of Republic of North Macedonia's internal calculations, 2018.

During that year, the insurance market development indicator improved. This was perceived through the improvement of the insurance penetration and insurance density of its products on the market.

Furthermore, in 2017, the reinsurance volume did not change in life insurance, while there was a slight decline in non-life insurance. On the

other hand, the share of net paid claims of insurance companies in gross claims also increased to 83.3% which arises from non-life insurance.

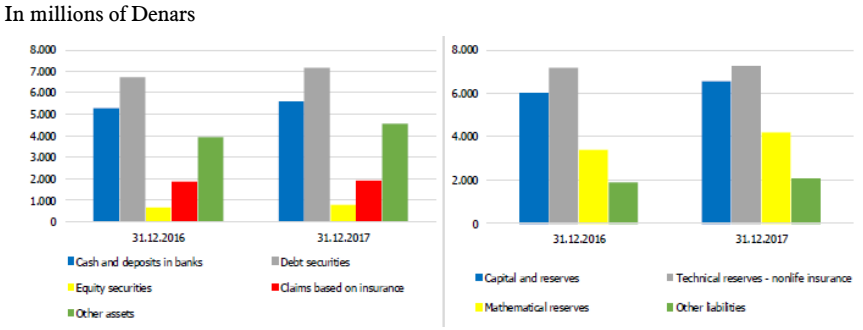


Chart 7: Structure of insurance companies' assets (left) and liabilities (right)

Source: Insurance Supervision Agency and National Bank of Republic of North Macedonia's internal calculations, 2018.

By size of assets, the insurance sector is the third largest segment in the financial system of the Republic of North Macedonia. The Macedonian insurance sector is still small, with its total assets accounting for just 3.3% of GDP (3.2% in 2017). The large number of policies concluded in 2018 is, however, an indication that the public is becoming more aware of the need of securing its financial future in various ways. Despite accelerated growth in life insurance, non-life insurance is still prevalent, within which, the motor-based, third-party-liability insurance still being the most dominant class of insurance. This means that, despite the progress made in insurance, there is still room to stimulate larger use of the benefits from the non-mandatory classes of insurance. Life insurance registers high growth rates, although its share is still insufficient. There are several factors for this, primarily the size and growth of household disposable income, financial literacy, and a very important factor is that this segment is still relatively "young". Introduced tax reliefs can somewhat contribute to a larger uptake of life insurance. In addition to this is the fact that households' financial assets have grown over the years, which is one of the bases for growth in the insurance market (Financial Stability Report in the Republic of Macedonia, 2019).

Non-life insurance is prevalent on the insurance market according to the number of insurance companies, the amount of total assets, the amount of gross premiums written (GPW), and the number of concluded contracts. In 2018, the amount of GPW for non-life insurance registered

a much faster growth (9.4%) compared to its growth in 2017 (1.6%) and contributed to the total GPW growth for the whole sector with 76.1%, (against a contribution of 42.9% in 2017). However, despite its acceleration in 2018, GPW growth is lower than in the life insurance segment (15.5%). The level of development of the non-life insurance market has been improving slowly, albeit well below the EU level.

Table 1: Features of the insurance sector

	2014		2015		2016		2017		2018	
Category	Amount/ Number	structure in %	Amount/ Number	structure in %	Amount/ Number	structure in %	Amount/ Number	structure in %	Amount/ Number	structure in %
Number of insurance companies	16	100	15	100	15	100	16	100	16	100
Non-life insurance	11	68,8	11	73,3	11	73,3	11	68,8	11	68,8
Life insurance	5	31,3	4	26,7	4	26,7	5	31,3	5	31,3
Total assets, in millions of denars	16.416	100	17.562	100	18.480	100	20.030	100	21.639	100
Non-life insurance	12.152	80,1	13.641	77,7	13.674	74,0	13.993	69,9	14.545	67,2
Life insurance	3.264	19,9	3.921	22,3	4.806	26,0	6.037	30,1	7.093	32,8
Gross written premium, in millions of denars	7.631	100	8.280	100	8.722	100	8.992	100	9.927	100
Non-life insurance	6.742	88,4	7.179	86,7	7.430	85,2	7.546	83,9	8.258	83,2
Life insurance	888	11,6	1.101	13,3	1.292	14,8	1.446	16,1	1.670	16,8
Number of contracts concluded (policies)	1.135.156	100	1.199.860	100	1.292.749	100	1.385.676	100	1.476.374	100
Non-life insurance	1.126.338	99,2	1.191.177	99,3	1.279.016	98,9	1.368.493	98,8	1.454.110	98,5
Life insurance	8.818	0,8	8.683	0,7	17.733	1,1	17.183	1,2	22.264	1,5

Source: Insurance Supervision Agency and National Bank of Republic of North Macedonia's internal calculations, 2019.

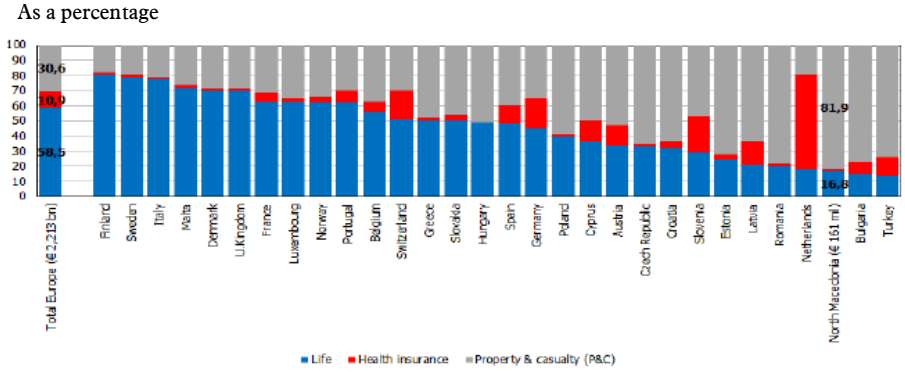


Chart 8: Structure of GPW value by insurance class, by country

Source: European Insurance, Key facts, October 2018. The data refer to 2017, except for the Republic of North Macedonia which refer to 2018, 2019.

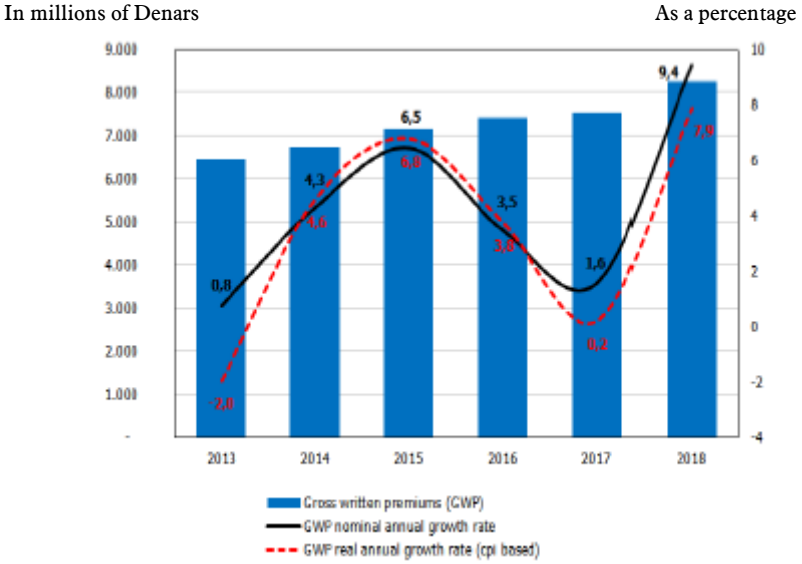


Chart 9: Movement of the total gross premiums written (GPW) from non-life insurance

Source: Insurance Supervision Agency and National Bank of Republic of North Macedonia's internal calculations, 2019.

The increased number of concluded non-life insurance policies and technical reserves growth conditioned asset growth of the non-life insurance companies by Denar 552 million or 3.9% compared to the preceding year (Financial Stability Report in the Republic of Macedonia, 2019).

During 2019, the insurance sector continued to grow and to increase its importance within the domestic financial sector. The total assets of the insurance sector increased by 10.5% on an annual basis, which is its highest growth rate in the previous five years. The life insurance segment continues to register higher growth rates of assets, although at a slower pace in the last two years, unlike non-life insurance, which has an accelerated upward trend. However, for the first time in 2019, the two segments of the insurance sector have a similar contribution to the asset growth of the insurance sector. The total gross written premium (GWP) of the insurance sector in 2019 on an annual basis increased by 6.6%, for which non-life insurance had a greater contribution, with further growth of life insurance premiums. Non-life insurance continues to prevail in the structure of the domestic insurance market with a share of 65.4% in total assets and 82.7% in total GPW of the insurance sector. This situation is the opposite of developed countries, where life insurance is more important, measured by GWP and total assets (Financial Stability Report in the Republic of Macedonia, 2020).

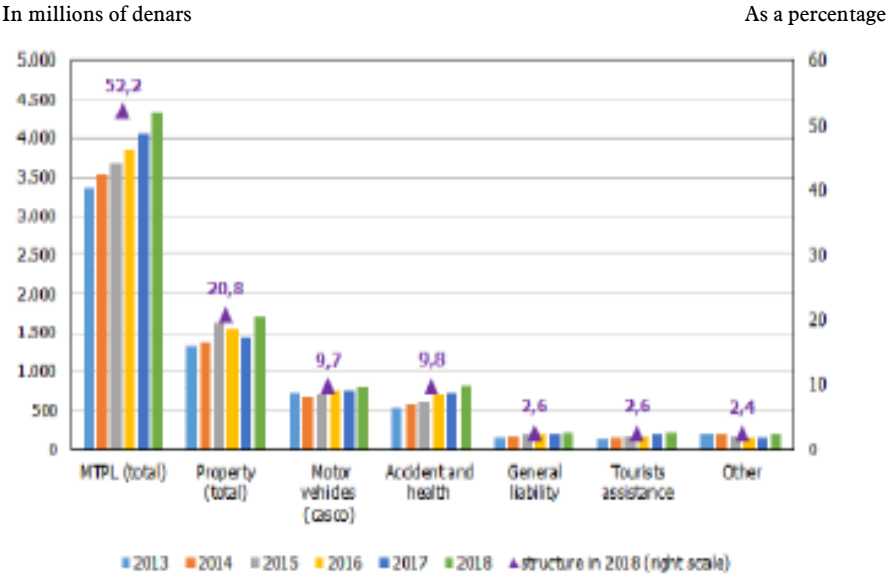


Chart 10: Gross policies written (GPW) by non-life insurance class

Source: National Bank based on data from the Insurance Supervision Agency, 2019.

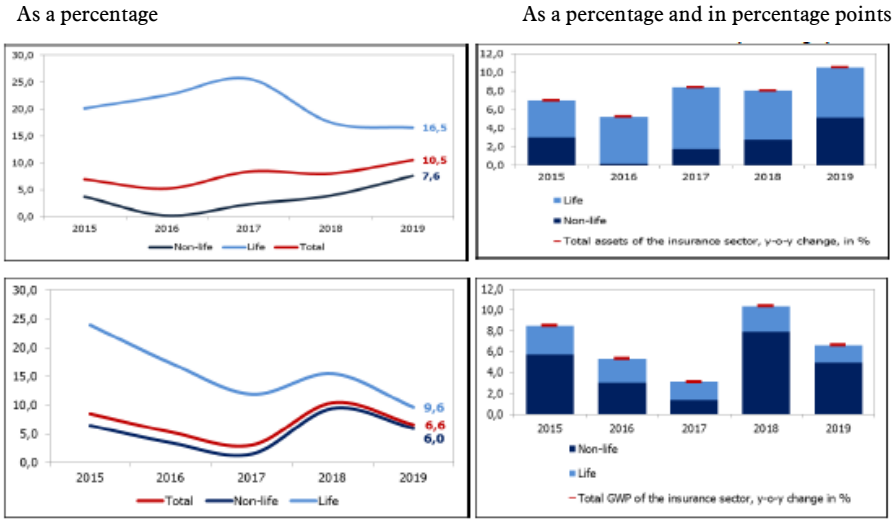


Chart 11: Annual rates of change and contribution to the annual growth of assets (top) and GWP (bottom) of the insurance sector

Source: National Bank based on data from the Insurance Supervision Agency, 2020.

At the end of 2019, the assets of the insurance sector make up 3.4% in GDP, as opposed to 78.8% which is the share of the assets of the banking sector. With a degree of insurance penetration of 1.5% of GDP and a degree of insurance density of Denar 5,099 (or Euro 82.9) per capita in 2019, the Macedonian insurance sector is among the smallest and least developed of markets, compared to the more advanced European economies, as well as the countries in the region. International comparisons show a link between the size of the insurance sector and the degree of development of the economy, with more developed economies tending to have larger insurance markets and vice versa (Financial Stability Report in the Republic of Macedonia, 2020).

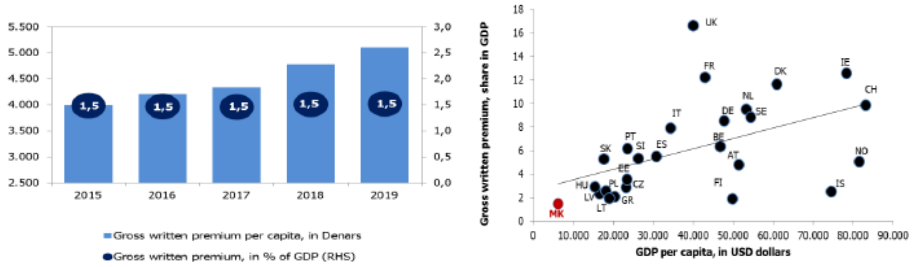


Chart 12: Indicators for the development of the insurance market in the Republic of North Macedonia (left) and in comparison with the EU countries (right). Note: The data in the chart on the right, for all countries, including RNM, refer to 2018

Source: National Bank, based on data from the Insurance Supervision Agency and the OECD, 2020.

During 2020, despite the challenges posed by the COVID-19 Pandemic, the domestic insurance sector maintained a sound liquidity and solvency position and achieved a positive financial result. It thus showed good preparedness for dealing with shocks, which was contributed to by the good condition of the sector before the pandemic, but also highlighted the measures adopted by the Insurance Supervision Agency (ISA), as a competent supervisor and regulator, in response to the crisis. The pandemic affected the operation of the sector mainly through reduced demand for insurance policies, which applied to both segments of insurance.

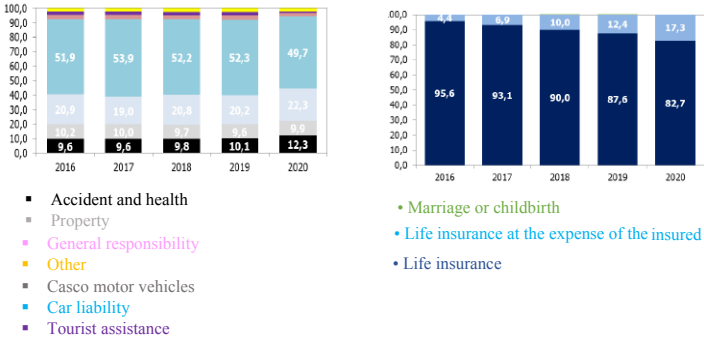


Chart 13: Gross policy premiums according to life insurance classes (left) and life (right)

Source: National Bank based on data from the Insurance Supervision Agency, 2021.

The reduced activity in 2020 is accompanied by an improvement in profitability in both insurance segments. The improvement was especially pronounced in the non-life insurance sector, which was contributed to by the consolidation of two insurance companies which, in 2019, showed significant operating losses. Thus, the total segment of non-life insurance in 2020 achieved positive rates of return on assets and capital of 1.7% and 4.7%, respectively, compared to the negative rates of return in the previous year. The life insurance segment continued to operate at a profit and improved the rates of return on assets and capital which, in 2020, were 1.9% and 10.1% respectively (Financial Stability Report in the Republic of Macedonia, 2021).

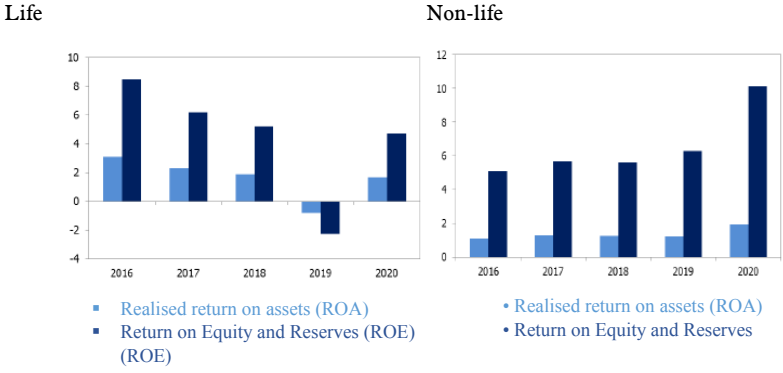


Chart 14: Profitability indicators of the domestic insurance sector (in percent)

Source: National Bank based on data from the Insurance Supervision Agency, 2021.

However, low operating efficiency, as a long-term characteristic of the insurance sector, remains a limiting factor for the growth of the sector's profitability. Such conditions arise from the high costs of implementing insurance, with high costs for commission charged by indirect sales channels. These expenses, in 2020, in non-life insurance continued to grow and reached 27.4% of the total realised GVA through the insurance intermediaries (insurance brokerage companies, insurance representation companies, and banks). Thus, they contributed to maintaining a very high cost ratio of non-life insurance which, in 2020, was 51.4%. In life insurance, the cost of commission in 2020 decreased, which contributed to the improvement of the cost ratio from 32.7% to 29%. However, their share in the total administrative costs and the costs of implementing the insurance is still high and in 2020 it was 45.6%. Such conditions impose the need for more economical cost management and cost-effectiveness improvement, especially in the current context, when the risks to the sector's profitability are emphasised. Namely, at the end of 2020, the regulatory relief brought by the ISA in response to the crisis, which had supported the profitability in the previous period, ceased to apply. An additional risk factor is the uncertain dynamics of economic recovery, which may continue to affect the scope of activities of the sector. In addition, the crisis can cause structural changes, such as permanent changes in the habits and needs of customers, which can increase the need for investment and the adjustment of business models in the direction of greater digitalisation and development of new products and services in insurance (Financial Stability Report in the Republic of Macedonia, 2021).

Conclusions

The North Macedonian insurance sector is still small, but with a likelihood of serious improvement. This sector is characterised by full coverage of technical reserves (technical reserves and mathematical reserve in life insurance), i.e., future liabilities that arise from insurance policies and possible losses regarding risks related to performing insurance activities, with permissible fund categories. Furthermore, the insurance sector's solvency – as an indicator for the stability of the sector - remains high, which is based on the high capitalisation of the sector.

The period selected for research has its own peculiarities in the Republic of North Macedonia. Firstly, the change of political power after 2016 did not leave the direction of economic development unaffected, and that includes the approach of the security sector. Secondly, the global Covid-19 Pandemic, as everywhere in the world, affected our country. Frequent changes in insurance legislation are a consequence of various changes

occurring in the insurance sector, along with the need imposed by the requirement for harmonisation with EU directives and regulations. The pandemic situation seems to have highlighted the benefits of having financial protection against adverse risks and has raised the awareness of households and the corporate sector about the need for insurance, which is reflected in the growth of optional insurance classes.

The insurance sector is the third largest segment according to the size of assets in the financial system of the Republic of North Macedonia. Non-life insurance continues to prevail within its scope, whose slower growth in 2017 contributed to the deceleration of the growth of the insurance sector overall. The last five years have been characterised by a high growth of life insurance with an investment component, which contributed to increasing its share in the total Gross Value Added (GVA) of life insurance from 4.4% in 2016 to 17.3% in 2020. The reason for such movements may be the search for return by the insured, which in turn increases the exposure of the insured to market risk and the possibility of losses due to investment risk. The representation of these products in the financial assets of the population is currently low. Moreover, in the last five years, the insurance sector has registered a growth at a higher average rate compared to the banking sector. Asset growth in the last three years exceeds the historical average for the previous ten-year period, which is a positive indicator for the development of the insurance sector. However, compared to the banking sector, the size of the insurance sector remains small, which limits the importance of the sector as a source of risks to financial stability. Finally, the solvency of the insurance sector as an indicator of the stability of the sector is still high, based on the high capitalisation of the sector, which exceeds the regulatory minimum several times over.

References

Abraham, K., Daniel, S. (2020) *Insurance Law and Regulation, Cases and Materials* (7th edition). Foundation Press.

Financial Stability Report in the Republic of Macedonia in 2015 (2016) National Bank of the Republic of North Macedonia, Skopje.

Financial Stability Report in the Republic of Macedonia in 2016 (2017) National Bank of the Republic of North Macedonia, Skopje.

Financial Stability Report in the Republic of Macedonia in 2017 (2018) National Bank of the Republic of North Macedonia, Skopje.

Financial Stability Report in the Republic of Macedonia in 2018 (2019) National Bank of the Republic of North Macedonia, Skopje.

Financial Stability Report in the Republic of Macedonia in 2019 (2020) National Bank of the Republic of North Macedonia, Skopje.

Financial Stability Report in the Republic of Macedonia in 2020 (2021) National Bank of the Republic of North Macedonia, Skopje.

Furmston, M., Jason, Ch. (2010) *Commercial and Consumer Law*. Harlow: Pearson Education Limited.

Gurses, O. (2015) *Marine Insurance Law*. Oxon: Routledge Taylor & Francis Group. DOI: https://doi.org/10.4324/9781315618234.

Hodgin, R. (2002) *Insurance Law: Text and Materials* (2nd edition). London: Cavendish Publishing Limited.

Insurance Contract Law: Business Disclosure; Warranties; Insurers' Remedies for Fraudulent Claims; and Late Payment (2014) The Law Commission and The Scottish Law Commission.

Law on Compulsory Traffic Insurance (2005) Official Gazette of the Republic of North Macedonia, no. 88/05. Law on Amending and Supplementing the Law on Compulsory Traffic Insurance, Official Gazette of the Republic of North Macedonia, no. 70/06, 81/08, 47/11, 135/11, 112/14, 145/15, 220/19.

Law on Insurance Supervision (2002) Official Gazette of the Republic of North Macedonia, no. 27/02. Law on Amending and Supplementing the Law on Insurance Supervision, Official Gazette of the Republic of North Macedonia, no. 84/02, 98/02, 33/04, 88/05, 79/07, 8/08, 88/08, 56/09, 67/10, 44/11, 112/11, 7/2012, 30/12, 45/12, 60/12, 64/12, 23/13, 188/13, 43/14, 112/14, 153/15, 192/15, 23/16, 83/18, 198/18, 101/19, 31/20.

Law on Obligations (2001) Official Gazette of the Republic of North Macedonia, no. 18/01. Law on Amending and Supplementing the Law on Obligations, Official Gazette of the Republic of North Macedonia, no. 04/02, 05/03, 84/08, 81/09, 161/09. Decision of the Constitutional Court of the Republic of North Macedonia, no. 121/2001, 67/2002.

Merkin, R. (ed.) (2013) *Insurance Law: An Introduction*. New York: Routledge Taylor & Francis Group. DOI: https://doi.org/10.4324/9781315850498.

Merkin, R. and Jenny, S. (2013) *Insurance and the Law of Obligations*. Oxford: Oxford University Press. DOI: https://doi.org/10.1093/acprof:oso/9780199645749.001.0001.

Perović, S. (ed.) (1995) *Komentar zakona o obligacionim odnosima (Knjiga druga)*. Beograd: Savremena Administracija.

Shabani, F.Z. (2021) *E drejta afariste*, Tetova: Universiteti i Tetovës.

Vasiljevic, M. (2011) *Trgovinsko pravo* (dvanaeseto dopunjeno izdanje) [*Трговинско право* – (ванаесето допуњено издање)], Beograd: Pravni Fakultet Univerziteta u Beogradu.

Zweifel, P. and Roland, E. (2012) *Insurance Economics*. Berlin: Springer-Verlag. DOI: https://doi.org/10.1007/978-3-642-20548-4.

Information About the Authors

Danuta Kabat-Rudnicka – Dr rer. pol. habil. Dr iur. – political scientist and lawyer, university professor and Jean Monnet professor at the Cracow University of Economics, College of Economics, Finance and Law; she studied economics, political science, and law in Cracow (University of Economics and Jagiellonian University), Tilburg, Hamburg, Leuven, Basel, Orleans, and Rome (La Sapienza). She has lectured at foreign universities under the Erasmus program, summer school (UCLan Cyprus campus), and an international seminar (Moscow). She is a reviewer for IRD and AJPSIR and a member of PECSA, UACES, ISA, and CES. Her research interests focus on issues such as federalism, constitutionalism, international law, European law, European Union politics, political systems, international organisations, international relations and theory, and international security.

Justyna Pierewoj – a graduate of law at the Faculty of Law of the University of Bialystok, and a graduate of BA and MA studies in international relations at the Faculty of History and Sociology at the University of Bialystok, and a doctoral candidate at the Department of Public International Law and the European Faculty of Law at the University of Bialystok. She is currently preparing her doctoral dissertation under the scientific supervision of prof. zw. dr hab. Maciej Perkowski. She is an active participant in international and national scientific conferences. She has a long-standing scientific interest in issues of international security, including health, pharmaceutical, and food security. Her research interests also relate to human trafficking, health protection regulation, the pharmaceutical market, and lobbying.

Rafał Riedel – Full Professor at the Institute of Political Science and Administration at Opole University, Poland, and a guest lecturer at the University of St. Gallen (Switzerland). He is also co-director of the team in the "OrgIntCEE – The <Missing Link>: Examining organized interests in post-communist policy-making" project, held by the University of Opole and the University of Konstanz.

Emilia Szyszkowska – a Ph.D. student in the field of political science at the Warsaw School of Economics. She is also a member of the team in the "OrgIntCEE – The <Missing Link>: Examining organized interests in post-communist policy-making" project, held by the University of Opole and the University of Konstanz. Her scientific interests are public affairs, public policies with a special focus on the healthcare sector as well as stakeholder groups and their political impact.

Katarzyna Strąk – a PhD Doctor of Law, and a researcher at the Institute of Law Studies at the Polish Academy of Sciences. Her research interests comprise European Union Law, including the Area of Freedom, Security, and Justice (EU immigration and asylum policies), fundamental rights, the internal market, EU Citizenship, and application of Polish Law on Aliens. She has been involved in evaluations for the European Commission in Horizon 2020 (Secure Societies – Protecting the Freedom and Security of Europe and its Citizens) as well as in NAWA programmes (Narodowa Agencja Wymiany Akademickiej – the National Agency for Academic Exchange). She has also had experience as an external peer reviewer for *The LEaDing Fellows Postdocs Programme* (The Netherlands, 2019), and as an ad hoc reviewer for the *Polish Review of International and European Law* and the *Polish Yearbook of International Law.*

Elīna Graudiņa – a lecturer at the Department of Political Science and Department of Humanities at the Rīga Stradiņš University. She holds an MA in Regional Policy and Public Administration. Currently, she is continuing her PhD in Political Science at the Rīga Stradiņš University. In her academic career, she has focused on issues concerning education, youth, civil society, democracy, and political activism (political participation, ethics in politics, and the integration of European values). At the Department of Humanities, she is more focused on philosophical anthropology. Her research interests focus on public policy, and youth-based political participation. She is a participant in the national research project "Values in Action: the Promotion of Responsible, Secure, and Educated Civil Society in Latvia through Research and Model Development". She has worked as an intern with Krišjānis Arturs Kariņš, a former Member of the European Parliament, and current Prime Minister of the Republic of Latvia.

Przemysław Dubel – Assistant Professor at the Faculty of Management at the University of Warsaw, Rector's Plenipotentiary for Strategic Projects, and Director of the Centre for Business Projects and Consulting at the Faculty of Management of the University of Warsaw. Dr Dubel is an expert in project implementation co-financed by European Structural Funds. In

his academic activity, he specialises in regional development management with particular emphasis on the impact of projects funded by the European programmes on the dynamisation of the European market. He is the author and co-author of numerous academic publications dedicated to the aforementioned issues. Dr Dubel is also the author of several dozen expert opinions and is also an active consultant.

Krystyna Gomółka – Full Professor of social science at the Department of Eastern Studies, the Faculty of Management and Economics, Gdańsk University of Technology. She is the author of 18 books and 260 scientific articles about cross-border cooperation, the labour market, the employment of women, youth-based civic participation, and political and economic transformation in post-Soviet States. She has published papers and books in the English, Russian, and Polish languages. As co-author, her most recent book was published in 2020 entitled, "Youth Civic Participation in The South Baltic Region. Example of Lithuania, Poland and Sweden" and "Bezpośrednie Inwestycje Zagraniczne. Świat–Europa–Kaukaz–Polska". Krystyna Gomółka has been the Head of three international research projects financed by the following programs: Poland – Russia, Norwegian Financial Mechanism, and Interreg, South Baltic.

Petro Kurmaiev – D.Sc.habil. (Economics), Assistant Professor in Economics, and founder of the Independent Agency for Education Quality Evaluating (Ukraine). He is an expert at the National Research Foundation of Ukraine. He has been the leader and participant of research projects and grant programs. He is the author and co-author of over 90 research articles. His research interests include entrepreneurship, the economics of education, and the labour market.

Salihe Salihu – a graduate of and whose PhD was obtained at the University of Tetovo. Currently, she works as a researcher at the Assembly of Kosovo in the Department of Research. She has worked as lecturer at the University of Prishtina and many Colleges in Kosovo. She is the president of the Kosovaro-Swedish Scientific Institution. The author of many articles in both the Albanian and English languages. She is also the author of two books; "Migration and Nation-State in the Global Epoch", and "Sovereignty and Legitimacy of the State of Kosovo".

Faton Shabani – PhD, an Associate Professor at the Faculty of Law, at the University of Tetova (the Republic of North Macedonia). He is the author of five textbooks: Bankruptcy (2021), Business Law (2021), Non-Judicial Dispute Resolution (2019), International Business Law

(2018), and Legal Consequences of Non-Performance of the Contract for International Sale of Goods (2016). He is also the author and co-author of more than 60 referred papers in indexed scientific journals and conference proceedings books. Current research interests: Business Law, Contract Law, Intellectual Property, Consumer Protection, Competition Law, and International Business Law. As a visiting professor, he has lectured at world-renowned universities in various countries including the USA, Italy, Greece, Slovenia, Croatia, Turkey, Lithuania, Bulgaria, Albania, Serbia and Kosovo.

CENTRE
FOR EUROPE
UNIVERSITY
OF WARSAW

Publications of the Centre for Europe Publishing Programme

Scientific journals

- "Studia Europejskie – Studies in European Affairs": 1–4/1997, 1–4/1998, 1–4/1999, 1–4/2000, 1–4/2001, 1–4/2002, 1–4/2003, 1–4/2004, 1–4/2005, 1–4/2006, 1–4/2007, 1–4/2008, 1–4/2009, 1–4/2010, 1–4/2011, 1–4/2012, 1–4/2013, 1–4/2014, 1–4/2015, 1–4/2016, 1–4/2017, 1–4/2018, 1–4/2019, 1–4/2020, 1–4/2021.
- "Yearbook of Polish European Studies": 1/1997, 2/1998, 3/1999, 4/2000, 5/2001, 6/2002, 7/2003, 8/2004, 9/2005, 10/2006, 11/2007–2008, 12/2009, 13/2010, 14/2011, 15/2012, 16/2013, 17/2014, 18/2015, 19/2016, 20/2017.

Books

- K. Zajączkowski, *Misje cywilne i operacje wojskowe w Unii Europejskiej. W perspektywie wybranych teorii Stosunków Międzynarodowych i Integracji Europejskiej* (*Civil missions and military operations in the European Union. In the perspective of selected thearies of International Relations and European Integration*), Warszawa 2019.
- O. Barburska, *Polityka wschodnia Unii Europejskiej jako część składowa polityki zagranicznej UE* (*Eastern Policy of the European Union as a Component of Foreign Policy EU*), Warszawa 2018.
- W. Czapliński, A. Serzysko, *Współpraca w zakresie wymiaru sprawiedliwości i spraw wewnętrznych w Unii Europejskiej* (*Cooperation in the Field of Justice and Internal Affairs in the European Union*), Warszawa 2017.
- M. Rakusa-Suszczewski, *Cień radykalizmu. Pojęcie radykalizmu w świetle teorii ruchów społecznych (A shadow of radicalism. The notion of radicalism in the light of the theory of social movements)*, Warszawa 2016.
- A. Dziewulska, *Pokój po konflikcie: Bośnia, Afganista, Irak. Wnioski dla strategii bezpieczeństwa UE (Peace after conflict: Bosnia, Afghanistan, Iraq. Conclusions for the EU security strategy)*, Warszawa 2016.
- D. Milczarek, O. Barburska, *Past and Present of European Integration. Poland's Perspective,* Warsaw 2015.
- *European Union on the Global Scene: United or Irrelevant?*, ed. B. Góralczyk, Warsaw 2015.
- *Essays on Global Safety Governance: Challenges and Solutions*, ed. Patrycja Dąbrowska-Kłosińska, Warsaw 2015.

- *The European Union and Poland. Problems and Achivements*, eds. A. Adamczyk, P. Dubel, Warsaw 2015.
- O. Barburska, D. Milczarek, *Polityka wschodnia Unii Europejskiej: Porażka czy sukces?*, Warszawa 2014.
- *Unia Europejska jako aktor na scenie globalnej, Razem czy osobno?*, ed. B. Góralczyk, Warszawa 2014.
- *Poland and Turkey in Europe – Social, Economic and Political Experiences and Challenges*, eds. A. Adamczyk, P. Dubel, Warsaw 2014.
- *Introduction to European Studies, A New Approach to Uniting Europe*, eds. D. Milczarek, A. Adamczyk, K. Zajączkowski, Warsaw 2013.
- O. Barburska, D. Milczarek, *Historia integracji europejskiej w zarysie*, Warszawa 2013.
- *Co po postindustrializmie?*, eds. K. Wielecki, S. Sowiński, Warszawa 2013.
- A. Harasimowicz, *Bezpieczeństwo Polski 1918–2004. Granice, System międzynarodowy, Siła własna*, Warszawa 2013.
- *Europeisation of political rights: Voter Advice Application and migrant mobilization in 2011 UK elections*, eds. A. Dziewulska, A.M. Ostrowska, Warsaw 2012.
- *Practicioners' advice on EU project management*, ed. A. Dziewulska, Warsaw 2012.
- *New neighbours-on the diversity of migrants' political involvement*, eds. A. Dziewulska, A.M. Ostrowska, Warsaw 2012.
- *Poland in the European Union: Adjustment and Modernisation*, eds. A. Adamczyk, K. Zajączkowski, Warsaw–Lviv 2012.
- *Sieci informacyjne Unii Europejskiej w Polsce*, ed. M. Grabowska, Warszawa 2012.
- *Central Europe. Two Decades After*, ed. R. Riedel, Warsaw 2010.
- *Przestępczość gospodarcza. Problemy współpracy międzynarodowej*, ed. H. Machińska, Warszawa 2008.
- *„Inny" człowiek w „innym" społeczeństwie? Europejskie dyskursy*, eds. P. Mazurkiewicz, K. Wielecki, Warszawa 2008.
- *Poland in the European Union: First Experiences. Selected Political, Legal and Social Aspect*, eds. D. Milczarek, O. Barburska, Warsaw 2008.
- *Eastern Policy of the European Union: Role of Poland, Case of Ukraine*, eds. A.Z. Nowak, D. Milczarek, B. Hud', J. Borkowski, Warsaw 2008.
- *Kryzys postindustrialny: Interpretacje, prognozy. Perspektywa europejska*, eds. P. Mazurkiewicz, K. Wielecki, Warszawa 2007.
- *Rola Polski w kształtowaniu polityki wschodniej Unii Europejskiej na przykładzie Ukrainy*, ed. J. Borkowski, Warszawa 2006.
- D. Milczarek, *Unia Europejska we współczesnym świecie*, Warszawa 2005.
- *Regionalizm, polityka regionalna i Fundusze Strukturalne w Unii Europejskiej*, eds. A. Adamczyk, J. Borkowski, Warszawa 2005.

- *Fundusze kohezyjne i możliwości ich absorpcji w Polsce* (materiały konferencyjne), Warszawa 2004.
- *Globalization, International Business and European Integration*, eds. A.Z. Nowak, J.W. Steagall, M.N. Baliamoune, Warsaw–Jacksonville 2004.
- K. Wielecki, *Podmiotowość w dobie kryzysu post industrializmu. Między indywidualizmem a kolektywizmem*, Warszawa 2003.
- *On the road to the European Union. Applicant countries' perspective*, eds. D. Milczarek, A.Z. Nowak, Warsaw 2003.
- D. Milczarek, *Pozycja i rola Unii Europejskiej w stosunkach międzynarodowych. Wybrane aspekty teoretyczne*, Warszawa 2003.
- Globalization, *European Integration and...?*, eds. A.Z. Nowak, J.W. Steagall, Warsaw–Jacksonville 2002.
- *Suwerenność i integracja europejska*, eds. W. Czapliński, I. Lipowicz, T. Skoczny, M. Wyrzykowski, Warszawa 1999.
- I. Pawlas, H. Tendera-Właszczuk, *Poland's economy competitiveness with respect to the integration with the European Union*, Warsaw 1999.
- *Wybrane problemy i obszary dostosowania prawa polskiego do prawa Unii Europejskiej*, eds. P. Saganek, T. Skoczny, Warszawa 1999.
- *Subsydiarność*, ed. D. Milczarek, wyd. drugie, Warszawa 1998.
- E. Skotnicka-Illasiewicz, *Powrót czy droga w nieznane? Europejskie dylematy Polaków*, wyd. drugie, Warszawa 1997.
- *Le francais en Pologne. Mythes et réalités*, eds. J. Boutet, K. Wróblewska-Pawlak, Warszawa 1996.

Series „Studia nad integracją europejską"
(redakcja serii: P. Jasiński, T. Skoczny)
- *Elektroenergetyka (Electricity Supply Industry)*, Warszawa 1996.
- *Gazownictwo (Gas Supply Industry)*, Warszawa 1996.
- *Telekomunikacja (Telecommunications)*, Warszawa 1997.

Series „Dokumentacja akcesyjna"
(redakcja serii: T. Skoczny)
- Tom 1. *Dokumenty dotyczące przystąpienia do Wspólnot Europejskich Danii, Irlandii i Wielkiej Brytanii oraz Grecji (Documents Concerning the Accession to the European Communities of Denmark, Ireland, Great Britain and Greece)*, Volume editor Jana Plaňavová-Latanowicz, Warszawa 1998.
- Tom 2. *Dokumenty dotyczące przystąpienia do Wspólnot Europejskich Hiszpanii i Portugalii (Documents Concerning the Accession to the European Communities of Spain and Portugal)*, Volume editor Jana Plaňavová-Latanowicz, Warszawa 1998.

- Tom 3. *Dokumenty dotyczące przystąpienia do Unii Europejskiej Austrii, Finlandii i Szwecji (Documents Concerning the Accession to the European Communities of Austria, Finland and Sweden)*, Volume editor Jana Plaňavová-Latanowicz, Warszawa 1998.
- Tom 4. *Rozszerzenie Unii Europejskiej na Wschód (Enlargement of the European Union to the East)*, Volume editor Bogdan Góralczyk, Warszawa 1999.
- Tom 5. *Przygotowania Polski do członkostwa w Unii Europejskiej (Poland's Preparation to Membership in the European Union)*, Volume editor Jan Borkowski, Warszawa 1999.

Series „Raporty z badań"

- *Prawne i ekonomiczne aspekty połączeń między sieciami telekomunikacyjnymi (Legal and Economic Aspects of Connections Between Telecommunications Networks)*, (kier. zespołu Tadeusz Skoczny).
  - Raport I. *Cellular Telephony and Connections Between Networks in the European Union*, Piotr Jasiński, Tadeusz Skoczny.
  - Raport II. *Ekonomiczne aspekty połączeń między sieciami w warunkach gospodarki rynkowej (Economic Aspects of Connections Between Networks under Conditions of Market Economy)*, Piotr Jasiński, Tadeusz Skoczny.
- *Liberalizacja łączności międzystrefowej w Polsce (The Liberalisation of Toll Connections Between Area Zones in Poland)*, Piotr Jasiński, Tadeusz Skoczny.
- *Raport zawierający ocenę stopnia adaptacji prawa polskiego do prawa wspólnotowego (Report on Harmonisation of Polish Law with the Community Law)*, (kier. zespołu Tadeusz Skoczny).

"Textbooks and Manuals" series

- *Practicioners' advice on EU project management*, ed. Agata Dziewulska, Warsaw 2012.