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ATTILA BADÓ – SAMANTHA CHEESMAN\*

## Les défis constitutionnels du pouvoir judiciaire dans les systèmes juridiques post-socialistes d'Europe centrale et orientale<sup>1</sup>

### *Introduction*

En dépit de l'expérimentation théorique, bien que l'on ne puisse pas évoquer à proprement parler une famille juridique post-socialiste distincte,<sup>2</sup> il ne fait aucun doute que les États post-socialistes d'Europe centrale et orientale et, plus précisément, les États ayant suivis un processus d'adhésion à l'Union européenne (UE) ont dû faire face à des problèmes similaires depuis les années 1990. Parmi les difficultés concernant la transition de la dictature à la démocratie<sup>3</sup> et visant la véritable nature et la méthode de garantie de l'indépendance judiciaire, un discours politique ou, plutôt, un discours professionnel qui se produit principalement dans les cours constitutionnelles a été et est maintenant mis davantage en évidence et également dans les États occidentaux. L'indépendance vis-à-vis des partis politiques ou de l'autorité gouvernementale joue un rôle de plus en plus important dans les États d'Europe centrale et orientale, car la connivence entre l'État et les tribunaux à parti unique a souvent eu des conséquences tragiques pendant la période stalinienne.<sup>4</sup> (La phase ultérieure et plus souple de la dictature dans certains pays n'a pas toujours été associée à une prévalence sans faille de l'indépendance judiciaire, bien que des pressions politiques directes n'aient pas pu être détectées dans une partie considérable des litiges juridiques. 5) À la lumière de cette triste période historique, il est compréhensible que les risques d'apparition d'aspects politiques partisans soient plus retentissants que d'habitude dans les sociétés post-socialistes.

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<sup>1</sup> La recherche a été soutenue par le Centre de compétences TIC et défis sociétaux du Pôle des sciences humaines et sociales de la Commission européenne. Centre de compétence du pôle des sciences humaines et sociales du Centre d'excellence pour la recherche, le développement et l'innovation interdisciplinaires de l'université de Szeged. L'auteur est membre du groupe de recherche Digitalization and Democracy.

<sup>2</sup> *Voir, par exemple*. FEKETE 2010, p. 209.

<sup>3</sup> ANDERSON, BERNSTEIN Gray, 2005. p. 132. <http://hdl.handle.net/10986/7351>

<sup>4</sup> KAHLER 1993, p. 291; GRAVER 2015. p. 301.

<sup>5</sup> FLECK 2001, p. 276.

Ces craintes sont prédominantes dans une strate sociale étroite, car le système des traditions politiques de l'Europe centrale et orientale, un héritage démocratique affaibli et des autonomies fragiles ou dysfonctionnelles entraînent une indifférence à l'égard des changements institutionnels concernant l'indépendance judiciaire également.

Dans cette étude, les fondements constitutionnels les plus importants des systèmes judiciaires des États postsocialistes d'Europe centrale et orientale sont présentés. Cette étude porte sur le système judiciaire des régimes juridiques évalués en prenant en considération les bases constitutionnelles et les règles établies dans les lois les plus importantes et en apportant une littérature comparée sur l'institution judiciaire. Après avoir clarifié les questions structurelles et le statut constitutionnel des tribunaux, les formes centrales de l'administration, nous allons évaluer comment les aspects bien connus de l'indépendance et de la responsabilité judiciaires jouent un rôle dans l'administration de la justice d'un système juridique donné. Le concept d'indépendance judiciaire se retrouve ainsi au cœur de l'analyse. Dans ce cadre, l'indépendance organisationnelle du pouvoir judiciaire détermine la relation des tribunaux avec les autres branches du pouvoir, permettant d'analyser la marge d'appréciation réelle des juges d'une part et d'autre part, peut éclairer les réformes des systèmes judiciaires d'Europe centrale et orientale sur la voie de la démocratie après la dictature et le système du parti unique. Cela peut également révéler comment les États d'Europe centrale et orientale ont essayé de répondre aux exigences de l'adhésion européenne tout en prenant en considération les besoins de la société. Bien que le système d'organisation du pouvoir judiciaire dans les États post-socialistes ait également subi des changements, principalement en raison d'amendements constitutionnels visant à appliquer le principe d'accès à la justice, aucune analyse desdits changements ne sera entreprise dans cette présente étude. Bien que nous puissions évoquer une signification plus large et plus étroite du concept de justice, dans ce chapitre, la situation des systèmes juridiques d'Europe centrale et orientale sur la base du concept le plus étroit sera présentée également pour des raisons de longueur. Ainsi, nous traiterons spécifiquement des tribunaux, qui sont les acteurs centraux de l'application de la loi. On renoncera également ici à la présentation des activités des cours constitutionnelles, auxquelles ce volume consacre un chapitre distinct. Au début du chapitre, on analysera comment la Cour de justice de l'Union européenne (CJUE) et du Conseil de l'Europe, qui relie la grande Europe, interprète le concept au cœur de notre analyse : l'indépendance judiciaire. Ensuite, nous aborderons la question des fonds constitutionnels et de l'administration centrale des tribunaux. En guise de conclusion, les voies possibles de développement des systèmes judiciaires post-socialistes seront esquissées.

### *1. L'indépendance de la justice et l'indépendance organisationnelle de la justice dans l'espace européen*

L'indépendance judiciaire est encore aujourd'hui un concept incertain, malgré le fait que presque toutes les constitutions en Europe, mais surtout les constitutions post-communistes, consacrent obligatoirement ce principe. Cependant, son contenu exact est difficile à déterminer puisque le principe et le phénomène de l'indépendance judiciaire peuvent être examinés sous différents aspects : l'indépendance organisationnelle du pouvoir judiciaire,

la sécurité existentielle du juge ou l'indépendance et l'impartialité du juge dans l'exercice de ses fonctions judiciaires.<sup>6</sup> Les accords internationaux ainsi que la jurisprudence internationale et nationale ont réussi à établir des normes de base, mais parfois très restrictives et assez floues, concernant l'indépendance judiciaire.

Les institutions de l'Union européenne sont dotées de compétences très limitées et d'outils encore plus restreints pour préserver l'indépendance de la justice dans les États membres, mais il existe un certain nombre de possibilités institutionnelles inexploitées dans l'UE pour assurer un contrôle efficace de l'indépendance de la justice et la signalisation ou toute autre participation active si nécessaire. Conformément à l'article 2 du traité sur l'Union européenne (TUE), „l'Union est fondée sur les valeurs de respect de la dignité humaine, de liberté, de démocratie, d'égalité, de l'État de droit, ainsi que de respect des droits de l'homme, y compris des droits des personnes appartenant à des minorités. Ces valeurs sont communes aux États membres dans une société où règnent le pluralisme, la non-discrimination, la tolérance, la justice, la solidarité et l'égalité entre les femmes et les hommes.” L'article 6 TUE souligne également que „les droits fondamentaux, tels qu'ils sont garantis par la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales et tels qu'ils résultent des traditions constitutionnelles communes aux États membres, constituent des principes généraux du droit de l'Union.” Un autre argument en faveur de l'implication de l'UE est la création d'un espace de liberté, de sécurité et de justice qui repose, notamment sur la reconnaissance mutuelle automatique des décisions judiciaires rendues dans d'autres États membres. La reconnaissance mutuelle repose sur la confiance mutuelle dont l'un des éléments cruciaux est la conviction qu'un jugement rendu dans un autre État membre a été adopté par un tribunal indépendant et impartial dans le cadre d'une procédure équitable. Malgré un engagement théorique sans équivoque en faveur de l'État de droit, l'UE dispose en réalité de très peu d'outils pour le mettre en œuvre efficacement. Le Conseil européen, statuant à l'unanimité sur proposition d'un tiers des États membres ou de la Commission et après approbation du Parlement européen, peut constater l'existence d'une violation grave et persistante par un État membre des valeurs visées à l'article 2, après avoir invité l'État membre en question à présenter ses observations (article 7 TUE).<sup>7</sup>

La Charte des droits fondamentaux de l'UE pourrait servir de base supplémentaire à l'action de l'UE. En vertu de l'article 47 de la Charte, toute personne dont les droits et libertés garantis par le droit de l'Union sont violés, a droit à un recours effectif devant un tribunal dans le respect des conditions prévues par cet article. Toute personne a droit à ce que sa cause soit entendue équitablement, publiquement et dans un délai raisonnable, par un tribunal indépendant et impartial, préalablement établi par la loi. Toute personne a la possibilité d'être conseillée, défendue et représentée. Toutefois, l'article 51 de la Charte limite la portée de ces dispositions en précisant que les dispositions de la Charte s'adressent aux institutions, organes et organismes de l'Union dans le respect du principe de

<sup>6</sup> RUSSEL O'BRIEN 2001, 326. p.

<sup>7</sup> Sur la base des expériences insatisfaisantes liées à l'application de l'article 7 TUE en tant qu'option nucléaire, la Commission a présenté, le 11 mars 2014, une nouvelle initiative pour faire face aux menaces systémiques pesant sur l'État de droit dans les États membres, qui était censée être complémentaire des procédures d'infraction et de l'article 7 des activités de surveillance de „l'État de droit” dans les États membres et de prise de mesures proportionnées et efficaces si nécessaire.

subsidiarité et aux États membres uniquement lorsqu'ils mettent en œuvre le droit de l'Union. Ils en respectent donc les droits, observent les principes et en favorisent l'application selon leurs compétences respectives et dans le respect des limites des compétences de l'Union telles qu'elles lui sont conférées par les traités. En outre, la Charte n'étend pas le champ d'application du droit de l'Union au-delà des compétences de l'Union, ne crée pas de nouvelle compétence ou mission pour l'Union et ne modifie pas les compétences et missions définies dans les traités. En conséquence, il est peu probable que la Charte s'avère un outil efficace pour promouvoir l'indépendance des tribunaux nationaux dans les États membres. Toutefois, depuis 2010, la Commission publie un rapport annuel sur la mise en œuvre de la Charte et peut également engager des procédures d'infraction, mais celles-ci ne sont généralement pas fondées exclusivement sur la Charte. <sup>8</sup> Une autre initiative européenne importante sur l'indépendance judiciaire, y compris l'indépendance organisationnelle du pouvoir judiciaire, est le plan d'action<sup>9</sup> proposé par le Comité des ministres du Conseil de l'Europe en 2017, qui comprenait des recommandations et le suivi des États membres. Ce plan d'action vise à dépolitiser les tribunaux, tout en poursuivant le respect des spécificités des États membres. Il n'exige pas la création de conseils judiciaires, toutefois, il précise la nécessité d'éviter l'élection des membres des Conseils ou d'autres organes judiciaires. <sup>10</sup> Dans l'ensemble, il existe de nombreux points de vue et idées différents dans l'UE sur ce qu'implique l'indépendance du pouvoir judiciaire. L'analyse et l'examen des différentes solutions utilisées dans les divers États membres de l'UE doivent également tenir compte des spécificités de l'institution politique nationale de chaque État.

Pour les États d'Europe centrale et orientale, il est souvent difficile de comprendre les critiques des institutions de l'UE ou des organisations des droits de l'homme qui remettent en cause une action judiciaire. Cela se remarque surtout en ce qui concerne l'administration de la justice, et en relation avec celle-ci, la sélection et la responsabilité disciplinaire des juges, pour lesquelles les démocraties stables d'Europe occidentale présentent également diverses solutions. Depuis des décennies, les différents systèmes juridiques européens expérimentent des moyens d'assurer la séparation des pouvoirs, le contrôle mutuel et l'équilibre entre l'indépendance et la responsabilité du pouvoir judiciaire. Bien qu'une tendance claire soit constituée par le fait que les anciens pouvoirs ministériels sont progressivement repris dans la plupart des pays par ce que l'on appelle des conseils judiciaires, qui sont conçus pour établir une autonomie judiciaire, il existe une variation considérable

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<sup>8</sup> Par exemple, lorsque – comme mentionné ci-dessus – la Commission a contesté la mise à la retraite anticipée d'environ 274 juges et procureurs en Hongrie, causée par une réduction soudaine de l'âge de la retraite obligatoire pour cette profession de 70 à 62 ans, la Cour de justice de l'Union européenne a confirmé l'évaluation de la Commission selon laquelle cette mise à la retraite obligatoire est incompatible avec la législation européenne sur l'égalité de traitement (la directive interdisant la discrimination fondée sur l'âge et l'article 21 de la Charte) – et non sur des considérations liées à l'indépendance du pouvoir judiciaire.

<sup>9</sup> Plan d'action du Conseil de l'Europe sur le renforcement de l'indépendance et de l'impartialité des juges (CM(2016)36 final).

<sup>10</sup> „Des mesures devraient être prises pour dépolitiser le processus d'élection ou de nomination des personnes aux conseils de la magistrature, lorsqu'ils existent, ou à d'autres organes appropriés de gouvernance judiciaire.” Annexe, note explicative p. 19.



dans les compétences et la composition de ces conseils. En outre, il existe des pays européens (Autriche et Allemagne) qui, ne suivant pas la tendance indiquée, continuent à assurer l'administration externe des tribunaux sous la compétence gouvernementale.<sup>11</sup>

Ainsi, même les systèmes judiciaires ayant des siècles de traditions juridiques ininterrompues peuvent recourir à des solutions institutionnelles susceptibles de susciter des doutes quant à l'indépendance et à l'impartialité des juges. Mais il est tout à fait possible qu'en raison des particularités de la culture juridique et politique, ces solutions ne conduisent pas du tout à la violation du principe du procès équitable dans la pratique. Cependant, la culture politique et juridique est également un concept indéfini, et il serait donc très difficile, sur cette base, de prendre une décision éclairée quant à la violation de l'indépendance des juges.

## *II. Fondements constitutionnels. Administration centrale des tribunaux.*

En ce qui concerne les tribunaux des États post-socialistes d'Europe centrale et orientale, après l'effondrement du bloc soviétique, ils ont été confrontés presque partout au problème de savoir comment transposer les structures institutionnelles enracinées dans les démocraties occidentales après la Seconde Guerre mondiale et les principes régissant le fonctionnement du pouvoir judiciaire dans un système juridique défini pendant des décennies par un cadre dictatorial.

Depuis le changement de régime de 1990, les États post-socialistes d'Europe centrale et orientale s'efforcent de répondre à l'exigence d'indépendance judiciaire au regard des critères d'adhésion à l'Union européenne. À cette fin, certains systèmes juridiques ont fait l'objet de plusieurs réformes dans le cadre desquelles l'organisation judiciaire a été restructurée à plusieurs reprises.<sup>12</sup> On a pu constater l'extension de l'application des organes d'auto-administration judiciaire conformément aux tendances de l'Europe occidentale. Depuis que l'adhésion des États post-socialistes d'Europe centrale et orientale à l'UE s'est avérée être un succès, un nouveau développement s'est produit. L'UE dispose de moyens plutôt limités pour exercer une influence sur les systèmes d'administration judiciaire de ses États membres en raison notamment du principe de non-ingérence dans le système d'organisation interne des États-membres ; ainsi, une marge de manœuvre considérable est accordée aux pays post-socialistes où les traditions démocratiques et la fragilité de la culture politico-juridique offrent un terrain fertile pour s'orienter vers la création d'un pouvoir judiciaire opportuniste fidèle au gouvernement ou, mieux encore, à la direction du tribunal en cas d'existence d'une intention politique à cet effet. En ce qui concerne les attitudes d'exécution, l'appareil d'État dictatorial qui a duré près d'un demi-siècle a laissé une marque indélébile dans ces pays.

Dans les États post-socialistes du changement de régime, les réformes en cours de l'État de droit ont été guidées par le fait que l'indépendance judiciaire pouvait être réalisée face à des décennies d'État-parti, lorsque les gouvernements communistes intervenaient

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<sup>11</sup> RIEGER 2011, p. 209.

<sup>12</sup> Voir, par exemple. ANDERSON. Gray, 2007. pp. 329–355.

plus ou moins dans les questions de fond de l'administration de la justice. Dans l'euphorie initiale, l'élite politique des sociétés en voie de démocratisation a accordé beaucoup plus d'importance à cet aspect qu'à la question de la responsabilité des juges. En outre, la responsabilité semblait être un obstacle plus important à la réalisation de l'indépendance judiciaire. Toutefois, dans les pays postsocialistes, à l'instar des pays d'Europe occidentale, les partis de changement de régime ont expérimenté diverses solutions pour atteindre les objectifs susmentionnés. Étant donné que, dans le passé, le gouvernement était partout responsable de l'administration externe des tribunaux, en plus du degré de pression externe déjà mentionné après le changement de régime, il appartenait aux hommes politiques de décider quand et dans quelle mesure ils autorisaient une plus grande autonomie judiciaire.

Les modèles administratifs d'Europe occidentale (ministériels, autonomes et mixtes) se retrouvent donc également dans les systèmes juridiques post-socialistes évalués. Dans ce qu'il suit, l'objectif est de présenter brièvement ces solutions variées. Bien que d'importantes études empiriques aient été menées sur l'efficacité des modèles administratifs introduits dans les pays postsocialistes, leur description épuiserait le champ de cette étude.<sup>13</sup>

En Hongrie, sept ans après le changement de régime, un conseil judiciaire à majorité judiciaire a été créé dans le cadre de la réforme globale de la justice de 1997, lequel a repris presque tous les pouvoirs du gouvernement en matière d'administration de la justice.<sup>14</sup> Outre le ministre de la justice, le conseil comprenait également le procureur général représentant le ministère public et le bâtonnier, mais la majorité des juges élus par les organes représentatifs des juges assurait une pleine autonomie. Avant cela, il y avait des batailles politiques permanentes, principalement au sujet de la nomination des chefs de cour. Toutefois, depuis la formation du Conseil, des critiques professionnelles sont apparues et se sont progressivement intensifiées dans les pays d'Europe occidentale au sujet de l'auto-administration complète de la justice : les gestionnaires administratifs élus par les juges induisent un système d'entreprise à peine contrôlable, ce qui entraîne une augmentation du népotisme au sein du pouvoir judiciaire. Le gouvernement, qui a obtenu une majorité parlementaire des deux tiers en 2010, a mis en œuvre une réforme judiciaire, confiant l'administration des tribunaux à un organe administratif doté de larges pouvoirs et dirigé par un responsable nommé par une majorité des deux tiers du Parlement. La supervision de cet organe a été confiée au Conseil judiciaire, composé exclusivement de juges mais doté de pouvoirs moins importants. Cette nouvelle forme d'organisation a été largement critiquée pour avoir donné à une seule personne un pouvoir exceptionnel sur les tribunaux.<sup>15</sup> Le Bureau national de la magistrature ("NOJ") est responsable de pratiquement toutes les questions liées à la sélection des juges et des dirigeants des tribunaux, et supervise les activités administratives de tous les tribunaux, à l'exception de la Cour suprême hongroise, la Curie. La tâche du Conseil dans le domaine de l'administration centrale consiste essentiellement à contrôler les activités de la NOJ.<sup>16</sup> Les tribunaux de service en Hongrie ont le droit de juger les affaires

<sup>13</sup> Voir, par exemple, les travaux sur l'expérience opérationnelle du ministère tchèque et le modèle slovaque de gouvernement local. KOSAŘ 2016, 488 p.

<sup>14</sup> Loi LXVII. de 1997 sur l'organisation et l'administration des tribunaux.

<sup>15</sup> À la fin des années 2010, il y a eu un changement de personnel à la tête de l'Office en raison de conflits croissants entre le Conseil judiciaire et le chef de l'Office.

<sup>16</sup> Article 103 (1) (a) de la loi CLXI de 2011 sur l'organisation et l'administration des tribunaux.

disciplinaires. Depuis 1997, l'influence du ministère de la justice sur le fonctionnement quotidien des tribunaux n'est qu'informelle.

En Roumanie, immédiatement après la chute du régime Ceausescu, le Conseil judiciaire a été créé en 1991, avec un prédécesseur historique. (En 1909, bien avant le Conseil judiciaire français, mentionné pour la première fois dans la littérature, un conseil judiciaire a été créé pour assister le ministre dans la promotion des juges et pour avoir des compétences dans les questions disciplinaires des juges). Ce conseil, créé en 1991, disposait de faibles pouvoirs par rapport au ministre de la justice ; par conséquent, l'une des questions clés du processus d'adhésion à l'Union européenne jusqu'en 2007 était de savoir dans quelle mesure le gouvernement était capable de céder le contrôle du pouvoir judiciaire, augmentant ainsi les pouvoirs du conseil, et, parallèlement, quelles garanties institutionnelles le gouvernement parvenait à mettre en place pour lutter contre la corruption, qui est un problème particulier en Roumanie. Sous la pression de l'UE, une réforme complète a eu lieu en 2003. À la suite de longs débats politiques, ainsi que d'autres règles constitutionnelles et juridiques liées à l'adhésion à l'Union européenne, un organe à majorité judiciaire extrêmement large, composé de dix-neuf membres représentant l'ensemble du pouvoir judiciaire, a vu le jour. Aux quatorze membres juges élus par les assemblées générales des magistrats s'ajoutent deux avocats de renom élus par le Sénat, le ministre de la justice, le président de la Haute Cour de la Cour de cassation et le procureur général. Le Conseil a reçu les pleins pouvoirs sur pratiquement toutes les questions touchant à la carrière des juges. Les juges et les procureurs sont nommés par le Président de la République sur proposition du Conseil. La réforme a fondamentalement changé le statut du pouvoir judiciaire. Le gouvernement a presque totalement perdu le contrôle de cette branche du pouvoir. Bien que le ministre de la justice soit devenu membre du conseil, il ne peut pas, par exemple, prendre part au jugement des affaires disciplinaires. Le Conseil a reçu les pleins pouvoirs non seulement pour les questions concernant les juges mais aussi pour celles concernant les procureurs. Ce changement important a été associé à des „effets secondaires” typiques. L'indépendance totale exigée par la Commission européenne a entraîné un manque de contrôle externe et a renforcé la nature corporative du système.<sup>17</sup> Pour contrer cela, le processus de réforme judiciaire entre 2017 et 2019, qui a intensifié les conflits entre le gouvernement et le pouvoir judiciaire, peut également être considéré comme tel. Les lois du Parlement sur la nomination des procureurs et la poursuite des juges ont également été portées devant la CJUE, à l'issue de laquelle les juges ont estimé que certains éléments de la réforme étaient incompatibles avec le droit de l'UE et l'indépendance du pouvoir judiciaire.<sup>18</sup> L'administration centrale du système judiciaire roumain fait l'objet de débats plus étendus et plus détaillés que ceux décrits ci-dessus, qui, comme dans les pays de la région, continuent de refléter un état de recherche d'une voie à suivre.<sup>19</sup>

<sup>17</sup> Pour plus de détails sur les „effets secondaires”, voir Selejan, Gutan, 2018, pp. 1707–1740.

<sup>18</sup> Le 18 mai 2021, la CJUE a statué sur la nature juridique du mécanisme de coopération et de vérification et des rapports d'avancement de la Commission européenne, ainsi que sur leur effet contraignant pour les tribunaux roumains.

<sup>19</sup> <https://verfassungsblog.de/failing-to-struggle-or-struggling-to-fail-on-the-new-judiciary-legislation-changes-in-romania/>; <https://verfassungsblog.de/new-challenges-against-the-judiciary-in-romania/>; <https://muse.jhu.edu/article/698921/pdf>;

La Pologne a également laissé un certain temps pour former le Conseil judiciaire après le changement de régime. Bien qu'il y ait eu des initiatives pour mettre en place un organe, la création d'un organe reprenant une partie importante des pouvoirs du gouvernement dans l'administration des tribunaux a finalement été intégrée dans la constitution polonaise en 1997, en même temps que la Hongrie. Depuis 1997, le Conseil national de la magistrature est composé de 25 membres : 15 juges élus par leurs pairs, un représentant du président de la Pologne, le ministre de la Justice, six membres du parlement, le président de la Cour suprême de Pologne, le président de la Cour administrative suprême de Pologne.<sup>20</sup> La solution polonaise appartient au système dit mixte. Outre le Conseil, le ministère de la Justice a conservé des pouvoirs importants en matière administrative, de l'établissement du budget des tribunaux à la nomination des chefs de cour. Bien qu'un certain nombre de conflits de compétences soient apparus à la suite des travaux du Conseil, le débat vraiment sérieux entre le gouvernement et le pouvoir judiciaire, puis les institutions de l'UE, s'est déroulé bien au-delà de ce problème particulier à la fin des années 2010.<sup>21</sup> Le problème de la responsabilité/indépendance du pouvoir judiciaire en Pologne est arrivé au premier plan des batailles politiques dans le but de modifier la composition du Conseil judiciaire à l'initiative du gouvernement. L'argument était de renforcer la responsabilité, ce que l'on cherchait à obtenir en modifiant la pratique interprétative pour la sélection des membres du Conseil. Jusqu'alors, les juges membres du collège de la majorité judiciaire étaient élus par le collège judiciaire municipal. Le gouvernement a estimé que ce mode d'élection est également constitutionnel si ces membres sont élus par le corps législatif, renforçant ainsi le contrôle parlementaire. L'opposition polonaise a considéré cette mesure, ainsi que d'autres mesures prises dans le domaine de la justice, comme une grave violation de l'indépendance de la justice. Un projet de loi en 2017 visait à réformer le Conseil national de la magistrature, les quinze juges nommés par les gouvernements autonomes seraient, à la place, élus par le *Sejm*. Toutefois, le président Andrzej Duda a opposé son veto à cette loi.<sup>22</sup> La Commission européenne a ensuite pris une mesure unique contre la Pologne en déclenchant l'article 7 du traité de l'Union européenne. Il a été proposé de suspendre les droits de vote de la Pologne en raison de certains éléments de la réforme judiciaire. Le président polonais a répondu en signant immédiatement la loi à laquelle il avait opposé son veto. Invoquant la violation de la souveraineté polonaise, le gouvernement a déjà évoqué l'idée du „Polexit” à la suite d'un arrêt de la Cour européenne de justice sur la responsabilité disciplinaire des juges polonais. La Commission européenne a porté l'affaire devant la CJUE en octobre 2019 car elle a estimé que la Pologne avait manqué à ses obligations en vertu du droit de l'UE en mettant en place un système disciplinaire établi en 2017. Selon la Commission, plusieurs éléments de la réforme disciplinaire enfreignent le droit de l'UE. Une fois que le concept d'infraction

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[https://medelnet.eu/images/2018/Romanian\\_Judges\\_Union\\_-\\_Report\\_on\\_the\\_unlawful\\_involvement\\_of\\_the\\_Romanian\\_secret\\_intelligence\\_agencies\\_through\\_secret\\_protocols\\_in\\_the\\_Romanian\\_judiciary\\_system.pdf](https://medelnet.eu/images/2018/Romanian_Judges_Union_-_Report_on_the_unlawful_involvement_of_the_Romanian_secret_intelligence_agencies_through_secret_protocols_in_the_Romanian_judiciary_system.pdf); <https://www.ia-cajournal.org/articles/10.36745/ijca.350/>; [https://ec.europa.eu/info/sites/default/files/ro\\_rol\\_country\\_chapter.pdf](https://ec.europa.eu/info/sites/default/files/ro_rol_country_chapter.pdf)

<sup>20</sup> Le conseil a été créé en vertu des articles 186 et 187 de la Constitution polonaise.

<sup>21</sup> *Pour l'histoire du conflit, voir: Zoll. WORTHAM, 2019. p. 875.*

<sup>22</sup> voir MAZUR – ŻUREK, 2017. p. 56 ; MATCZAK 2018. DOI:10.2139/ssrn. 3121611; MATCZAK, 2018. pp. 6–7. [<https://perma.cc/NJA3-N2TU>]

disciplinaire a été élargi, cela pourrait, selon eux, augmenter le nombre de cas dans lesquels les jugements des tribunaux peuvent être mis sous contrôle politique. À la suite de cette décision de justice, la Cour constitutionnelle polonaise a même rendu un jugement déclarant la suprématie du droit polonais sur le droit européen.<sup>23</sup> En 2018, une chambre disciplinaire pour les juges a été créée au sein de la Cour suprême, en réponse à laquelle la Commission européenne a lancé une procédure d'infraction contre la Pologne. Cette chambre est entièrement composée de juges sélectionnés par le Conseil national de la magistrature, dont les membres sont nommés par le Sejm. Une étape importante dans le différend entre la Pologne et l'UE a été la décision 12-2 de la Cour constitutionnelle, qui a jugé que l'ingérence de la CJUE dans le système judiciaire polonais violait les règles garantissant la primauté de la Constitution et les règles de l'UE concernant la souveraineté. Selon l'arrêt, les articles 1 et 4 du traité sur l'Union européenne ne sont pas conformes aux articles 2 et 8 de la Constitution polonaise et à l'article 90, paragraphe 1.<sup>24</sup> Le litige repose donc sur le fait que la Cour constitutionnelle polonaise ne reconnaît pas la primauté du droit de l'UE, qui est établi par les États membres dans l'exercice conjoint de certains éléments de leur souveraineté, en invoquant l'article 8 de la Constitution polonaise, qui dispose que la Constitution est la loi suprême de la Pologne et que ses dispositions sont directement applicables, sauf disposition contraire de la Constitution elle-même.<sup>25</sup> Il semble que le débat sur l'administration centrale de la justice ne soit toujours pas résolu, que ce soit au niveau national ou européen.

<sup>23</sup> „L'article 4, paragraphe 3, deuxième alinéa, du traité UE, lu en combinaison avec l'article 279 du traité FUE – dans la mesure où la Cour de justice impose, *ultra vires*, des obligations à la République de Pologne dans le cadre de mesures provisoires relatives au système judiciaire et à la compétence des juridictions polonaises, ainsi que le mode de procédure devant les juridictions polonaises – est incompatible avec les articles 2, 7, 8, paragraphe 1, et 90, paragraphe 1, en liaison avec l'article 4, paragraphe 1, de la Constitution de la République de Pologne et, par conséquent, n'est pas couverte par les principes de primauté et d'effet direct visés à l'article 90, paragraphes 1 à 3, de la Constitution. (P 7/20/14 VII 2021)

<sup>24</sup> L'UE accuse le tribunal constitutionnel polonais de violer le droit communautaire. (<https://macmillan.yale.edu/news/eu-charges-polands-constitutional-tribunal-violating-eu-law> Dernière visite le 06 mars 2022). Comp : Avis du Conseil national de la magistrature du 30 janvier 2017 sur le projet de loi du gouvernement modifiant la loi sur le Conseil national de la magistrature et certaines autres lois (UD73). Avis n° 904/2017. Commission européenne pour la démocratie par le droit (Commission de Venise) Pologne – Avis sur le projet de loi modifiant la loi sur le Conseil national de la magistrature. ([https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)031-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)031-e) Dernière visite le 06 mars 2022). Dossier No III PO 7/18 Jugement au nom de la République de Pologne (<https://curia.europa.eu/juris/showPdf.jsf?jsessionid=93EB10E7E9A4A3080F7381AF0F435AB4?text=&docid=222926&pageIndex=0&doclang=FR&mode=req&dir=&occ=first&part=1&cid=1096125> Dernière visite le 06 mars 2022).

<sup>25</sup> L'argument polonais est quelque peu contredit par le fait que l'article 90(1) de la Constitution dispose que la République de Pologne peut, sur la base d'accords internationaux, déléguer les pouvoirs des organes du pouvoir étatique dans certaines matières à une organisation internationale ou à une institution internationale. Il semblerait que le statut des juges et le fonctionnement indépendant des tribunaux n'entrent pas dans ce cadre spécifique. L'article 178, paragraphe 1, de la Constitution dispose que les juges sont indépendants dans l'exercice de leur fonction, sous la seule réserve de la Constitution et de la loi. Et l'article 190(1) stipule que les jugements de la Cour constitutionnelle sont généralement contraignants et définitifs. Ainsi, si la Constitution polonaise elle-même reconnaît que la République de Pologne peut déléguer certains pouvoirs à une organisation ou une coopération internationale sur la base d'un accord international, ces pouvoirs ou compétences ne s'étendent pas aux domaines qui affectent le système d'organisation judiciaire.

Pendant longtemps après le changement de régime, le système judiciaire slovaque a continué à fonctionner sous une forme presque inchangée, sous l'administration du ministère de la Justice. Le rapport de la mission d'experts de la Commission européenne et du ministère slovaque de l'Intérieur de novembre 1997 a conclu que le système judiciaire slovaque n'était pas conforme à l'État de droit, car les tribunaux étaient complètement dépendants de l'exécutif d'un point de vue administratif. En raison de l'absence d'autonomie judiciaire, le rapport demandait une révision du système. Un amendement au chapitre sept de la Constitution et la création du Conseil judiciaire ont donc été principalement dus à des influences extérieures en 2001.<sup>26</sup> Dans le même temps, l'élite politique slovaque était réticente à lâcher complètement le pouvoir judiciaire en renforçant le rôle de l'autonomie judiciaire. Le Conseil n'est pas nécessairement composé d'une majorité de juges. Parmi les dix-huit membres, neuf sont délégués par les juges, et le gouvernement, le Président de la République et le Parlement peuvent également déléguer chacun trois membres supplémentaires au conseil.<sup>27</sup> Bien que pour ces dernières nominations, un juge professionnel peut être délégué au panel, comme en témoigne la composition actuelle du Conseil. La création du Conseil judiciaire a entraîné un changement important en République slovaque. Sur la base de ces changements, les organes d'autonomie judiciaire sont impliqués dans la procédure de nomination, de révocation, de transfert des juges.<sup>28</sup> Quoi qu'il en soit, la solution slovaque recherche un équilibre typique des modèles mixtes d'Europe occidentale, qui peut assurer un contrôle mutuel des branches du pouvoir sur le système judiciaire, de sorte que la gestion d'un caractère autonome soit également réalisée. Les scandales, les débats et les efforts de réforme qui en résultent dans le système judiciaire slovaque se sont intensifiés à la fin des années 2010, lorsque le nouveau gouvernement de coalition a déclaré une lutte contre la corruption après que treize juges ont été inculpés de crimes graves. Par la suite, le gouvernement a fait des propositions visant à renforcer la responsabilité des juges, à modifier la composition du Conseil judiciaire, à créer la Cour administrative suprême, ainsi que d'autres propositions nécessitant un amendement constitutionnel.<sup>29</sup>

L'administration des tribunaux en République tchèque est le seul des pays analysés qui repose sur le rôle dominant du ministère de la Justice. Le „modèle exécutif” n'a survécu que dans ce pays post-socialiste d'Europe centrale et orientale, l'élément d'autonomie

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<sup>26</sup> L'art. L'article 141a de la Constitution concernant le Conseil judiciaire de la République slovaque a été inséré par la loi constitutionnelle n° 90/2001 Coll. qui est entrée en vigueur le 1er juin 2001. Le 11 avril 2002, le Conseil national de la République slovaque a approuvé la loi n° 185/2002 Coll. sur le Conseil judiciaire de la République slovaque, telle qu'amendée.

<sup>27</sup> - neuf juges élus et rappelés par les juges de la République slovaque,  
- trois membres élus et révoqués par le Conseil national de la République slovaque (parlement)  
- trois membres nommés et révoqués par le Président de la République slovaque,  
- trois membres nommés et rappelés par le gouvernement de la République slovaque.

<sup>28</sup> Le Conseil judiciaire de la République slovaque est constitué par la Constitution de la République slovaque. Les compétences du Conseil judiciaire sont prévues par la Constitution à l'article 141a, paragraphe 4, et par la loi n° 185/2002 Coll. sur le Conseil judiciaire de la République slovaque.

<sup>29</sup> Domin, 2020 <https://blog-iacl-aidc.org/2020-posts/2020/7/30/judicial-reform-in-slovakia-how-to-deal-with-bad-judges>

judiciaire étant largement absent. Les conseils judiciaires ont un rôle exclusivement consultatif, mais ne participent pas à la prise de décision.<sup>30</sup> L'administration judiciaire des huit tribunaux régionaux et des quatre-vingt-six tribunaux de district est assurée par le ministère de la justice, directement ou indirectement par l'intermédiaire des présidents de ces tribunaux. Les deux Cours suprêmes (la Cour suprême et la Cour administrative suprême) sont administrées exclusivement par les présidents des tribunaux. Les présidents des tribunaux sont proposés par le ministère de la Justice et nommés par le Président de la République. Les présidents des tribunaux sont nommés pour un mandat de dix ans dans les cours suprêmes et pour un mandat de sept ans dans les tribunaux de district et régionaux ; ils ne peuvent pas être nommés à nouveau dans le même tribunal.<sup>31</sup>

Chaque année, le président du tribunal concerné est chargé de déterminer le plan de travail du tribunal pour l'année suivante, en fixant la composition des organes judiciaires et les mécanismes d'attribution des affaires.<sup>32</sup> Les fonctions liées aux ressources humaines et à la gestion financière sont réparties entre le ministère de la Justice et les présidents des tribunaux. Les présidents dirigent la formation professionnelle des stagiaires et déterminent le nombre de juges non professionnels. Les présidents des tribunaux régionaux détaillent le budget de l'État disponible pour le fonctionnement et la gestion des tribunaux régionaux respectifs et des tribunaux de district connexes. Par conséquent, les présidents des tribunaux de district ne participent pas à la préparation et à la planification du budget, leur tâche consiste à assurer le fonctionnement du tribunal donné, en tenant compte des aspects organisationnels, personnels, économiques, financiers et éducatifs.<sup>33</sup> Chaque tribunal emploie une personne appelée directeur de tribunal qui s'occupe de l'administration du tribunal. Les directeurs de cour sont nommés par les présidents des tribunaux sur la base d'un concours. Ils ne sont pas titulaires d'un diplôme en droit, ce sont généralement des économistes qui occupent ce poste. Leur emploi est régi par le code du travail et ils peuvent occuper leur poste sans limite de temps. Dans les affaires disciplinaires, les conseils des tribunaux supérieurs agissent en première instance, et en deuxième instance, le conseil disciplinaire de la Cour suprême. La procédure disciplinaire peut être engagée par le président de la juridiction concernée ou par le ministre de la justice. La demande peut être présentée dans un délai de 60 jours à compter de la connaissance de l'acte donnant lieu à la procédure disciplinaire, mais au plus tard dans un délai de deux ans à compter de la date de l'acte. Les juges sont nommés par le Président de la République sur la base d'une procédure de nomination en plusieurs étapes. Étant donné que la plupart des nouveaux juges sont essentiellement nommés au tribunal de première instance, la première étape de la procédure de nomination est effectuée par le président du tribunal dans lequel se produit la vacance. Le président du tribunal propose au ministère de la justice les candidats appropriés. Par la suite, le ministre de la justice est en droit d'accepter ou de rejeter la proposition reçue concernant les candidats.<sup>34</sup> Étant donné que le Président de la

<sup>30</sup> SMITH 2008, p. 85–93.; doi/epdf/10.1002/pad.483

<sup>31</sup> CONTINI 2013, p. 82.

<sup>32</sup> BLISA – PAPOUSKOVÁ – URBÁNIKOVÁ 2018, p. 1951–1976. doi:10.1017/S2071832200023294

<sup>33</sup> Fabri, 2013, p.101. <https://rm.coe.int/joint-project-on-strengthening-the-court-management-system-in-turkey-j/16807895a0>

<sup>34</sup> Loi sur les tribunaux et les juges n° 6/2002.

République peut exercer le pouvoir de nommer un juge avec l'accord du Gouvernement, la liste des candidats est transmise au Gouvernement. Si le Gouvernement est d'accord avec les candidats de la liste, le Président de la République nomme le ou les candidats.<sup>35</sup>

Il est caractéristique de chacun des États émergents de l'ex-Yougoslavie qu'après leur indépendance, ils aient réformé leur système judiciaire afin d'adhérer à l'UE et aient créé partout des conseils judiciaires.<sup>36</sup> Les fondements du système judiciaire croate, y compris le Conseil judiciaire, ont été établis en 1993. Les derniers changements importants ont été apportés avec la nouvelle loi sur les tribunaux, qui est entrée en vigueur le 1er janvier 2019.<sup>37</sup> L'administration des tribunaux croates peut être classée comme un système d'administration mixte, car si les pouvoirs liés à la sélection et à la responsabilité disciplinaire des juges ont été transférés au Conseil judiciaire, à une exception près<sup>38</sup>, l'exécutif a conservé des pouvoirs dans d'autres domaines administratifs des tribunaux. Le Conseil judiciaire d'État (SJC) est un organe indépendant et autonome au sens de l'article 121 de la Constitution, qui garantit l'indépendance et l'autonomie du pouvoir judiciaire de la République de Croatie.<sup>39</sup> Il décide en toute indépendance de la nomination, de la promotion, du transfert, de la révocation des juges et des présidents de tribunaux (à l'exception du président de la Cour suprême), des procédures disciplinaires et de la formation continue des juges et des membres du pouvoir judiciaire.<sup>40</sup> Il est composé de onze membres, dont sept juges, deux professeurs de droit et deux députés, élus pour un mandat de quatre ans et rééligibles une seule fois. Les présidents des tribunaux ne peuvent pas être membres du Conseil supérieur de la magistrature (CSM). Le président du CSM est élu par les membres en leur sein.<sup>41</sup> Toutes les questions administratives qui ne relèvent pas de la compétence du Conseil sont de la responsabilité du ministère de la Justice, qui les traite en collaboration avec le président des tribunaux. Dans ce contexte, le ministre de la justice a le droit de résilier, d'abroger ou d'annuler toute disposition administrative illégale (article 71). Le ministre adopte le règlement des tribunaux, qui fixe l'organisation et l'administration des juridictions et détermine le nombre de juges présidant chaque tribunal. Le

<sup>35</sup> L'art. 63 (1) de la Constitution de la République tchèque.

<sup>36</sup> *Pour une analyse de la situation dans les pays de l'ex-Yougoslavie, voir* DIETRICH 2008, p. 11.

<sup>37</sup> L'objectif du législateur était de résoudre les problèmes liés à l'administration des grands tribunaux, ainsi que les difficultés liées aux petits tribunaux comprenant moins de dix juges et donc difficiles à gérer efficacement.

<sup>38</sup> Le Président de la Cour suprême est élu par le Parlement sur proposition du Président de la République, après consultation du Conseil général de la Cour suprême et de la commission compétente du Parlement.

<sup>39</sup> Ustav Republike Hrvatske. Pročišćeni tekst. Narodne novine 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14. <https://www.zakon.hr/z/94/Ustav-Republike-Hrvatske>

<sup>40</sup> la nomination des juges, la nomination et la révocation des présidents de tribunaux, la mutation des juges, la conduite des procédures disciplinaires et la décision sur la responsabilité disciplinaire des juges, la décision sur la révocation des juges, la participation à la formation des juges et des fonctionnaires judiciaires, la conduite de l'inscription des candidats à l'École nationale de la magistrature et le processus de passage des examens finaux, l'adoption de méthodologies d'évaluation des juges, la tenue des dossiers des juges, la gestion et le contrôle des déclarations de patrimoine des juges.

<sup>41</sup> Sa composition est réglementée plus en détail dans la section 4 du dernier amendement en vigueur depuis le 1er septembre 2018, prescrivant que les membres élus parmi les juges sont les suivants : deux juges de la Cour suprême, un juge d'une juridiction supérieure (un juge), trois juges de tribunaux de comté et un juge d'un tribunal de première instance (généralement un tribunal de district).<sup>41</sup> Les juges élus au CSM ont un devoir réduit dans leurs tribunaux : 75% pour le Président du Conseil et 20% pour les membres du Conseil.



ministre tient un registre des juges, il peut demander n'importe quelle information, et il peut également demander au juge d'application des peines l'explication de certaines poursuites.

L'établissement de l'autonomie judiciaire slovène a été motivé par la transition vers une démocratie constitutionnelle et, de manière pragmatique, par l'admission au Conseil de l'Europe, qui a également été fortement soutenue par la sphère universitaire.<sup>42,43</sup> L'autonomie se manifeste par le contrôle mutuel des trois branches du pouvoir et leur influence sur le pouvoir judiciaire. La principale caractéristique du système est qu'en plus de l'établissement de l'autonomie judiciaire, le rôle du pouvoir exécutif (budget, préparation de la législation relative aux tribunaux, etc.) ne peut pas non plus être négligé. Ce qui est intéressant, cependant, c'est que tous les juges slovènes, sur proposition du Conseil judiciaire, sont nommés juges suite à une décision du Parlement. Mais ensuite (à l'exception du président de la Cour suprême), c'est le Conseil judiciaire qui décide des promotions des juges et de la nomination des présidents et vice-présidents des tribunaux. Le Conseil de la magistrature [*Sodni svet*] a été créé en 1990, immédiatement après l'indépendance.<sup>44</sup> Il se composait de neuf membres : cinq juges, trois avocats éminents et le ministre de la justice, n'ayant pas encore obtenu leur mandat du Parlement socialiste. Le Conseil n'a eu qu'un rôle affaibli. La Constitution, puis les lois ultérieures sur les tribunaux<sup>45</sup> et celles sur le service des juges<sup>46</sup>, prévoyaient déjà la mise en place d'un organe d'autonomie judiciaire fort, qui donne déjà des pouvoirs plus larges au conseil judiciaire central. (Il y avait des idées qui auraient étendu les pouvoirs du conseil aux bureaux des procureurs, mais cela a finalement été rejeté par les partis politiques). L'article 131 de la Constitution prévoyait la création d'un Conseil judiciaire composé majoritairement de juges. En plus des six juges élus, cinq membres le sont par le Parlement sur proposition du Président de la République. En termes de statut, comme l'a confirmé la Cour constitutionnelle slovène, le Conseil est un organe *sui generis* indépendant des autres branches du pouvoir, qui n'est pas non plus un organe représentatif des juges.<sup>47</sup> Afin d'assurer l'indépendance des juges, la Constitution prévoit deux dispositions de garantie : un juge ne peut être nommé et révoqué que sur proposition du Conseil.<sup>48</sup> Bien que des initiatives aient été prises pour transférer la nomination des juges du Parlement au Président de la République en raison du risque de politisation, au regard des pouvoirs forts et indépendants du Conseil judiciaire et sans la volonté des partis politiques, cette initiative est devenue sans objet. Les pouvoirs du Conseil ont été renforcés en 2017, dans une loi distincte<sup>49</sup> sur le Conseil judiciaire, dans laquelle quatre grands groupes de compétences ont été détaillés: 1.

<sup>42</sup> KOSAŘ 2016, p. 488.

<sup>43</sup> Voir, par exemple. GUASTI – DOBOVŠEK – AŽMAN, 2013, pp. 175–190.

<sup>44</sup> FIŠER, 2001.

<sup>45</sup> JO RS 94/07.

<sup>46</sup> JO RS 94/07.

<sup>47</sup> Cour constitutionnelle de Slovénie, affaire U-I-224/96, par. 11 :

<sup>48</sup> Constitution, Art. 130, 132.

<sup>49</sup> Journal officiel de la République de Slovénie 23/17.

Sélection, nomination et révocation des juges, présidents de tribunaux, vice-présidents<sup>50</sup>  
2. Autres compétences liées à la politique des ressources humaines judiciaires.<sup>51</sup> 3. Le rôle du Conseil en matière disciplinaire. Le Conseil crée une commission disciplinaire, engage une procédure disciplinaire et veille à ce que des mesures disciplinaires soient prises. Le quatrième groupe comprend les compétences qui permettent la mise en œuvre des précédentes.<sup>52</sup> Il adopte, en concertation avec le ministre de la justice, les critères de sélection des juges et l'évaluation des juges déjà nommés. Il crée un code d'éthique et d'intégrité. Le ministre de la Justice consulte le Conseil sur le nombre nécessaire de juges et sur les questions d'organisation.

La Serbie est le seul système juridique parmi ceux analysés qui cherche à rejoindre l'UE. La stratégie de la Commission européenne pour les Balkans occidentaux prévoit que cela pourrait se produire en 2025 au plus tôt, mais dans l'intervalle, un certain nombre de réformes sont nécessaires, notamment dans le système judiciaire. À la suite de la sécession de la Serbie et du Monténégro et de la déclaration simultanée d'indépendance de la Serbie, une stratégie nationale de transformation du système judiciaire a été adoptée en 2006, qui devait aboutir à l'adoption, d'ici 2010, de la loi jetant les bases de l'administration de la justice serbe post-socialiste. Le Conseil supérieur de la magistrature a été créé, qui joue également un rôle important dans la sélection, les questions disciplinaires et la révocation des juges. Un système mixte a été décidé, l'administration de la justice étant assurée conjointement par le Conseil et le ministère de la justice (article 70). Ce dernier supervise le travail administratif des tribunaux, collecte les données statistiques et autres, entretient les installations, décide des questions budgétaires et supervise les activités financières du Conseil supérieur de la magistrature au-delà des tribunaux. Le Conseil supérieur de la magistrature (CSM) était composé de onze membres : le président de la Cour suprême, le ministre de la Justice et le président de la commission compétente du Parlement, ainsi que huit membres élus. Ces membres étaient élus par le Parlement : six juges (de la province autonome de Voïvodine) et deux avocats prestigieux ayant au moins 15 ans d'expérience professionnelle.<sup>53</sup> Le Conseil avait le droit d'élire et de retirer les juges ayant été finalisés.<sup>54</sup> Comme en Slovaquie, les efforts pour établir un contrôle mutuel entre les branches du pouvoir étaient apparents. Outre le ministère et le Conseil, le pouvoir

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<sup>50</sup> Art. 23/1 de la loi sur le Conseil judiciaire Dans ce contexte, le Conseil a le droit de faire des propositions à la personne du Président de la Cour suprême et il propose également l'identité des juges de la Cour suprême. Il a le pouvoir de nommer tous les autres présidents et vice-présidents de la cour et décide également de toutes les promotions judiciaires. Il propose la nomination de nouveaux juges et le Parlement décide de la nomination des juges. Il émet un avis sur la procédure de révocation du président de la Cour suprême. La proposition de la révocation des juges relève également de sa compétence.

<sup>51</sup> *Ibid* Art. 23/2 Les conflits d'intérêts, les promotions, l'attribution de titres judiciaires supérieurs, le passage à une catégorie de rémunération supérieure sont également inclus, et le Conseil décide en dernier ressort de l'évaluation négative des juges et des plaintes contre les juges, de la mutation des juges et d'autres questions relatives à leur statut.

<sup>52</sup> *Ibid*, Art. 23/4.

<sup>53</sup> Zakon o Visokom savetu sudstva („Sl. glasnik RS”, br. 116/2008, 101/2010, 88/2011 i 106/2015) <https://vss.sud.rs/sites/default/files/attachments/Zakon%20o%20Visokom%20savetu%20sudstva%2001.01.2016.pdf>

<sup>54</sup> <https://vss.sud.rs/sites/default/files/attachments/Zakon%20o%20sudijama%2001.01.2016.pdf>

législatif a reçu des pouvoirs importants pour nommer les juges et sélectionner les membres du Conseil. C'est ce dernier point qui a constitué un élément essentiel du système judiciaire dans le processus d'adhésion à l'UE, puisque le corps législatif a élu près des deux tiers des membres du Conseil. De cette manière, le Parlement a eu une influence indirecte non seulement sur l'élection des juges en période probatoire, mais aussi sur la nomination de tous les juges.

Les efforts d'intégration européenne ont incité le gouvernement serbe à changer la situation, et il a initié un amendement constitutionnel.<sup>55</sup> Le projet a fini par limiter considérablement le rôle du pouvoir législatif. Le 16 janvier 2022, la Serbie a organisé un référendum sur la réforme constitutionnelle. Le référendum a confirmé les changements initiés par le gouvernement. Les pouvoirs du Conseil ont considérablement augmenté. La composition du Conseil a également été modifiée, et les juges élus par leurs pairs sont désormais majoritaires au sein de l'instance. Six juges sur onze membres sont élus par leurs pairs, quatre membres sont élus par l'Assemblée nationale parmi les „éminents juristes". Le président de la Cour suprême est le septième juge à siéger. Le ministre de la justice ne sera pas membre du Conseil. L'amendement constitutionnel garantit que les juges et les procureurs sont élus sans la participation directe de l'Assemblée nationale. Les juges et les présidents de tribunaux seront élus exclusivement par le Conseil supérieur de la magistrature.<sup>56</sup> Le mandat probatoire de trois ans pour les juges a également été supprimé. (Le Parlement n'élira que le procureur suprême de l'État et cinq des 15 juges de la Cour constitutionnelle).<sup>57</sup>

### *III Les défis des systèmes judiciaires post-socialistes. Conclusion*

Malgré l'histoire commune au sein du bloc soviétique et les caractéristiques identiques du changement de régime qui a suivi, c'est la diversité des solutions institutionnelles qui caractérise aujourd'hui les États d'Europe centrale et orientale. Outre la diversité, le trait identique le plus important peut être le fait que, malgré des réformes régulières, la relation entre l'indépendance et la responsabilité<sup>58</sup> révèle des incohérences et une confusion dans le système judiciaire.<sup>59</sup> On peut conclure des réformes que le règlement de la relation entre indépendance et responsabilité est omniprésent dans les litiges relatifs à la répartition des pouvoirs.<sup>60</sup> La référence constante à l'indépendance est souvent associée au manque de préparation, à la réclusion, à l'augmentation des éléments corporatifs et au manque de transparence des tribunaux. Les conseils de la magistrature établis selon les exemples occidentaux montrent des différences significatives dans certains systèmes juridiques, tant en ce qui concerne leur composition que leurs compétences. En Hongrie,

<sup>55</sup> <https://europeanwesternbalkans.com/2021/06/08/serbian-parliament-votes-to-trigger-amending-the-constitution-in-the-field-of-the-judiciary/>

<sup>56</sup> Les procureurs seront élus par le Conseil supérieur des procureurs.

<sup>57</sup> USTAV REPUBLIKE SRBIJE (& quot;Sl. glasnik RS&quot; ;, br. 98/2006 i 115/2021)

<sup>58</sup> Solomon, 2012, p. 909-937. <https://doi.org/10.1007/978-3-642-28299-7>

<sup>59</sup> PIANA 2009. <https://doi.org/10.1177/0010414009333049>

<sup>60</sup> FLECK 2011, p. 33.; FLECK 2012, pp. 793-835.

un Conseil composé exclusivement de juges contrôle un président élu par le corps législatif, qui dirige le Bureau judiciaire. En Roumanie, en Pologne et en Slovaquie, le Conseil composé d'une majorité de juges a pris en charge l'administration de la justice, mais ce dernier fournit également un exemple de l'importance du pouvoir législatif dans le processus de nomination des juges. Il en a été de même en Serbie, qui s'est jusqu'à présent séparée de l'ex-Yougoslavie et n'a pas encore rejoint l'UE. Ici, le pouvoir législatif a non seulement élu la majorité des membres du Conseil, mais a également joué un rôle décisif dans la nomination des juges. Jusqu'à récemment, un nouvel amendement constitutionnel, proposé par la Commission de Venise pour faciliter le processus d'adhésion à l'UE, a apporté un soutien considérable à l'indépendance organisationnelle du pouvoir judiciaire. La solution slovaque se caractérise non seulement par un équilibre dans la composition du Conseil, mais aussi par une répartition des responsabilités entre le Conseil et le ministère de la justice. Quant à l'administration ministérielle tchèque, elle fournit l'exemple que même dans un État post-socialiste, le modèle autrichien/allemand peut devenir acceptable pour l'UE si cette solution l'est également pour l'élite politique nationale.

Il est clair que la plupart des controverses dans les systèmes juridiques post-socialistes d'Europe centrale portent sur la nomination, la promotion et la sélection des juges, bien que récemment, la question de la responsabilisation des juges ait été vivement débattue dans certains pays, suscitant des critiques de l'UE à l'égard de la Roumanie et de la Pologne. La sélection n'est évidemment pas un problème spécifique de ces États, une recherche globale peut être perçue. Cependant, la culture judiciaire ancrée dans le passé dictatorial et le système de parti unique renforce les craintes quant à la vulnérabilité de l'indépendance judiciaire.

Au XXI<sup>ème</sup> siècle, la légitimité de l'administration de la justice provient d'une conviction profonde partagée par la société selon laquelle, lorsqu'ils prennent des décisions, les tribunaux ne sont pas influencés par un lien inapproprié avec des acteurs extérieurs (par exemple, des partis politiques, le gouvernement, des lobbyistes, des dirigeants judiciaires ou des électeurs), mais sont fondés exclusivement sur des considérations juridiques professionnelles et un sens objectif de la justice.<sup>61</sup> La question de la sélection des juges et de la gestion des tribunaux est un sujet récurrent dans les litiges. La culture consistant à s'appuyer fortement sur le „capital social” est présente dans tous les États post-socialistes. Cette attitude de „capitalisation” des liaisons a nécessairement été renforcée partout par l'économie de pénurie caractéristique du socialisme, engloutissant également la justice dans le processus. Là où la corruption ne prévaut pas dans le jugement des affaires judiciaires (Hongrie, Tchéquie et Pologne), elle est plus ou moins dominante dans la sélection des juges et la gestion des tribunaux. Comme en Roumanie, on peut même le constater lorsque, dans le cadre inspiré de l'exemple français, l'introduction d'un concours est rendue obligatoire en cas de nomination de juges (et de procureurs). Le processus d'adhésion à l'UE a joué un rôle positif sans équivoque dans l'augmentation des éléments fondés sur le mérite. Des formes plus objectives de sélection des juges sont apparues dans divers cas. Quoi qu'il en soit, qu'il s'agisse de l'administration ministérielle, d'un Conseil central de la magistrature ou du rôle renforcé des autonomies judiciaires locales, le degré acceptable d'objectivité du système des procédures de sélection est partout remis en

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<sup>61</sup> BADÓ 2014, pp. 27–58.

question et l'on peut entendre parler d'effets de distorsion de la politique partisane ou de la sélection qui proviennent de l'intérieur du système judiciaire. En l'absence d'une introduction nationale et obligatoire du concours, la situation pourrait être encore plus sombre.<sup>62</sup>

C'est en vain que des exigences formulées avec précision sont incluses dans les recommandations de diverses organisations internationales concernant le recrutement des juges<sup>63</sup>. En l'absence de normes européennes contraignantes, les États membres peuvent facilement détourner l'application des éléments fondés sur le mérite dans la sélection des juges et la gestion des tribunaux. Cette situation particulière est soulignée par Ramona Coman et Cristina Dallara dans leur travail sur l'indépendance de la justice roumaine.<sup>64</sup> Dans de telles circonstances, outre les traditions historiques susmentionnées, les juges peuvent devenir plus facilement sans défense et opportunistes, ce qui peut ouvrir la voie à des tentatives internes ou externes d'influence.

ATTILA BADÓ – CHEESMAN, SAMANTA

AZ IGAZSÁGSZOLGÁLTATÓ HATALOM ALKOTMÁNYOS  
KIHÍVÁSAI A KÖZÉP-KELET EURÓPAI POSZTSZOCIALISTA  
JOGRENDSZEREKBEN

(Összefoglalás)

A tanulmány a közép-kelet európai országok igazságszolgáltatási rendszereinek alapvető problémáit, a vizsgált jogrendszerek elmúlt évtizedekben megvalósított, vagy folyamatban lévő reformkísérleteit mutatja be. A szerzők a bíróságok központi igazgatási formáinak összehasonlító vizsgálatára vállalkoznak és azt mutatják be, hogy a bírói függetlenség és elszámoltathatóság jól ismert szempontjai milyen mértékben játszanak szerepet az egyes jogrendszerekben. Az elemzés középpontjában a bírói függetlenség fogalma és aktuális helyzete áll, ami az Európai Unió tagállamai, vagy az éppen csatlakozni kívánó országok szempontjából különös jelentőséggel bír. A szovjet blokk közös történelme és az azt követő rendszerváltás azonos jellemzői ellenére az intézményi megoldások sokfélesége jellemzi ma a közép-kelet-európai országokat. A sokféleség mellett a legfőbb azonos vonást az jelenti, hogy a rendszeresen bekövetkező reformok ellenére a függetlenség és az elszámoltathatóság viszonya továbbra is problematikus ezekben az országokban. A reformokból arra lehet következtetni, hogy a függetlenség és az elszámoltathatóság viszonyának rendezési igénye, vagy éppen kényszere mindenütt jelen van a hatalommegosztással kapcsolatos vitákban

<sup>62</sup> Michal Bobek, dans son étude de 2014 sur le système de sélection tchèque selon lequel l'application du concours n'est que facultative dans la sélection des candidats, il écrit ce qui suit : „Aujourd'hui, le plus grand problème réside toujours dans l'absence de tout critère ouvert, transparent et clair selon lequel les nouveaux candidats seront choisis par les présidents des tribunaux régionaux(...)” MICHAL BOBEK op. cit, p. 12.

<sup>63</sup> Voir, par exemple, les recommandations de Kiev sur l'indépendance de la justice en Europe orientale, dans le Caucase du Sud et en Asie centrale, 2010.

<sup>64</sup> COMAN – DALLARA 2012, pp. 835–855.



JÓZSEF HAJDÚ\*

## The Four-Day Work Week as a Complex Relationships Among Time, Work, Competition and Wellbeing

### *Introduction*

When Henry Ford<sup>1</sup> gave his workers a five-day week<sup>2</sup> in 1926, having Saturdays off was seen as a revolutionary shift to the typical workweek.<sup>3</sup> Another example to mention, in the 1990s, a number of organizations went with a 9/80 schedule, where people work nine hours Monday through Thursday and eight hours every other Friday in exchange for getting alternate Fridays off.<sup>4</sup>

There was another societal experiment approach in the 1960s and 1970s: the idea of a ‘leisure society’. It was predicted that the pattern of falling working hours which had been experienced in Western societies in the first half of the twentieth century would continue indefinitely. The leisure society has clearly not been realised. On the contrary: contemporary industrial societies seem to be characterised by a shortage of time, experienced as ‘time squeeze’ and stress. The leisure society idea can be seen as the modern version of the age-old dream of a ‘life of ease and plenty’.<sup>5</sup>

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<sup>1</sup> Henry Ford had been contemplating the idea of a five-day workweek since at least 1916 before implementing it in 1926. (Source: Don Lee (1994) *Finding the Week that Works: For Many Employers the Four-Day Schedule Hasn't Panned Out, but Alternatives Are Succeeding*; Retrieved from: <https://www.latimes.com/archives/la-xpm-1994-11-13-fi-62226-story.html> (29. 09. 2022.))

<sup>2</sup> It began as an experiment at some Ford Motor Co. plants in July 1926 and became company policy by September that same year.

<sup>3</sup> RICH BARLOW: (2022) *Is the Four-Day Workweek the Next Frontier?* Retrieved from: <https://www.bu.edu/articles/2022/pros-and-cons-of-the-four-day-workweek/> (29. 09. 2022.)

<sup>4</sup> DON LEE (1994) *Finding the Week that Works: For Many Employers the Four-Day Schedule Hasn't Panned Out, but Alternatives Are Succeeding*. Retrieved from: <https://www.latimes.com/archives/la-xpm-1994-11-13-fi-62226-story.html> (29. 09. 2022.)

<sup>5</sup> ANTHONY J. VEAL: (2020) *Whatever Happened to the Leisure Society?* Routledge, 2020 pp. 36–52.

There is an argument to be made that modern technology has significantly speed up the way of many types of work, and that the five-day week is no longer necessary.<sup>6,7</sup> With the evolution of technology and the increase in office jobs, the rule that longer hours equal more productivity is not necessarily true anymore. And with the 4-day week pilot running in countries across the world, there is a clear sense that this change in working practice could become the norm for some organisations.<sup>8</sup>

A 4-day workweek is a relatively new concept, brought about largely due to recent advancements in technology. Nowadays numerous countries<sup>9</sup> have launched tests of four-day workweek to see if five days is too long and four days makes more sense. A four-day workweek is, ideally, a 32-hour workweek with no loss in productivity, pay, or benefits. Depending on the company and the industry, the most spread pattern of the FDWW is that everyone might work Monday through Thursday and have Fridays off (fixed day-off).<sup>10</sup> Other possibilities include allowing each employee to choose their extra day off or having a company-wide policy of a different third day off, such as Monday or Wednesday (flexible day-off<sup>11</sup>).<sup>12</sup> A FDWW may seem like a radical idea, but we have gradually reduced the number of hours worked within a typical workweek since the late 19th century.<sup>13</sup>

The main hypotheses of this paper are: 1. technical developments are the necessary precondition of the FDWW; 2. one size does not fit for every employer; 3. employee engagement itself does not improve with a FDWW, but there is a potential for enhancing

<sup>6</sup> Whilst the five-day week used to be a great model that got the most out of its workers, it was born in an era where factory work was the norm. In a 19th century factory, a 5-day week was ideal.

<sup>7</sup> ANDREW BARNES: “*The 4 Day Week, How the Flexible Work Revolution Can Increase Productivity, Profitability and Well-being, and Create a Sustainable Future*,” Introduction and Page 3. Brown Book Group, 2020.

<sup>8</sup> Welcome to the 4-day work week pilot program! Retrieved from: <https://www.4dayweek.com/pilot-program> (29. 09. 2022.)

<sup>9</sup> For example, 60 North American (USA plus Canada) companies switch to a four-day week, with over 4,000 employees cumulatively participating in the trials by 2022. This is based on the 100-80-100™ model, meaning workers get 100% of the pay, for 80% of the time, in exchange for a commitment to maintaining at least 100% of the output.

<sup>10</sup> A fixed day-off helps maintain a consistent routine: everybody – co-workers, customers, business partners, etc. – knows exactly what to expect, and it is easy to schedule cross-functional meetings. Of course, a FDWW with a fixed day-off can be challenging for customer support and customer-facing teams who want (or need) to be available throughout the week. This is why many customer success teams end up taking a staggered approach, in which some team members cover one part of the week and others cover the remaining days to ensure continuous availability.

<sup>11</sup> With a flexible 4-day workweek, team members can choose their free day flexibly and spontaneously. This approach is ideal for companies and teams that prioritize flexibility above anything else. But the flexibility that is great on an individual level can bring its own challenges for the larger team: if everyone takes different days off, and schedules change from week to week, this approach can be confusing and complicated. Scheduling meetings with different team members can become difficult, as it is harder to stay on top of who is available when. Plus, team members who prefer predictable schedules to optimize their deep work times may find this approach disruptive.

<sup>12</sup> 4 Day Week Global. “Moving to a 4 Day Week; Retrieved from: <https://www.4dayweek.com/get-started> (29. 09. 2022); BETTINA SPECHT: (2021) *4-day workweek: which day should you take off?* Retrieved from: <https://wildbit.com> (29. 09. 2022.)

<sup>13</sup> For example, in 1890, the United States government estimated that a full-time employee within a manufacturing plant worked an average of 100 hours a week. By the mid-20th century, manufacturing employees only worked 40 hours a week.



employers' competitiveness; 4. work-life balance and wellbeing of employees does improve with FDWW; 5. it might help to overcome the forthcoming 2022-23 energy crisis.

The article introduces the main features of the FDWW, including its positive and negative factors, its influence on competitiveness, the link between FDWW and automation and some decisive countries' (including Hungary) and/or companies' experiments.

### *1. Definition of four-day workweek*

The brief definition of the four-day workweek (hereinafter: FDWW): The idea is simple – employees would work four days a week while getting paid the same and earning the same benefits, but with the same workload. (in sum: four-day working week of around 32 hours, with no less pay).<sup>14</sup>

A four-day workweek can be defined in two ways: the first is when an employee compresses their full-time hours (typically 35 hours) over a four-day period. And the second is reducing an employee's hours (typically to 28 hours) over four days, so they are then able to have a three-day weekend.

The basic aims of FDWW are twofold. On the one hand, it serves companies to operate with fewer meetings and more independent work. Furthermore, the following pragmatical strategies might be followed by the companies engaged in FDWW: 1. Prioritize and re-evaluate tasks; 2. Minimize interruptions and distractions; 3. Increase automation; 4. Emphasize human creativity; 5. Limit work-based social events; 6. Reduce and shorten meetings; 7. Spend less time on email and messaging apps; 8. Define clear goals; 9. Set goals that are achievable within a shorter workweek; 10. Measure outcomes, not hours; 11. Implement asynchronous work; 12. Maintain employee trust; 14. Solicit regular employee feedback; 15. Learn from trial and error; 16. It is an effective way to promote worker productivity and wellbeing (reduced employee burnout and improved employee retention); 17. Lower operating costs for an office (unless the company is already all-remote); 18. Larger applicant pool for open positions. etc.

On the other hand, the fundamental goal of a FDWW is to improve workers' quality of life. By working fewer hours overall and having three full days off, people have more time for personal priorities like these: 1. Spending quality time with family, friends, and pets; 2. Caregiving; 3. Doctor appointments; 4. Personal development; 5. Education; 6. Travel; 7. Hobbies; 8. Home maintenance and improvements and 9. Household management, etc.<sup>15</sup>

One of the important guarantees to introduce FDWW is the *new technological developments* (AI and robot coworkers), which could make it possible for employees to accomplish the same amount of work in less time and still ensure customers are supported. AI technology will significantly disrupt every aspect of every industry in every country

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<sup>14</sup> However, the long-standing debate over the FDWW poses a deeper question about the nature of work itself. The real problem is that most employees are poorly managed. Globally, eight in 10 employees are not engaged or are actively disengaged at work. These people are either watching the clock or actively working against their employer. And the desire to escape work is symptomatic of unhappy workplaces.

<sup>15</sup> THERESA AGOVINO: (2020) *The Phenomenon of the Four-Day Workweek*. Retrieved from: <https://www.shrm.org/hr-today/news/all-things-work/pages/four-day-workweek.aspx> (29. 09. 2022.)

including how and when we work. Within the near future, we are likely to see an increase in remote and more flexible work schedules like the 4-day workweek. The FDWW could become a reality within this century if businesses are forced to share the benefits of new technology with their employees.<sup>16</sup>

In general, the shorter working week can be envisaged or accomplished in a number of different ways: 1. For employees: In areas of the labour market benefiting significantly from automation and productivity gains, worker-led sectoral initiatives have demanded the right of employees to enjoy a share of the benefits, in the form of more free time. 2. At the firm level, progressive businesses have been implementing shorter working weeks, often finding that the initiative brings significant improvements for productivity, reputation and staff well-being. 3. At the state level, there have been calls for statutory measures and public spending to enable shorter working weeks by increasing the head-count in over-stretched areas of the public sector.<sup>17</sup>

The key ideas behind a four-day workweek is 1. to achieve the same results in fewer hours so people have more time to pursue other interests, spend time with loved ones, and manage their lives. 2. Companies could benefit through increased sales, decreased worker burnout, and lower turnover, among other positives. 3. Emphasizing results instead of hours logged means that there's no need to cut pay or benefits.

However, a four-day workweek doesn't always mean that employees maintain their pay and benefits. Some organizations have reportedly used a four-day week as a cost-saving measure.<sup>18</sup>

It also should be underline that a four-day week model does not suit every business. It is an option that is only viable for companies who can re-adapt their whole business to a new way of working. However, adopting a different way of working is a big step, so employer management need to consider whether or not a four-day week is right for their company.

## 2. *Evaluative considerations of FDWW: pros and cons*

### 2. 1. Pros

On the positive side in general, employees might really welcome having only four days of intense work obligations a week, plus three days free to spend with family or just

<sup>16</sup> The Pros and Cons of a 4 Day Working Week; Retrieved from: <https://www.changerecruitmentgroup.com/knowledge-centre/the-pros-and-cons-of-a-4-day-working-week>(29. 09. 2022.); A four-day work week: the pros and cons (2022) Retrieved from: <https://www.reedglobal.hu/en/blog/2021/12/a-four-day-work-week-the-pros-and-cons?source=google.com> (29. 09. 2022.)

<sup>17</sup> ROBERT SKIDELSKY: (2019) *How to achieve shorter working hours*. Retrieved from [https://progressiveeconomyforum.com/wp-content/uploads/2019/08/PEF\\_Skidelsky\\_How\\_to\\_achieve\\_shorter\\_working\\_hours.pdf](https://progressiveeconomyforum.com/wp-content/uploads/2019/08/PEF_Skidelsky_How_to_achieve_shorter_working_hours.pdf) (29. 09. 2022.)

<sup>18</sup> AMY FONTINELLE: (2022) The Impact of Working a 4-Day Week Society for Human Resource Management. "Retrieved from: <https://www.shrm.org/hr-today/news/all-things-work/pages/four-day-workweek.aspx> (29. 09. 2022.); DAVID FRAYNE and WILL STRONGE ed. (2022) *Future Fit For Wales, The roadmap to a shorter working week*. Report by the Future Generations Commissioner for Wales, Retrieved from: <https://www.futuregenerations.wales/wp-content/uploads/2022/02/SWW-Full-report-English.pdf> (29. 09. 2022.)

more ‘me’ time.<sup>19</sup> Going from the standard two days off to three days—statistically, that is a 50 percent increase. They might travel more, save more on commuting and parking, and get more time with friends and family. The mainstream form of FDWW means 100 percent pay for four days in exchange for maintaining 100 percent productivity.

#### 2. 1. 1. Increased engagement and motivation or simple effective time management

The employees’ engagement and productivity vary by countries (working cultures<sup>20</sup>), by sectors,<sup>21</sup> by workplaces, by working groups and by individual employees. Increased productivity basically means to finish – minimum – the five-day workload within four days. This approach might be more clearly understood when the real (net) working hours of some sample countries are displayed. Data from the Organisation for Economic Co-operation and Development (OECD) show that the average annual hours worked by employed people in 2020 were the lowest in Germany at 1,332 (25.6 per week). In the USA,<sup>22</sup> employees worked an average of 1,767 hours (34 per week), while Canadians work 1,664 hours (32 per week). Among other places experimenting with four-day workweeks, those in the United Kingdom work 26 hours per week, Spaniards work 30 hours per week, and the Japanese work 31 hours per week.<sup>23</sup>

However, the six-hour work day would be most effective in organisations – such as hospitals – where employees work for six hours and then they just leave [the workplace] and go home. However, this kind of solution might even increase stress levels given that employees might try to fit all the work that they have been doing in eight hours into six – or if they are office workers, they might take the work home.

Another experiment published by the Harvard Business Review<sup>24</sup> shows shorter work days, a decrease from the average 8-hour work day to a 6-hour work day, increased productivity. A 2018 survey of 3,000 employees by the Workforce Institute at Kronos found more than half of full-time workers thought they could do their job in five hours a day.<sup>25</sup>

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<sup>19</sup> World Economic Forum (2022) This is what the 4-day workweek means for equal rights, productivity and climate change; Retrieved from: <https://www.weforum.org/agenda/2022/02/what-the-four-day-workweek-means-for-the-future-of-employment/> (29. 09. 2022.)

<sup>20</sup> According to Bengt Lorentzon, the concept of six-hour days also jars with the strong culture of flexible working approach; One concrete example: a bank employee worked in the UK and clients wanted to stay in touch on weekends and during the evening. When he relocated to Stockholm, it was mainly over. He argues that the environment might at times feel “frustrating” for those used to putting in longer hours or getting swift responses from clients, but he is convinced that the Swedish model brings far greater benefits than drawbacks. In Sweden there is a mutual respect. The clients will wait until office hours to call or email and at the same time he will not be phoned when he is on holiday.

<sup>21</sup> For example, in a real estate company there is no need for managers to have all their agents (workers) in the office at the same time, they just want to get the results and people have to deliver. However, compare that to the assistant nurses in the operation room, they cannot just leave work after six hours to go home.

<sup>22</sup> When someone looks at these numbers, it would seem that the average American who is age 16 or older already has almost the equivalent of a four-day workweek, and workers in some other countries have even more free time.

<sup>23</sup> OECD (2022), Hours worked (indicator). Retrieved from: <https://data.oecd.org/emp/hours-worked.htm> doi: 10.1787/47be1c78-en (29. 09. 2022.)

<sup>24</sup> STEVE GLAVESKI: (2018) *The Case for the 6-Hour Workday*. Retrieved from: <https://hbr.org/2018/12/the-case-for-the-6-hour-workday> (29. 09. 2022.)

<sup>25</sup> KARI PAUL: (2019) *Microsoft Japan tested a four-day work week and productivity jumped by 40%*. Retrieved from: <https://www.theguardian.com/technology/2019/nov/04/microsoft-japan-four-day-work-week-productivity>

In addition, the typical – including much *waste time* – employee day is characterized by: 1. Hour-long meetings, by default, to discuss matters that can usually be handled virtually in one’s own time. 2. Unplanned interruptions, helped in no small part by open-plan offices, instant messaging platforms, and the “ding” of desktop and smartphone notifications. 3. Unnecessary consensus-seeking for reversible, non-consequential decisions. 4. The relentless pursuit of “inbox zero,” a badge of honor in most workplaces, but a symbol of proficiency at putting other people’s goals ahead of one’s own. 5. Traveling, often long-distance, to meet people face-to-face, when a phone call would suffice. 6. Switching between tasks constantly, and suffering the dreaded cognitive switching penalty as a result, leaving one feeling exhausted with little to show for it. 7. Wasting time on a specific task long after most of the value has been delivered, and 8. Rudimentary and administrative tasks.<sup>26</sup> These types of wasting time shall be avoided to manage an appropriate FDWW work schedule.

Another issue is *deep work*, which concerns human tangible capacity. Three to four hours of continuous, undisturbed deep work each day is all it takes to see a transformational change in our productivity and our lives. It is just not true that if someone stays at the office longer, he/she gets more work done. The shorter workday forces the employees to prioritize effectively, limit interruptions, and operate at a much more deliberate level for the first few hours of the day. The law of nature that is the Pareto principle<sup>27</sup> stipulates that about 20% of someone’s tasks will create about 80% of the value, so it is about focusing on those high-value tasks.<sup>28</sup>

The last issue raised under this point is the *autonomy* of employees. Basically, every manager wants employees to take ownership of their work. When they give employees autonomy to do their work in any allotted amount of time, they take that power and translate it into ownership and engagement. In case of FDWW, the management’s message is clear: employees are trusted to get their work done (increased autonomy).<sup>29</sup>

## 2. 1. 2. Work and family life balance

This is mainly an equality issue. Reduced working hours given by the FDWW can also help towards the goal of more equality between female and male family members in household things and raising children.<sup>30</sup> The policy has been shown to generate greater

<sup>26</sup> ADAM GRANT: (2016) *Originals: How Non-Conformists Move the World*. Viking Publisher, New York pp. 47–64.

<sup>27</sup> MACIEJ DUSZYŃSKI: (2021) *Pareto Principle & the 80/20 Rule*. Retrieved from: [https://resumelab.com/career-advice/pareto-principle?utm\\_source=google&utm\\_medium=sem&utm\\_campaign=6540517835&utm\\_term=%2Bpareto%20%2Bprinciple&network=g&device=c&adposition=&adgroupid=104311758447&placement=&gclid=EAIaIQobChMIprWvi52u-gIVowuiAx1WygBMEAAAYASAAEgLFBPD\\_BwE](https://resumelab.com/career-advice/pareto-principle?utm_source=google&utm_medium=sem&utm_campaign=6540517835&utm_term=%2Bpareto%20%2Bprinciple&network=g&device=c&adposition=&adgroupid=104311758447&placement=&gclid=EAIaIQobChMIprWvi52u-gIVowuiAx1WygBMEAAAYASAAEgLFBPD_BwE) (29. 09. 2022.)

<sup>28</sup> CAL NEWPORT: (2016) *Deep Work: Rules for Focused Success in a Distracted World*. Grand Central Publishing pp. 78–92.

<sup>29</sup> JIM HARTER and RYAN PENDELL: (2021) *Is the 4 Day Work Week a Good Idea?* Retrieved from: <https://www.gallup.com/workplace/354596/4-day-work-week-good-idea.aspx#:~:text=In%20March%202020%2C%20during%20the,employee%20engagement%20and%20wellbeing%20data.> (29. 09. 2022.)

<sup>30</sup> The future is ours: Women, automation and equality in the digital age’ Retrieved from: <https://www.ippr.org/research/publications/women-automation-and-equality> (29. 09. 2022.)

gender equality in terms of the allocation of caring responsibilities.<sup>31</sup> A FDWW would promote an equal workplace as employees would be able to spend more time with their families and better juggle care and work commitments. Employees are less likely to be stressed or take sick leave as they have plenty of time to rest and recover.<sup>32</sup>

Working less would improve the elusive “work-life balance”, and help to restore employees’ mental health and physical wellbeing. It would also give more time to spend on social activities, to care for children and the elderly, and to engage with community volunteer activities. Experiments with reduced working hours at select workplaces in Sweden in 2015 reduced sickness and even increased productivity.<sup>33</sup>

Research shows that 63% of businesses found it easier to attract and keep quality staff with a four-day working week. This work-life balance benefit is still a relatively rare offering and can be a great way to get the best talent through the door – and keep them engaged, too.<sup>34</sup>

An important country case experiment is worth mentioning here. Lithuania will give a four-day workweek to parents with young kids. Under the new policy, which will take effect in 2023, public-sector employees with children under the age of three will be allowed to work 32 hours a week without any reduction in their pay. A standard workweek in Lithuania is 40 hours. The four-day workweek would help the public sector better compete for talent against private-sector companies that offer higher pay and it is also intended to address a persistent gender pay gap.<sup>35</sup> Considering that less than 30% of Lithuanian employees work in the public sector, the country’s four-day workweek trial is limited in scope. But the policy could be an important litmus test for working parents, and provide more data on the potential of the four-day workweek to improve gender equity.<sup>36</sup>

### 2. 1. 3. A Smaller Carbon Footprint

There is an environment benefit if the working week is shortened to four days.<sup>37</sup> With a FDWW, huge amounts of commuting to and from work could be avoided, as well as

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<sup>31</sup> In Iceland, the Reykjavik public sector shorter working week trial found a marked improvement in male participants helping around the home and assisting with childcare.

<sup>32</sup> The Pros and Cons of a 4 Day Working Week; Retrieved from: <https://www.changerecruitmentgroup.com/knowledge-centre/the-pros-and-cons-of-a-4-day-working-week>

<sup>33</sup> ALEX WILLIAMS: (2016) *Why three-day weekends could help to save the world*. Retrieved from: <https://www.independent.co.uk/climate-change/news/bank-holiday-three-day-weekends-climate-change-environment-working-hours-a7215421.html> (29. 09. 2022.)

<sup>34</sup> We are taking the 4 day week global, Retrieved from: <https://www.4dayweek.com/>

<sup>35</sup> Studies have shown that the gender pay gap tends to widen after women have children. This so-called “motherhood penalty” is driven by a number of factors, including the fact that women often cut back on hours when they have kids, and may take a step back from their careers to let a spouse devote more time to a higher-paying job. A four-day workweek like Lithuania’s has the potential to address this imbalance by giving both men and women the opportunity to spend more time at home with young kids.

<sup>36</sup> Courtney Vinopal (2022) Lithuania will give a four-day workweek to parents with young kids, Retrieved from: <https://qz.com/work/2157973/lithuania-will-give-a-four-day-workweek-to-new-parents/> (29. 09. 2022)

<sup>37</sup> A trial conducted by the US state of Utah for government employees showed a significant ecological impact from reducing the average work week from five to four days using a compressed work schedule. During the

the energy outputs from running workplaces.<sup>38</sup> At a point when we need to massively cut back our carbon outputs, instituting a three-day weekend could be the simplest and most elegant way to make the business world economy more environmentally friendly.<sup>39,40</sup>

For example, a study by Autonomy found that a four-day week across the economy would reduce UK carbon emissions by 117,000 tonnes per week (equivalent to removing 1.3 million cars off the road annually).<sup>41</sup>

#### 2. 1. 4. Reduce costs and increase employee retention

A four-day week can cut costs for everyone. In the case of the employer, the obvious one is that, given the office would be closed for one extra day a week, running costs (e.g. heating or cooling, electricity, cleaning, etc.) would see a significant drop.

The most obvious beneficiary of the FDWW might be the employee. They would be paying less to commute and therefore gas or transportation expenses by one day, and would see cut costs in expenses like lunch and coffees during the day, too.<sup>42</sup> For those employees with children, one less day at the office will mean one less day of childcare needed. Employees will also have more freedom to schedule important things outside of work, such as doctor's appointments. Working four days a week means for employees that every weekend is a long weekend, with more opportunities to spend with friends and family, more chances to relax and more time to focus on hobbies and interests outside of work. A four-day workweek allows the employee to continue to contribute on the job while gaining the time to pursue a long-neglected avocation, to help care for the children or grandchildren.

The FDWW can be used as an employee retention tool, regardless of what age bracket employees are in. Basically, few companies use this model. The key to retaining employees is avoiding burnout and focusing on wellness. A 2020 Gallup poll of over 10,000 workers found the lowest level of job burnout in employees who worked a 4-day week.

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first ten months, the project saved over US\$1.8m in energy costs and a reduction of at least 6,000 metric tons of carbon dioxide emissions from closing the large office building on Fridays. If employees' commutes are also included, Utah estimated that it could save 12,000 metric tons of CO<sub>2</sub>, the equivalent of removing 2,300 cars off the road for one year, simply by working one day less a week

<sup>38</sup> ALLYSON CHIU: (2022) *How a four-day workweek could be better for the climate; How a four-day workweek could be better for the climate*. Retrieved from: <https://www.washingtonpost.com/climate-solutions/2022/08/08/4-day-workweek-environment/> (29. 09. 2022.)

<sup>39</sup> ALEX WILLIAMS: (2016) *Why three-day weekends could help to save the world*. Retrieved from: <https://www.independent.co.uk/climate-change/news/bank-holiday-three-day-weekends-climate-change-environment-working-hours-a7215421.html>

<sup>40</sup> However, as usual, every coin has two sides, namely FDWW employees may well use their longer weekends to fly abroad, without the need to take any days off from work. It presumably diminishes savings and increases the carbon footprint.

<sup>41</sup> Autonomy (2020), 'Sparking change: electricity consumption, carbon emissions and working time'. Retrieved from: <https://autonomy.work/portfolio/sparkingchange/> (29. 09. 2022.)

<sup>42</sup> LAURA SANDS: (2022) *A four-day work week: is it really worth it?* retrieved from: <https://www.breathehr.com>

Additionally, FDWW employees reported the highest rates of ‘thriving wellbeing’ at 63% of those polled.<sup>43</sup>

The future of work depends on creating renewable human energy<sup>44</sup> and solving the problem of human energy crises. As with climate change, warning signs abound. Just as we have seen melting ice caps, rising sea levels, and wildly swinging temperatures, on the human level we have seen languishing, depleted surge capacity and a global mental health crisis. According to Gallup, seven in 10 people globally report they are struggling or suffering.<sup>45</sup>

In the face of the Human Energy Crisis, the latest Work Trend Index data shows workers around the world have a new “worth it” equation, with 53% of respondents – particularly parents (55%) and women (56%) – saying they are more likely to prioritize their health and wellbeing over work than before.<sup>46</sup> The FDWW might be one piece of the mosaic to fulfill this aim. It could give people permission to balance their lives in meaningful ways without feeling they must sacrifice career growth for personal priorities and vice versa. Inevitably, the future of human work depends on creating “renewable human energy”.<sup>47</sup>

#### 2. 1. 5. Shortening working week and saving jobs

Theoretically, the FDWW, which reduces the weekly working hours, might lead to saving jobs and cost.

A shorter working week could help towards creating a more equitable world of work by redistributing jobs and hours in a fair and rational way. By helping to iron out existent inequalities across the labour market, reduced working hours can alleviate harmful patterns of overwork and underemployment, as well as unemployment rates.<sup>48</sup>

#### 2. 1. 6. Improving health

Reducing working hours can be a strong, preventative step towards a healthier society. Working time reduction has been repeatedly shown to decrease stress levels and provide

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<sup>43</sup> JIM HARTER and RYAN PENDELL: (2021) *Is the 4 Day Work Week a Good Idea?* Retrieved from: <https://www.gallup.com/workplace/354596/4-day-work-week-good-idea.aspx#:~:text=In%20March%202020%2C%20during%20the,employee%20engagement%20and%20wellbeing%20data.> (29. 09. 2022.)

<sup>44</sup> Since the World Health Organization categorized burnout as an “occupational phenomenon” in 2019, it’s only become more widespread and exacerbated thanks to the realities of the last few years. Source: Burn-out an “occupational phenomenon”: International Classification of Diseases; Retrieved from: [https://www.who.int/news/item/28-05-2019-burn-out-an-occupational-phenomenon-international-classification-of-diseases.](https://www.who.int/news/item/28-05-2019-burn-out-an-occupational-phenomenon-international-classification-of-diseases)

<sup>45</sup> JIM CLIFTON: (2021) *The Next Global Pandemic: Mental Health.* Retrieved from: <https://www.gallup.com/workplace/357710/next-global-pandemic-mental-health.aspx> (29. 09. 2022)

<sup>46</sup> Work Trend Index (2022) Great Expectations: Making Hybrid Work Work; Retrieved from: <https://www.microsoft.com/en-us/worklab/work-trend-index/great-expectations-making-hybrid-work-work>

<sup>47</sup> KATHLEEN HOGAN: (2022) *Why Leaders Can’t Ignore the Human Energy Crisis.* Retrieved from: <https://www.linkedin.com/pulse/why-leaders-cant-ignore-human-energy-crisis-kathleen-hogan> (29. 09. 2022)

<sup>48</sup> Autonomy (2019), ‘The shorter working week: a radical and pragmatic proposal’. Retrieved from: <https://autonomy.work/portfolio/the-shorter-working-week-a-report-from-autonomy-in-collaboration-with-members-of-the-4-day-week-campaign/> (29. 09. 2022.)

a range of physical and mental health benefits.<sup>49</sup> These could counteract the initial cost of implementing the policy by providing relief for the public health system.<sup>50</sup>

In addition, a shorter working week would increase the possibility for workers to experience the positive effects that derive from periods away from work, and would equally decrease the time at work that makes this recovery so crucial in the first place. Unlike annual holidays that are few and far between, a shorter working week would provide a regular recovery period to benefit from the positive effects of rest.<sup>51</sup>

#### 2. 1. 7. Preparation for automation

A shorter working week could contribute to relieving the technologically induced unemployment and underemployment. By spreading total available work-hours more equitably across society, a shorter working week can reduce the more acute effects of automation, such as job polarisation and casualisation. The FDWW is an opportunity for automation to be introduced in a kind of staggered approach, making sure that the benefits of that technology reach the employer and the employee, rather than it just being seen as a negative thing for employment.<sup>52</sup>

#### 2. 1. 8. Ease the recent energy crises

Not so long before the Covid-19 virus forced employees to stay at home and work remotely either in home-office or in telework. It seems that the Covid pandemic is over, but this time concerns over very high energy bills<sup>53</sup> could push people into co-working spaces to keep costs down. Employees are gratefully embracing their companies' adoption of four-day weeks in order to save money either on child care, food or gas needed for getting to work.<sup>54</sup>

<sup>49</sup> A quite old comparative study of Swedish childcare and health workers investigated the effects of a reduction to a six-hour day, or 30-hour working week (reduced from 39 hours) on their health and well-being. The study compared an experimental group – who had a nine-hour reduction in their working week – with a second control group who retained their normal working hours. Most health related variables – including sleep quality, mental fatigue and cardiorespiratory symptoms – improved significantly more in the experimental group than in the control group. Source: Åkerstedt, T., Olsson, B., Ingre, M., Holmgren, M. & Kecklund, G. (2001), 'A 6-Hour Working Day-Effects on Health and Well-Being', *Journal of Human Ergology*, vol. 30(1/2), 197–202.

<sup>50</sup> Autonomy (2019), 'The shorter working week: a radical and pragmatic proposal'. Retrieved from: <https://autonomy.work/portfolio/the-shorter-working-week-a-report-from-autonomy-in-collaboration-with-members-of-the-4-day-week-campaign/>

<sup>51</sup> DE BLOOM, J. et al., (2012), 'Effects(29. 09. 2022.) of Short Vacations, Vacation Activities and Experiences on Employee Health and Well-Being'. *Stress and Health*, 28(4), 305–318.

<sup>52</sup> MATHEW LAWRENCE, CARYS ROBERTS and LOREN KING: (2017) *Managing automation, Employment, inequality and ethics in the digital age*. Retrieved from: <https://www.ippr.org/publications/managing-automation>.

<sup>53</sup> High energy prices are lashing European industry, forcing factories to cut production quickly and put tens of thousands of employees on furlough. The cutbacks, though expected to be temporary, are raising the risks of a painful recession in Europe.

<sup>54</sup> NICOLA SMITH (2022) *Why a 4-day week is proving more economical for employees as the cost of living rises*. Retrieved from: <https://www.worklife.news/talent/why-a-4-day-week-is-proving-more-economical-for-employees-as-the-cost-of-living-rises/> (29. 09. 2022.)



## 2.2. Cons of the FDWW

To avoid misunderstandings, the Cons by no means mean that FDWW is bad. On the contrary, they are more of a view into the practical difficulties of implementing a 4-day week schedule.<sup>55</sup>

While business owners and some politicians might praise the positives, academics are more sceptical. For example, Allard Dembe, a professor of public health at Ohio State University, is uncertain about the shortened workweek. He states that, to achieve a 40-hour workweek in four days, the longer working days will increase fatigue and stress, especially if already working overtime. Another issue is communication; ensuring clear handovers between staff, and avoiding any favouritism or inequality between team members who may have vastly different work schedules.<sup>56</sup>

While there has been a lot of talk about the shortened workweek, examples of its implementation (with well-recorded and conclusive data) are few. There are some known cons of FDWW enrolled here:

### 2.2.1. Customer satisfaction

Many business leaders worry there will not be adequate coverage for customers in the frame of the FDWW. Therefore, for some organizations, half of the 4-day workforce takes off on Mondays, while the other half takes off on Friday – providing coverage for clients. The need to have a given employer's products and/or services available for customers, or to assist other members of the group, may limit the possibility to compress the workweek.<sup>57</sup>

For example, in the Utah study<sup>58</sup> the customers complained that they were unable to access government services with offices closed on a Friday.

### 2.2.2. Presenteeism

Indeed, economists have long been aware of the redundant hours contained in many working days, with employees effectively under-utilised in their workplaces, yet unable

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<sup>55</sup> Autonomy (2019), 'The shorter working week: a radical and pragmatic proposal'. Retrieved from: <https://autonomy.work/portfolio/the-shorter-working-week-a-report-from-autonomy-in-collaboration-with-members-of-the-4-day-week-campaign/> (29. 09. 2022.)

<sup>56</sup> DEMBE, A.: (2016, September 3). *Why a four-day workweek is not good for your health*. The Conversation. Retrieved from <http://theconversation.com/why-a-four-day-workweek-is-not-good-for-your-health-64516> (29. 09. 2022)

<sup>57</sup> JIM HARTER and RYAN PENDELL: (2021) *Is the 4 Day Work Week a Good Idea?* Retrieved from: <https://www.gallup.com/workplace/354596/4-day-work-week-good-idea.aspx#:~:text=In%20March%202020%2C%20during%20the,employee%20engagement%20and%20wellbeing%20data.> (29. 09. 2022.)

<sup>58</sup> In 2007 the US state of Utah redefined the working week for state employees, with extended hours on Monday to Thursday meaning it could eliminate Fridays entirely. However, Utah abandoned the experiment in 2011 after residents complained they were unable to access services on Fridays.

to leave due to the persistent issue of “presenteeism”<sup>59</sup> – where workers are valued by managers for hours logged in the office rather than productivity. Unlike absenteeism,<sup>60</sup> presenteeism is not always apparent. Employers know when someone does not show up for work, but they often cannot tell when – or how much – illness or a medical or psychological condition hinders someone’s performance in the workplace. Typically, studies show that presenteeism costs employers two to three times more than direct medical care, which is paid for by companies in the form of insurance premiums or employee claims. Presenteeism is clearly against the notion of FDWW.

Many of today’s organizations sabotage flow by setting counter-productive expectations on availability, responsiveness, and meeting attendance, with research by Adobe<sup>61</sup> finding that employees spend an average of six hours per day on email. Another study found that the average employee checks emails 74 times a day, while people touch their smartphones 2,617 times a day. Employees are in a constant state of distraction and hyper-responsiveness.

To move to a FDWW, either compressed or reduced hours, can be a strong motivator for employees or they continue the similar amount of working time sabotage. Like any other benefit, it is perceived as a way the business can support its staff members on and off the job. The rarity of these programs may motivate employees to work hard to earn or retain the benefit.<sup>62</sup>

### 2. 2. 3. Balancing shift patterns

One of the most common mentioned disadvantages of FDWW is that, if the employer runs a Monday to Friday business, staying that way gets a bit more complicated. In the practice, certain days of the week might be more hotly contested than others. Maybe everyone wants Monday or Friday off, or everyone decides they want a mid-week break. Having too many or too few people in the office can bring things grinding to a halt.<sup>63</sup>

<sup>59</sup> Woody Allen once said that 80% of success in life can be attributed to simply showing up. Turn more seriously, employers are beginning to realize that they face a nearly invisible but significant drain on productivity: presenteeism, the problem of workers’ being on the job but, because of illness or other medical conditions, not fully functioning. Employers know when someone does not show up for work (absenteeism), but they often cannot tell when, or how much, poor health, mental condition, smoking, hangover, postpartum blues, depression, etc. hurts on-the-job performance.

<sup>60</sup> According to the Journal of the American Medical Association studies, for example, on-the-job productivity loss resulting from depression and pain was roughly three times greater than the absence-related productivity loss attributed to these conditions. That is, less time was actually lost from people staying home than from them showing up but not performing at the top of their game. (Source: Wayne N. Burton, Alan Morrison, and Albert I. Wertheimer, “Pharmaceuticals and Worker Productivity Loss: A Critical Review of the Literature,” *Journal of Occupational and Environmental Medicine*, June 2003.)

<sup>61</sup> KRISTIN NARAGON: (2015) *Subject: Email, We Just Can’t Get Enough*. Retrieved from: <https://blog.adobe.com/en/2015/08/26/email> (29. 09. 2022)

<sup>62</sup> RITA O’DONNELL: (2022) *The 4-Day Workweek: Pros and Cons*. Retrieved from: <https://www.zenefits.com/workest/the-4-day-workweek-pros-and-cons/> (29. 09. 2022)

<sup>63</sup> CHRIS SHENTON: (2021) *The considerable challenges of a four-day work week*. Retrieved from: <https://www.weekly10.com/disadvantages-of-a-4-day-work-week/> (29. 09. 2022)

#### 2. 2. 4. Squeezing a bigger size balloon into a smaller box

One option for a FDWW is to reduce the number of hours that employees work. Theoretically, FDWW does suggest that it can increase productivity, but asking employees to meet the same targets in less time is a pretty tough challenge. In line with this issue, compressed hours can turn up the pressure.

The disadvantages of a FDWW vary depending on whether hours are compressed or reduced. In reality, most employees on a four-day week will most likely be expected to work the same 40-hour weeks, but in four days instead of five. In this case, shifts might be extended to 10 hours.<sup>64</sup>

Longer days could have a significant effect on your employees' stress levels and therefore their overall wellbeing and productivity. And although the theory is that more time away from work benefits an employee's work-life balance, by working extra hard during their new 'working week', they may find that their work-life balance actually takes a hit. Plus, an overclocked schedule is a fast-track to burnout.<sup>65</sup>

According to the opinion of Harter and Pendell, employee engagement<sup>66</sup> certainly does not improve with a four-day workweek, but wellbeing does. Even so, moving from working five days a week to working four could increase an organization's percentage of actively disengaged employees. In other words, by working fewer days per week, employees who already feel disconnected from their employer, team or manager are more likely to drift even farther away – from tolerating their jobs to hating them. Anyhow, if the goal is to build an engaging workplace culture, reducing the workweek may not be the place to start.<sup>67</sup>

#### 2. 2. 5. Compensating employees for reduced hours can be expensive

This is perhaps the most obvious disadvantage of FDWW to any shrewd employer. Giving staff the same pay for fewer hours. It is a hidden pay rise. The main question is whether cutting hours could increase productivity or not.<sup>68</sup>

There is another approach here. Salaried workers on compressed time – 4 days at 10 hours per day – should be expected to perform and produce at the same level as their traditional schedule. However, hourly workers who work this schedule may put the employer at risk of overtime pay if there is a need for them to come in on their typical day off. Conventionally, many states require overtime after employees work 8 hours per shift.

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<sup>64</sup> Laura Sands (2022) A four-day work week: is it really worth it? Retrieved from: <https://www.breathehr.com> (29. 09. 2022)

<sup>65</sup> CHRIS SHENTON: (2021) *The considerable challenges of a four-day work week*. Retrieved from: <https://www.weekly10.com/disadvantages-of-a-4-day-work-week/> (29. 09. 2022)

<sup>66</sup> Gallup defines employee engagement as the involvement and enthusiasm of employees in both their work and workplace.

<sup>67</sup> JIM HARTER and RYAN PENDELL: (2021) *Is the 4 Day Work Week a Good Idea?* Retrieved from: <https://www.gallup.com/workplace/354596/4-day-work-week-good-idea.aspx#:~:text=In%20March%202020%2C%20during%20the,employee%20engagement%20and%20wellbeing%20data.> (29. 09. 2022.)

<sup>68</sup> CHRIS SHENTON: (2021) *The considerable challenges of a four-day work week*. Retrieved from: <https://www.weekly10.com/disadvantages-of-a-4-day-work-week/> (29. 09. 2022.)

Compressing these non-exempt workers to four 10-hour days could mean 8 hours of overtime pay per week.<sup>69</sup>

#### 2. 2. 6. One size does not fit for everyone

Basically, almost everyone loves a 3-day weekend. This is typically how businesses structure a 4-day week (Monday or Friday off). Holding on to that benefit may mean additional stress during ‘on’ days to ensure employees do not lose their ‘off’ day. Most employees believe that a 4-day week helps with work-life balance. That is a plus, but if the work portion adds more stress, the alternative schedule might be a losing proposition.<sup>70</sup>

However, it is easy to forget that not everyone can benefit equally from the FDWW schedule. Retail, hospitality, health, public transportation and other service industry workers cannot have FDWW.

Until the above-mentioned professionals cannot also take FDWW, it will never be universal the way people want it to be.<sup>71</sup>

The other side of the coin is that not all individuals like the idea of a four-day workweek, for a number of reasons. For example, they may enjoy the social aspects of their jobs or find their work so engaging that they do not want to do less of it. And some workers might find that a compressed week gives them a constant pre-vacation-type pressure to get more work done in less time – a level of stress that is unsustainable.

Gallup found that for employee engagement, the quality of the work experience was more important than the number of days worked. Simply shortening the workweek is not enough to improve employee engagement in a poorly managed organization. Still, workers do place a high value on schedule flexibility, which can lower stress levels and help them manage other aspects of their lives more effectively, allowing them to be more engaged at work.<sup>72</sup>

There may be sections of a company that can shift to a 4-day workweek, while others cannot. Unless the employer plans to shut down the production line and live with the ripple effects that causes, office workers may have the option but not front-liners. This might become a pain point for any business: it might result in resentment. If an employer is considering a FDWW change, it must be sure that it can apply equally to all departments.

More employees are requesting their companies to consider compressed workdays or shortened workweeks. It will be essential to review all the plusses and minuses of making the shift before deciding to change.<sup>73</sup>

<sup>69</sup> RIIA O’DONNELL: (2022) *The 4-Day Workweek: Pros and Cons*. Retrieved from: <https://www.zenefits.com/workest/the-4-day-workweek-pros-and-cons> (29. 09. 2022.)

<sup>70</sup> BEN LAKER: (2022) *What Does the Four-Day Workweek Mean for the Future of Work?* Retrieved from: <https://www.zenefits.com/workest/the-4-day-workweek-pros-and-cons> (29. 09. 2022.)

<sup>71</sup> CHRIS SHENTON: (2021) *The considerable challenges of a four-day work week*. Retrieved from: <https://www.weekly10.com/disadvantages-of-a-4-day-work-week/> (29. 09. 2022.)

<sup>72</sup> JIM HARTER and RYAN PENDELL: (2021) *Is the 4 Day Work Week a Good Idea?* Retrieved from: <https://www.gallup.com/workplace/354596/4-day-work-week-good-idea.aspx#:~:text=In%20March%202020%2C%20during%20the,employee%20engagement%20and%20wellbeing%20data.> (29. 09. 2022.)

<sup>73</sup> RIIA O’DONNELL: (2022) *The 4-Day Workweek: Pros and Cons*. Retrieved from: <https://www.zenefits.com/workest/the-4-day-workweek-pros-and-cons>

In sum, supporters say that the four-day workweek boosts productivity, but critics say it is impractical in certain sectors.<sup>74</sup>

### 2. 2. 7. More work for managers

Four-day workweeks obviously can add tasks for the employers as well. Managers will spend more time scheduling meetings, client contacts, and group tasks when some staffers are not on the clock. They will need to keep a closer eye on: 1. Overtime; 2. Project management and 3. Performance.

Administrators will have to monitor schedules and productivity to assure the program does not cost more than it is worth.<sup>75</sup>

## 3. *Four-day workweek pioneers*

In this sub-chapter, the FDWW pioneer countries – including Hungary as well – will be introduced briefly.

### 3. 1. Iceland

Iceland is one of the leaders in the four-day working week.<sup>76</sup> Between 2015 and 2019, Iceland conducted the world's largest pilot of a 35 to 36-hour workweek (cut down from the traditional 40 hours) without any calls for a commensurate cut in pay. Some 2,500 people took part in the test phase.<sup>77</sup>

To ensure quality control, the results were analysed by British think tank Autonomy and the Icelandic non-profit Association for Sustainability and Democracy (ALDA).

The pilot was dubbed a success by researchers and Icelandic trade unions negotiated for a reduction in working hours. Researchers found that worker stress and burnout lessened and there was an improvement in work-life balance.<sup>78</sup> However, not every government shared Iceland's success with the four-day working week.<sup>79</sup>

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<sup>74</sup> World Economic Forum (2022) The UK has begun the world's biggest trial of the four-day work week. What are the pros and cons? Retrieved from: <https://www.weforum.org/agenda/2022/06/four-day-work-week-uk-trial/> (29. 09. 2022.)

<sup>75</sup> RIIA O'DONNELL: (2022) *The 4-Day Workweek: Pros and Cons*. Retrieved from: <https://www.zenefits.com/workest/the-4-day-workweek-pros-and-cons> (29. 09. 2022.)

<sup>76</sup> Most of the workplaces ended up cutting back by only one to three hours a week, though they were able to maintain their productivity and provide the same level of service. The experiment did result in a nationwide decrease in hours worked, but only by 35 minutes in the private sector and 65 minutes in the public sector.

<sup>77</sup> Full results of this trial are published by Autonomy, Alda, and the BSRB separately at [autonomy.work/research](https://autonomy.work/research).; The city of Reykjavik trialled reduced working hours in the city council with around 70 employees taking part.

<sup>78</sup> Anthony Veal (2019) The success of Iceland's 'four-day week' trial has been greatly overstated Retrieved from: <https://theconversation.com/the-success-of-icelands-four-day-week-trial-has-been-greatly-overstated-164083>

<sup>79</sup> JOSEPHINE JOLY: (2022) *Four-day week: Which countries have embraced it and how's it going so far?* Retrieved from: <https://www.euronews.com/next/2022/06/06/the-four-day-week-which-countries-have-embraced-it-and-how-s-it-going-so-far> (29. 09. 2022.)

The experiment also led to a significant change in Iceland, with nearly 90 per cent of the working population now having reduced hours or other accommodations.<sup>80</sup>

The initial small trial inspired both wider support and take-up of a shorter working week across Iceland.<sup>81</sup> After its success, several Icelandic state departments outside of Reykjavik began their own trials.<sup>82</sup>

### 3. 2. Belgium

The labour law reform package agreed by the country's federal government grants employees the ability to request a four-day week. This has to be done at the request of the employee, with the employer giving solid reasons for any refusal. Another significant portion of Belgium's new labour reforms impact the work-life balance of employees in both the public and private sectors. It is closely linked to FDWW.

Employees would be able to ask to work four days a week for a period of six months. After that, they could choose to continue the arrangement or return to a five-day week with no negative consequences. The period of six months was chosen so that an employee would not be stuck for too long in the case of a wrong choice.

Workers will also be able to request variable work schedules. The minimum notice period for shifts is also changing, with companies now required to provide schedules at least seven days in advance. This would benefit those who wish to spend more time with their children. It would be especially helpful for divorced or separated parents who share custody of their children.<sup>83</sup>

In Belgium the FDWW for employees is optional.<sup>84</sup> In February 2022, Belgian employees won the right to perform a full workweek in four days instead of the usual five without loss of salary. Employees are able to decide whether to work four or five days a week, but this does not mean they will be working less – they will simply condense their working hours into fewer days.

Belgium hopes that the agreement will help to make the country's notoriously rigid labour market more flexible and will make it easier for people to combine their family

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<sup>80</sup> Going Public: Iceland's Journey to a Shorter Working Week, June 2021. Retrieved from: <https://autonomy.work/portfolio/icelandsww/> (29. 09. 2022.)

<sup>81</sup> Iceland Review (2019), 'Collective agreement opens possibility for shorter work week'. Retrieved from: <https://www.icelandreview.com/news/collective-agreement-opens-possibility-for-shorter-work-week/> (29. 09. 2022.)

<sup>82</sup> NEF (2019), 'Achieving a shorter working week across Europe'. Retrieved from: <https://neweconomics.org/uploads/files/workingtime-newsletter1.pdf> (29. 09. 2022.)

<sup>83</sup> TOM BATEMAN: (2022) Belgium approves four-day week and gives employees the right to ignore their bosses after work; Retrieved from: <https://www.euronews.com/next/2022/02/15/belgium-approves-four-day-week-and-gives-employees-the-right-to-ignore-their-bosses> (29. 09. 2022.)

<sup>84</sup> The goal is to give people and companies more freedom to arrange their work time. (Alexander de Croo, Prime minister of Belgium)

lives with their careers, and will create a more dynamic economy.<sup>85</sup> The basic goal is to give people and companies more freedom to arrange their work time.

There is one more important issue in Belgium. Beyond approving the four-day week, it gives employees the right to ignore their bosses after work (right to switch off).

However, the perspective of a four-day workweek is not appealing to all. Some full-time employees will indeed be working very long days if they choose to condense their hours, and others, such as shift workers, will simply not have the option of that flexibility.<sup>86</sup>

### 3. 3. The United Kingdom

The five-day week has been part of UK working life for more than a century so an alteration to FDWW would be considered a radical shift. A six-month pilot programme – the biggest of its kind – was launched on June 6, 2020 to study the impact of shorter working hours on businesses' productivity and the wellbeing of their workers, as well as the impact on the environment and gender equality.<sup>87</sup> More precisely in Scotland,<sup>88</sup> a government trial is due to start in 2023 while Wales is also considering a trial. Scotland pointed to Iceland and its strong results as a big reason for taking a chance with the four-day workweek. Therefore, some Scottish businesses have already started their own truncated workweeks, with Glasgow-based UPAC Group's employees enjoying a four-day week with the same salary after running a successful pilot programme. In Wales, Sophie Howe, the Future Generations Commissioner, has also called on the government to introduce a similar four-day working week trial, at least in the public sector.<sup>89</sup>

Some 70 UK companies<sup>90</sup> and 3,300 employees have signed up for the programme.<sup>91</sup> FDWW employees are expected to follow the "100:80:100 model" – 100 per cent of the pay for 80 per cent of the time, in exchange for a commitment to maintain at least 100 per cent productivity. Hence, workers will have their hours reduced by 20 per cent, but will not suffer any loss in compensation.

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<sup>85</sup> Only about 71 out of 100 Belgians in the age group from 20 to 64 years have a job, fewer than the eurozone average of about 73 and a full 10 percentage points less than in neighbouring countries such as the Netherlands and Germany, according to Eurostat data for the third quarter of 2021.

<sup>86</sup> JOSEPHINE JOLY: (2022) Four-day week: Which countries have embraced it and how's it going so far? Retrieved from: <https://www.euronews.com/next/2022/06/06/the-four-day-week-which-countries-have-embraced-it-and-how-s-it-going-so-far> (29. 09. 2022.)

<sup>87</sup> UK Parliament (2020), 'Four Day Week in the UK: EDM 636 tabled on 18 June 2020'. Retrieved from: <https://edm.parliament.uk/early-day-motion/57154/fourday-week-in-the-uk> (29. 09. 2022.)

<sup>88</sup> According to a poll conducted by Scottish think tank the Institute for Public Policy Research (IPPR) in Scotland that showed 80 per cent of the people responding to the idea were highly positive of the initiative.

<sup>89</sup> JOSEPHINE JOLY: (2022) Four-day week: Which countries have embraced it and how's it going so far? Retrieved from: <https://www.euronews.com/next/2022/06/06/the-four-day-week-which-countries-have-embraced-it-and-how-s-it-going-so-far> (29. 09. 2022.)

<sup>90</sup> These 70 companies are across banking, hospitality, care, and animation studios are signed up to take part in FDWW pilot project. Source: [https://economictimes.indiatimes.com/nri/work/worlds-biggest-four-day-work-week-trial-begins-in-the-uk/articleshow/92051543.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/nri/work/worlds-biggest-four-day-work-week-trial-begins-in-the-uk/articleshow/92051543.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) (29. 09. 2022.)

<sup>91</sup> It is started by the supervision of researchers at Cambridge and Oxford Universities and Boston College, as well as the non-profit advocacy groups 4 Day Week Global, the 4 Day Week UK Campaign and the UK think tank Autonomy.

Under the reform, employees will be allowed to work up to 9.5 hours a day – the equivalent of 9 am to 6.30 pm – meaning they will be able to squash a week of work into four longer days. This could be further extended to a 10-hour day through a workplace trade union agreement.

According to the survey by recruitment company Reed (2021), more than 80% of people in the UK would prefer a four-day working week. It lists the advantages of the four-day model as: a) Improved morale and fewer absences: A shorter working week leads to less burnout, making staff happier and more focused in their roles. b) Helps recruitment: Offering potential and existing employees a flexible working pattern will help attract and retain talented professionals. c) Employees have a longer time to recuperate before returning to work and have more time to spend with families and friends, and d) even the climate crisis.<sup>92</sup>

According to Reed, there are also some potential disadvantages of the four-day workweek in the UK: a) It doesn't suit all industries: Some sectors require a seven-day-a-week presence, which could make a short working week impractical. Examples include emergency services, public transport networks and logistics. b) It does not suit all UK workers: Some employees prefer the structure of a five-day week, and some like working overtime. c) It can increase costs: Some sectors, such as healthcare, require staff to work long shifts. Companies in these areas may have to pay more overtime or draft staff in to make any shortfalls.

### 3. 4. Sweden

In Sweden,<sup>93</sup> a four-day working week with full pay was tested in 2015 with mixed results.<sup>94</sup>

The proposal was to try six-hour workdays<sup>95</sup> instead of eight-hour ones without loss of pay, but not everyone was pleased with the idea of spending money on the trial.<sup>96</sup>

<sup>92</sup> EVIE BREESE AND LIAM GERAGHTY: (2022) *What is the four-day working week and how close is the UK to getting it?* Retrieved from: <https://www.bigissue.com/news/employment/what-is-the-4-day-working-week-and-why-are-uk-campaigners-calling-for-it/> (29. 09. 2022.)

<sup>93</sup> Across Sweden, only around 1% of employees work more than 50 hours a week, one of the lowest rates in the OECD, where 13% is the average. By law, Swedes are given 25 vacation days, while many large firms typically offer even more. Parents get 480 days of paid parental leave to split between them. Most offices are empty after 5pm. (Source: Maddy Savage (2015) *The truth about Sweden's short working hours*; Retrieved from: <https://www.bbc.com/news/business-34677949>) (29. 09. 2022.)

<sup>94</sup> For example, from 2015 to 2017, Sweden conducted a trial study into a shorter work week. Nurses at a care home worked only 6 hours for five days a week. Results were largely positive with nurses logging less sick hours, reporting better health and mental wellbeing and greater engagement as they arranged 85% more activities for patients in their care. Source: Maddy Savage (2017) *What really happened when Swedes tried six-hour days?* Retrieved from: <https://www.bbc.com/news/business-38843341> (29. 09. 2022.); One of the key researchers in this field, Mr. Lorentzon is keen to stress that the six-hour day is still a long way from becoming the working norm in the Scandinavian nation.

<sup>95</sup> For example, in a digital production company (called Background AB) the staff are at their desks between 8.30am and 11.30am, take a full hour off for lunch and then put in another three hours before heading back to their homes in the Swedish mountains. They are asked to stay away from social media in the office and leave any personal calls or emails until the end of the day. Salaries have not changed since the initiative started in September. (Source: Maddy Savage (2015) *The truth about Sweden's short working hours*; Retrieved from: <https://www.bbc.com/news/business-34677949>) (29. 09. 2022.)

<sup>96</sup> The nursing home FDWW experiment still proved “successful from many points of view” by creating extra jobs for 17 nurses in the city, reducing sick pay costs and fuelling global debates about work culture. However, the experiment ultimately determined that the project was not cost effective. Implementing a four-day



As for positive experience, Sweden's trial of the six-hour work day is one of the more publicised examples, with optimistic employers hoping for higher morale, motivation and productivity in their employees, as well as encouraging a fuller private life outside of work<sup>97</sup>. Companies like Toyota and Filimundus have both implemented the six-hour work day and stand firm on the positives. The car firm had already decided to do this for mechanics 10 years ago and stuck with its decision.

Positive results were observed within the orthopaedics unit of a university hospital, which switched 80 nurses and doctors over to a six-hour workday and hired new staff to make up for the lost time. The response from the medical staff was positive, yet the experiment also faced a lot of criticism and was not renewed.

As for the sceptical side, in Chapman's article,<sup>98</sup> it seems the costs may outweigh the benefits. A trial of 68 nurses at an aged care facility in Gothenburg has found that, while employees felt healthier, had reduced absences and improved on their patient care, an additional 17 staff had to be hired to make up for the loss of working hours, costing the city 12m kroner.

### 3. 5. Germany

The German Government has used a shorter working hours scheme intermittently since the 1980s to help bridge temporary shortfalls in labour demand. The Kurzarbeit<sup>99</sup> Scheme<sup>100</sup> (short time work compensation scheme) entails government subsidising a temporary reduction of regular working hours in response to substantial drops in labour demand in an organisation or firm. Its primary and most impactful use has been to combat mass unemployment during the 2008 financial crisis and more recently during the Covid pandemic.<sup>101</sup>

Germany is home to one of the shortest average working weeks in Europe. According to the World Economic Forum (WEF), the average working week is 34.2 hours.<sup>102</sup> According to a Forsa survey,<sup>103</sup> 71 per cent of people working in Germany would like to have the

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work-week can be difficult as it requires the right support, technology and workplace culture. (Source: Maddy Savage (2017) Retrieved from: <https://www.bbc.com/news/business-38843341>) (29. 09. 2022.)

<sup>97</sup> MATHARU, H.: (2016, October 1) *Employers in Sweden introduce six-hour work day*. Independent. Retrieved from <http://www.independent.co.uk/news/world/europe/sweden-introduces-six-hour-work-day-a6674646.html> (29. 09. 2022.)

<sup>98</sup> CHAPMAN, B.: (2017, January 4). *Sweden's six-hour working day is 'too expensive' and could be scrapped*. Independent. Retrieved from <http://www.independent.co.uk/news/business/news/sweden-six-hour-working-day-too-expensive-scrapped-experiment-cothenburg-pilot-scheme-a7508581.html> (29. 09. 2022.)

<sup>99</sup> Kurzarbeit allows companies to retain their employees during periods of low demand and quickly adapt to increased economic activity once demand returns. This has a preventative protective effect on both employment and consumer demand. Kurzarbeit has also benefited firms and organisations, which by adopting the scheme can avoid the costly process of separation, re-hiring and training. On a more general scale, keeping unemployment down has protected society against the negative effects of inequality and reduced community cohesion.

<sup>100</sup> According to the ILO Convention No. 168 on Employment Promotion and Protection against Unemployment, it is called "partial unemployment".

<sup>101</sup> Autonomy (2020), 'Time for Change: a four-day week as an unemployment strategy'. Retrieved from: <https://autonomy.work/wp-content/uploads/2020/07/Time-for-Change-REPORT.pdf> (29. 09. 2022.)

<sup>102</sup> The world's most productive countries, like Norway, Denmark, Germany and the Netherlands, on average work around 27 hours a week -- the same hours proposed for a UK 4-day workweek.

<sup>103</sup> Forsa (2020), 'A four-day week is an essential step forward'. Retrieved from: <https://www.forsa.ie/blog/a-four-day-week-is-an-essential-step-forward/> (29. 09. 2022.)

option to only work four days a week. Just over three-quarters of those surveyed said they are supportive of the government exploring the potential introduction of a four-day week. Among employers, more than two out of three supported this idea. A substantial majority (75 per cent) believe that a four-day week would be desirable for employees,<sup>104</sup> with a majority (59 per cent) feeling it should be achievable for employers as well. Almost half of the employers (46 per cent) said they see trialling a four-day week in their own workplace setting as “feasible”.

Yet, trade unions are calling for further reduced working hours.<sup>105</sup> Last year, IG Metall, the country's largest trade union, called for shorter working weeks, arguing it would help retain jobs and avoid layoffs.

However, whether such a measure will be implemented or discussed is yet to be seen. So far, it is mainly smaller start-ups that are experimenting with a shorter working week. Most of the FDWW oriented smaller companies in Germany have a 32-hour week at 100% salary and are hiring remotely. They are active mainly in software engineering, product management, data science or marketing execution.<sup>106</sup>

So far, Germany has made less progress in implementing a shorter working week. There have been some pioneers in the business sector who have trialled the scheme in their own companies. For example, the Hamburg-based software firm Knowhere has announced that employees will switch to a four-day, 32-hour workweek from August for the same salary. Vereda, a marketing firm in Munster, has already implemented the same system.

The idea of extending working hours is not a new one: in 2004, Bavaria tried to introduce a 42-hour workweek for public sector workers but had to backtrack when large scale protests broke out. A similar scheme with a 44-hour workweek for public sector workers was attempted in North-Rhine Westphalia (in 2021), but once again, it was impossible to implement. So it seems there is no appetite among German people for increasing their weekly hours.

At the moment, the German government does not have any plans to make changes to the working week and is instead relying on employees to make their own arrangements with their employers. The introduction of a statutory four-day week is not planned in Germany. Instead, employers and employees are free to make their own decisions in this regard, subject to the provisions of the Working Hours Act.<sup>107</sup>

However, when implemented, a four-day week sees worker satisfaction increase, and so does productivity.<sup>108</sup>

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<sup>104</sup> A survey (2022) from hotel chain Novotel found that Germans had the worst work-life balance of four European countries surveyed, with respondents reporting that 58 percent of their time was dedicated to their jobs and just 42 percent was dedicated to their private lives.

<sup>105</sup> The Times (2020), ‘*German Ministers Raise Hopes of Four-Day Week*’. Retrieved from: <https://www.thetimes.co.uk/article/german-minister-raises-hopes-of-four-day-week-px6jtm0r> (29. 09. 2022.)

<sup>106</sup> 4 Day Work Week Companies in Germany, Retrieved from: <https://4dayweek.io/companies/germany> (29. 09. 2022.)

<sup>107</sup> Public News Time (2022) Why Germany is debating a shorter working week, Retrieved from <https://publicnewstime.com/travel/why-germany-is-debating-a-shorter-working-week/> (29. 09. 2022.)

<sup>108</sup> JOSEPHINE JOLY: (2022) Four-day week: Which countries have embraced it and how's it going so far? Retrieved from: <https://www.euronews.com/next/2022/06/06/the-four-day-week-which-countries-have-embraced-it-and-how-s-it-going-so-far> (29. 09. 2022.)

### 3. 6. Japan

Asia is home to some countries with famously long working hours — South Korea, China, and Japan, for example. Even though Japan is in this list, some Japanese big corporations venture into the four-day workweek. They offer to their employees more free time and flexibility so they can improve their work-life balance to meet responsibilities at home or acquire new skills outside of their workplace. While companies can benefit from introducing the compressed work schedule, as it can help attract more talent or prevent employees from leaving, it remains to be seen whether the relatively new working style will gain attraction in Japan.<sup>109</sup>

In Japan, it is larger companies that are venturing into FDWW, following the Japanese government's announcement in 2021 of a plan to achieve a better work-life balance across the nation.<sup>110</sup>

There are several reasons why FDWW could be good for Japan, where death by overwork (it is called “karoshi” in Japanese) claims many lives.

In 2019, tech giant Microsoft experimented with the model by offering employees three-day weekends for a month.<sup>111</sup> They found as a result that employees were not only happier – but significantly more productive. In addition to the increased productivity, employees took 25% less time off during the trial and electricity use was down 23% in the office with the additional day off per week. Employees printed 59% fewer pages of paper during the trial. The vast majority of employees – 92% – said they liked the shorter week.<sup>112</sup>

The four-day workweek is gaining ground in Japan as Panasonic joins the growing list of companies embracing the idea to not only improve work-life balance, but also promote retraining and attract talent.<sup>113</sup>

### 3. 7. New Zealand

Meanwhile, in New Zealand, 81 employees working for the consumer goods giant Unilever are currently taking part in a year-long trial of a four-day workweek at full

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<sup>109</sup> CHARMAINE JACOB: (2022) *Four-day work weeks: The countries in Asia that are open to it — and the ones that aren't*. Retrieved from: <https://www.cnbc.com/2022/03/02/is-a-four-day-work-week-catching-on-in-asia-it-depends-on-the-country.html> (29. 09. 2022.)

<sup>110</sup> Basic Policy on Economic and Fiscal Management and Reform 2021, *Four Driving Forces that Open the Way to the Future of Japan - Green, Digital, Creation of Vibrant Local Regions, Measures against Declining Birthrate*, Retrieved from: [https://www5.cao.go.jp/keizai-shimon/kaigi/cabinet/2021/2021\\_basicpolicies\\_en.pdf](https://www5.cao.go.jp/keizai-shimon/kaigi/cabinet/2021/2021_basicpolicies_en.pdf) (29. 09. 2022.); The Asahi Shinbun (May 7, 2022) 4-day week catching on among firms in changing Japan, Retrieved from: <https://www.asahi.com/ajw/articles/14615608> (29. 09. 2022.)

<sup>111</sup> The new project called Work-Life Choice Challenge Summer 2019, giving its entire 2,300-person workforce five Fridays off in a row without decreasing pay.

<sup>112</sup> KARI PAUL (2019) *Microsoft Japan tested a four-day work week and productivity jumped by 40%*. Retrieved from: <https://www.theguardian.com/technology/2019/nov/04/microsoft-japan-four-day-work-week-productivity> (29. 09. 2022)

<sup>113</sup> Motokazu Matsui (2022) Panasonic joins Japan's budding shift toward 4-day workweek, Retrieved from <https://asia.nikkei.com/Business/Business-trends/Panasonic-joins-Japan-s-budding-shift-toward-4-day-workweek> (29. 09. 2022.)

pay.<sup>114</sup> Their goal is to measure performance on output, not time. They believe the old ways of working are outdated and no longer fit for the purpose of current life. If the experiment in Unilever New Zealand turns out to be a success, it will reportedly be extended to other countries.<sup>115</sup>

Another New Zealand based company, Perpetual Guardian, conducted a trial study of a 4-day workweek.<sup>116</sup> Not only did employees maintain the same productivity level, but they also showed improvements in job satisfaction, teamwork, work-life balance (78% of employees could more effectively balance their work and home life)<sup>117</sup> and company loyalty. Employees also experienced less stress with a decrease of 45% to 38%.<sup>118</sup>

### 3. 8. USA and Canada

According to a survey by cloud-software vendor Qualtrics, a whopping 92 per cent of US workers are in favour of the shortened workweek, even if it means working longer hours. The employees surveyed cited improved mental health and increased productivity as the perceived benefits. Three out of four employees (74 per cent) say they would be able to complete the same amount of work in four days, but most (72 per cent) say they would have to work longer hours on workdays to do so.

In Canada, research from global employment agency Indeed found that 41 per cent of Canadian employers are considering alternative hybrid schedules and new work styles, following the COVID-19 pandemic.

Indeed's survey of 1,000 employers of office workers in Canada found that 51 per cent of large companies with 500+ employees would be "likely to implement 4-day workweeks".

Comparatively, 63 per cent of medium-sized organisations with 100-500 staff members say they would be prepared to implement a shorter workweek.

A majority of Canadian full-time workers (79 per cent) were also found to be willing to shorten their five-day workweek to four days, according to a new report by Maru Public Opinion.

Overall, the four-day workweek seems to be slowly but surely gaining traction across the globe, but whether governments will definitively adopt the idea is yet to be seen.<sup>119</sup>

<sup>114</sup> The Pros and Cons of a 4 Day Working Week; Retrieved from: <https://www.changerecruitment-group.com/knowledge-centre/the-pros-and-cons-of-a-4-day-working-week> (29. 09. 2022.)

<sup>115</sup> JOSEPHINE JOLY: (2022) Four-day week: Which countries have embraced it and how's it going so far? Retrieved from: <https://www.euronews.com/next/2022/06/06/the-four-day-week-which-countries-have-embraced-it-and-how-s-it-going-so-far> (29. 09. 2022.)

<sup>116</sup> The Guardian (2020), 'Jacinda Ardern flags four-day working week as way to rebuild New Zealand after Covid-19'. <https://www.theguardian.com/world/2020/may/20/jacinda-ardern-flags-four-day-working-week-as-way-to-rebuild-new-zealand-after-covid-19> (29. 09. 2022.)

<sup>117</sup> ROBERT BOOTH: (2019) *Four-day week: trial finds lower stress and increased productivity*. <https://www.theguardian.com/money/2019/feb/19/four-day-week-trial-study-finds-lower-stress-but-no-cut-in-output> (29. 09. 2022.)

<sup>118</sup> ADELE PETERS: (2018) *The four-day work week is good for business*. <https://www.fastcompany.com/90205776/the-four-day-work-week-works> (29. 09. 2022.)

<sup>119</sup> JOSEPHINE JOLY: (2022) Four-day week: Which countries have embraced it and how's it going so far? Retrieved from: <https://www.euronews.com/next/2022/06/06/the-four-day-week-which-countries-have-embraced-it-and-how-s-it-going-so-far> (29. 09. 2022.)

### 3. 9. Hungarian preliminary experiments

In fact, there is little experience with the introduction of the four-day workweek in Hungary. Working time is not only an economic, but also a legal, political and social issue. In Hungary workers have little influence on the length and schedule of working hours, and there is a lack of data monitoring.

However, there have already been Hungarian examples where employees are explicitly looking for opportunities with flexible working hours; therefore, there is a great chance that by the passage of time, this model might become more widespread in Hungary, resulting in a win-win situation.<sup>120</sup>

In Hungary, there are already jobs in the market sector where employees only have to work four days a week. One of the first companies was the Hungarian unit of *General Electric (GE)*, which shortened the workweek of thousands of its workers to avoid layoffs.<sup>121</sup>

A more recent example is the *Magyar Telekom Group*, which has been testing the introduction of the 4-day workweek.<sup>122</sup> In Hungary, Magyar Telekom is the first company in the modern corporate sector to launch a 4-day workweek project. Amid the fall in orders that the deepening economic crisis (2008) caused, the four-day workweek is crucial in preserving the jobs of our employees.

The Hungarian city, *Szombathely*, is planning to introduce the FDWW. The justification for the proposal is that the introduction of a 4-day workweek would increase the efficiency of workers.<sup>123</sup> Szombathely has raised an innovative idea. Fewer working days, the same job, the same salary. It is about giving local government employees one more day of rest while doing the same amount of work, so that they can work more productively and efficiently in those four days.

According to the proposal, the new work schedule would be introduced for a six-month period at the municipality, after which a decision could be made on its continuation. At the moment, it is in the preparatory phase, which means they are looking at the legal, work organisation and other possibilities to see if this idea is a good one and if it can be implemented. The proposal itself is to look at a six-month trial run from September, 2022.<sup>124</sup>

However, FDWW is not about only the number of hours and days; it's about employees desiring trust, independence, competitiveness (work productivity, flexibility, automation and time. If all conditions are met, it's an easy challenge to finish (what was thought to be a) five-day workload in four days. Still there are many steps ahead.

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<sup>120</sup> KITTÍ TORDAI: (2021) *Four-day workweek model to become more widespread in Hungary?* Retrieved from <https://dailynewshungary.com/four-day-workweek-model-to-become-more-widespread-in-hungary/> (29. 09. 2022)

<sup>121</sup> MÁRTON DUNAI: (2009) *GE Hungary unit tries 4-day workweek to save jobs.* Retrieved from: <https://www.reuters.com/article/br-ge-labour-cutback-idUSLB38461720090311> (29. 09. 2022.)

<sup>122</sup> They are switching to the FDWW between July and October in 2022. Source: [dailynewshungary.com](https://dailynewshungary.com) Retrieved from: <https://dailynewshungary.com/4-day-working-week-coming-at-magyar-telekom/> (29. 09. 2022.)

<sup>123</sup> FAZEKAS KIARA BARBARA: (2022) *Szombathelyen bevezethetik a négynapos munkahetet.* Retrieved from: <https://liner.hu/szombathelyen-negynapos-munkahet/> (29. 09. 2022.)

<sup>124</sup> HETZMANN MERCÉDESZ: (2022) *This Hungarian city may introduce the 4-day workweek.* Retrieved from: <https://dailynewshungary.com/this-hungarian-city-may-introduce-the-4-day-workweek/> (29. 09. 2022.)

## HAJDÚ JÓZSEF

A NÉGYNAPOS MUNKAHÉT KOMPLEX VISZONYRENDSZERE:  
IDŐ, MUNKA, VERSENY ÉS JÓLÉT

(Summary)

A négynapos munkahét bevezetése szükséges lehet, ezt egyre több szempont indokolhatja, bár ágazatonként eltérően valósulhat meg. A négynapos munkahét hívei elsősorban a munkavállalók hatékonyságát és a munka-magánélet egyensúlyát üdvözik a rövidebb munkahét bevezetésében – munkavállalók elégedettsége és a termelékenység is nő. Nemzetközi szinten egyre többen próbálják ki a 4 napos munkahetet. Például az Egyesült Királyságban már 70 vállalat teszteli ezt a működtetési formát, de Belgiumban is bevezették azt, hogy amelyik munkavállaló kéri, dolgozhasson a szokásos 5 helyett csak 4 napot, fizetéses csökkenés nélkül, ugyanazokkal a juttatásokkal. Magyarországon is találunk már példát hasonló működésre, azonban ez eddig inkább a kivétel, mintsem az általános gyakorlat. Ráadásul komoly kockázatai vannak a négynapos munkahétnek. Némely teljes munkaidőben foglalkoztatott munkavállaló nagyon hosszú napokat fog végig dolgozni, ha úgy dönt, hogy sűríti a munkaidejét. Másoknak pedig, például a váltott műszakban dolgozóknak egyszerűen nem lesz lehetőségük erre a rugalmasságra. A cikk a négynapos munkahét főbb jellemzőit, előnyös és hátrányos vonásait, versenyre gyakorolt hatását valamint a mintaadó országok gyakorlatát mutatja be, kitérve Magyarországra is.

**KRISZTINA JUHÁSZ\***

## **New Intergovernmentalism and the Common Security and Defence Policy**

### *I. Introduction*

New intergovernmentalism has appeared in the 2010s with the aim to give an alternative explanation about the Post-Maastricht era of the European integration. *Christopher Bickerton, Dermot Hodson and Uwe Puetter* characterize this period as an *integration paradox*, since while the basic constitutional features of the EU have not changed, EU activity has expanded to an unprecedented degree, for instance, on the areas of financial supervision, labour market reforms, migration, asylum and border control, police and judicial cooperation as well as the foreign and security policy. In other words, member states preferred integration without supranationalism, avoiding further significant transfer of competencies to supranational institutions, rather to so-called *de novo bodies*. Even in those cases when legislative competences have been delegated to supranational actors, such as on the area of justice and home affairs, it happened with an important modification of the community method governance, due to the European Council's special oversight power and the Commission's modified right of initiative.<sup>1</sup>

The integration paradox poses a challenge to the traditional theories of European integration such as intergovernmentalism and neo-functionalism which perceive integration as the transfer of competencies to supranational institutions such as to the European Commission, the European Parliament and the Court of Justice of the European Union.<sup>2</sup>

Further claim of intergovernmentalism is that deliberation and consensus-seeking became dominant behavioural norms in the EU which define basically all level and forums of the decision-making. Another characteristic of the decision-making system is that the European Council became a central actor. It does not only define the general direction and

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<sup>1</sup> BICKERTON, CHRISTOPHER – HODSON, DERMOT – PUETTER, UWE: *The New Intergovernmentalism and the Study of European Integration*. In: Bickerton, Christopher – Hodson, Dermot – Puetter, Uwe (eds): *The New Intergovernmentalism. States and Supranational Actors in the Post-Maastricht Era*. Oxford University Press, London 2015. pp. 1–3.

<sup>2</sup> BICKERTON – HODSON – PUETTER 2015a, pp. 3–4.

constitutional framework of the European integration, as it did in the past, but it oversees policy-making and guides the activity of the European Commission as well as the EU Council on the new areas of EU activity.<sup>3</sup>

The first part of the paper aims to give a synthesis of the claims and hypotheses of new intergovernmentalism laid down in 2015 by *Christopher Bickerton, Dermot Hodson and Uwe Puetter* in their edited volume entitled “*The New Intergovernmentalism. States and Supranational Actors in the Post-Maastricht Era*”, furthermore by works of other scholars enriched the literature of new intergovernmentalism since then. It also aims to review the main critiques of the approach and provide the author’s own ones as well. The second part of the paper intends to test the hypotheses of new intergovernmentalism on the area of common security and defence policy (CSDP) based on secondary literature review and the analysis of EU legal acts and official documents.

## *II. Hypotheses of New Intergovernmentalism and theirs Critiques*

*Bickerton, Hodson, and Puetter* set up six hypotheses regarding new intergovernmentalism which were confirmed, specified and criticized by themselves or other scholars in the same volume and in subsequent works as well. The authors themselves pinned it down that they didn’t intend to give a new grand theory of the European integration, and neither they provided a finished work regarding the evaluation of the Post-Maastricht period.

This part of the study takes a fling to synthesize the claims and the critiques of new intergovernmentalism providing a general theoretical framework of the subsequent analysis of its applicability on the area of common security and defence policy.

Hypothesis 1 states that deliberation and consensus have become the guiding norms of day-to-day decision making at all levels. Deliberative intergovernmentalism refers to that process in which deliberation and consensus-seeking have uncoupled from supranationalism since 1992 and become a decisive behavioural norm within the new areas of EU activity due to the decentralized decision-making that characterizing these policies.<sup>4</sup>

*Puetter* highlights especially the role of the European Council in deliberation and consensus, defining it as a centre of new intergovernmentalism, stating that on the one hand, since the beginning of the 1990s, European Council has been working for the expansion of the EU activities, but on the other hand it has been preventing significant expansion of the community method governance on these new policy areas. Consequently, in the Post-Maastricht era, the role of European Council has been changed. Until the late 1980s European Council’s main role was to define the constitutional issues and the general direction of the European integration providing long-term guidance to the European Commission and to the EU Council. Since the middle of the 1990s European Council has been getting involved into detailed policy decisions and formation via initiation and overseeing implementation in the new domains of EU activity. The European Council also

<sup>3</sup> PUETTER, UWE – FABBRINI, SERGIO: *Catalysts of integration – the role of core intergovernmental forums in EU politics*. *Journal of European Integration*, Vol. 38, No. 5, p. 634.

<sup>4</sup> BICKERTON – HODSON – PUETTER 2015a, pp. 29–30.



gives instructions regularly to the European Commission and to the EU Council regarding concrete policy-making and implementation.<sup>5</sup>

At the same time, deliberation and consensus-seeking aren't constrained only to the working method of the European Council, but characterize in general the day-to-day decision-making of the new areas of EU activity at all level, becoming a basic behavioural norm. Taking the EU Council, we could witness the ever growing dominance of qualified majority voting, at the same time consensus-seeking hasn't been declined significantly within it, since 65 percent of all decisions taken under the qualified majority voting rule, were adopted unanimously between 2009 and 2012.<sup>6</sup> *Stéphanie Novak* has found that between 1993 and 2011, on average, about 80% of legislative acts coming under the qualified majority voting procedure have been adopted unanimously by the EU Council.<sup>7</sup>

*Frank Schimmelfennig* has given a comprehensive critique of new intergovernmentalism and one of his remarks refers to, reproaching Bickerton et al. for using the criteria of supranational and intergovernmental inconsistently, that since deliberation and consensus-seeking are originally the working and behavioural methods of supranationalism, basically the new areas of EU activity have not become more intergovernmental, but rather more supranational in the Post-Maastricht period.<sup>8</sup>

Hypothesis 2 claims that supranational institutions such as the European Commission, the Court of Justice and the European Parliament are not hard-wired to seek ever closer union any more, but they are rather "complicit" in the expansion of the decentralized modes of decision-making and the ever-growing role of the European Council on the new areas of EU activity.<sup>9</sup> *Puetter* also argues that the Commission basically took a pragmatic stance towards the expanding powers of the European Council which, on the one hand, derives from the composition of the latter, namely that the President of the Commission is the member of the European Council and the High Representative, who is one of the Vice-Presidents of the Commission, takes part in its work as well. On the other hand, competencies and the relationship between the European Commission and the European Council are clearly defined by the treaties regarding the new areas of EU activity, so there is little chance to rivalry.<sup>10</sup>

At the same time, *John Peterson* came to the conclusion that this assumption of new intergovernmentalism cannot be unambiguously endorsed in the case of the European Commission. He also admits that the European Commission's ambition to be an engine of

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<sup>5</sup> PUETTER, UWE: *The European Council. The Centre of New Intergovernmentalism*. In: Bickerton, Christopher – Hodson, Dermot – Puetter, Uwe (eds): *The New Intergovernmentalism. States and Supranational Actors in the Post-Maastricht Era*. Oxford University Press, London 2015. pp. 165–167.

<sup>6</sup> VOTEWATCH EUROPE: *Agreeing to Disagree. The voting records of EU Member States in the Council since 2009 Annual Report*. p. 2. Available at <https://75276bc03af26d7c1f58-72b421883bb5b133f34e068afdd7cb11.ssl.cf3.rackcdn.com/2012/07/votewatch-annual-report-july-2012-final-7-july.pdf> (2022. 07. 13.).

<sup>7</sup> NOVAK, STÉPHANIE: *Qualified majority voting from the Single European Act to present day: an unexpected permanence*. Notre Europe Study and Research No. 88. p. 3. Available at [https://institutdelors.eu/wp-content/uploads/2018/01/etud88\\_en-qualifiedmajority-voting-novak.pdf](https://institutdelors.eu/wp-content/uploads/2018/01/etud88_en-qualifiedmajority-voting-novak.pdf) (2022. 07. 12.).

<sup>8</sup> SCHIMMELFENNIG, FRANK: *What's the news in "new intergovernmentalism"? A critique of Bickerton, Hodson, and Puetter*. *Journal of Common Market Studies*, Vol. 53. No.4, p. 724.

<sup>9</sup> BICKERTON – HODSON – PUETTER 2015a, p. 31.

<sup>10</sup> PUETTER 2015, p. 175.

the integration has been diminished since the Treaty of Maastricht and this phenomenon is mostly due to the fact, that the European Commission has adjusted to the new political reality of the integration, but this doesn't mean that the European Commission wouldn't be committed for an ever closer union any more.<sup>11</sup>

Regarding the role of the European Parliament (EP) in the Post-Maastricht era, *Johannes Pollak* and *Peter Slominski* stress that the introduction and the expansion of the co-decision procedure, renamed by the Treaty of Lisbon to ordinary legislative procedure, are contrary to the hypothesis 1 of new intergovernmentalism, even if it has happened mostly on those areas which belonged already to the community method governance. At the same time, the way how the European Parliament takes part in the co-decision confirms hypothesis 2, namely that the EP is not necessarily hard-wired to seek ever closer union via supranational decision-making. They refer to the informalization of the legislation under the rules of co-decision procedure by the Treaty of Amsterdam introducing the possibility of adopting a legal act at the first parliamentary reading. As a consequence, first-reading decisions have been increased, as well as the preliminary tripartite negotiations among the EP, the European Commission, and the EU Council<sup>12</sup>. Inter-institutional negotiations have become standard practice for the adoption of EU legislation.<sup>13</sup> In other words, deliberation and consensus are decisive working methods not only within, but also among the EU institutions, especially in case of the ordinary legislative procedure. At the same time, informalization causes less deliberation within the European Parliament since only limited number of MEPs are involved in the trilogues, and less transparency as well.<sup>14</sup>

Another observation regarding the European Parliament, especially on those narrow new areas of EU activity where it acquired co-decision rights, is that it behaves "responsibly", and seeks for consensus with the EU Council at all costs. Lopatin draws on the example of migration and asylum, when the EP has given up large part of its previous liberal immigration policy and moved towards the restrictive position of the EU Council.<sup>15</sup>

Last but not least, we have to mention the EP's stealthy approach on those new areas of EU activity where its formal rights are missing or weak, namely that it uses its formal legislative, budgetary or appointment/dismissal powers to obtain informal influence.<sup>16</sup>

Hypothesis 3 states that where competence-delegation occurs, member states prefer the creation and empowerment of "*de novo bodies*" and supranational institutions are mostly supportive, or as Bickerton et al. phrase it "complicit", in this process. They conceive *de*

<sup>11</sup> PETERSON, JOHN: *The Commission and the New Intergovernmentalism*. In: Bickerton, Chirstopher – Hodson, Dermot – Puetter, Uwe (eds): *The New Intergovernmentalism. States and Supranational Actors in the Post-Maastricht Era*. Oxford University Press, London 2015. p. 186.

<sup>12</sup> POLLAK, JOHANNES – SLOMINSKI, PETER: *The European Parliament. Adversary or Accomplice of the New Intergovernmentalism?*. In: Bickerton, Chirstopher – Hodson, Dermot – Puetter, Uwe (eds): *The New Intergovernmentalism. States and Supranational Actors in the Post-Maastricht Era*. Oxford University Press, London 2015. pp. 246–251.

<sup>13</sup> EUROPEAN PARLIAMENT: *Ordinary Legislative Procedure. Interinstitutional negotiations for the adoption of EU legislation*. Available at <https://www.europarl.europa.eu/olp/en/interinstitutional-negotiations> (2022. 07. 14.)

<sup>14</sup> POLLAK – SLOMINSKI 2015, p. 252.

<sup>15</sup> LOPATIN, ESTHER: *The Changing Position of the European Parliament on Irregular Migration and Asylum under Co-decision*. *Journal of Common Market Studies* Volume 51. Issue 4. July 2013.

<sup>16</sup> POLLAK – SLOMINSKI 2015, p. 248.

*novo bodies* as “newly created bodies that often enjoy considerable autonomy by way of executive or legislative power and have a degree of control over their own resources”.<sup>17</sup>

Peterson argues that the creation of *de novo* institutions is not inevitably contrary to the interest of the European Commission, since many of these institutions have achieved closer policy cooperation than previously existed, and in those areas where the European Commission’s powers were weak<sup>18</sup>. Renaud Dehousse came to the same conclusion when he claims that “More often than not, the powers entrusted to European agencies were previously held by national authorities rather than by the Commission”.<sup>19</sup>

It is highly contested in the literature that who is the main actor behind the mushrooming of *de novo bodies* in the post-Maastricht era. Puetter stresses that the European Council is the pivotal political force behind the proliferation of *de novo bodies*. He draws on the examples of European Financial Stability Facility (EFSF) and European Stability Mechanism (ESM), *de novo bodies* have been set up to handle the sovereign debt crisis,<sup>20</sup> but we have to mention, that these institutions are based on intergovernmental agreements and not on EU law. When creation of *de novo bodies* occurs in the framework of the EU, based on EU law, the situation is quite different since besides the European Council, the EU Council, the European Commission and the European Parliament are involved in the process as well. In practice, based on deliberation and consensus in the European Council, the European Commission makes a proposal to establish a *de novo body* and then the EU Council, due to co-decision, together with the European Parliament, adopts the necessary secondary legislative act.

During designing a new agency or body legislators confront two potential problems: bureaucratic drift and political drift. Bureaucratic drift occurs if a *de novo body* pursues a policy differing from that of its political principals, basically the institutions are involved in the creation of the *de novo body in question*. In case of political drift one of the political principals makes an effort to capture the agency. As a result, principals aim to use *ex ante*, ongoing and *ex post* control mechanisms to prevent either bureaucratic drift or political drift<sup>21</sup>. While initially, the design of EU agencies or *de novo bodies* fell under the exclusive competence of the EU Council, due to co-decision, the European Parliament’s role in the institutional design and the control mechanisms has increased.<sup>22</sup>

Marco Scipioni denies the assumption that the creation and diffusion of agencies represent the confirmation of a predominantly intergovernmental EU. Examining the Frontex transformation into the European Border and Coast Guard and the reform of the European Asylum Support Office, he came to the conclusion that the main force behind the reform and additional empowerment of these agencies was the Commission, while such a broad empowerment of these institutions was challenged by some Member States on

<sup>17</sup> BICKERTON – HODSON – PUETTER 2015a, p. 3.

<sup>18</sup> PETERSON 2015, p. 186.

<sup>19</sup> DEHOUSSE, RENAUD.: *The Politics of Delegation in the European Union*. Les Cahiers européens de Sciences Po, No. 4. 2013. p. 17.

<sup>20</sup> PUETTER 2015, p. 176.

<sup>21</sup> KELEMEN, DANIEL R.: *The Politics of ‘Eurocratic’ Structure and the New European Agencies*. West European Politics, Vol. 25, No. 4, pp. 95–96.

<sup>22</sup> POLLAK – SLOMINSKI 2015, pp. 256258.

subsidiarity grounds, for instance regarding the European Border and Coast Guard's ability to intervene in a particular Member State out of its own initiative.<sup>23</sup>

Regarding *de novo bodies* Schimmelfennig points out that these institutions “display a wide variation of intergovernmental and supranational features, which makes this term meaningless for an analysis of intergovernmentalism vs. supranationalism”<sup>24</sup>. Simon Bulmer questions that the increased creation of *de novo bodies* is an attribute of new intergovernmentalism, rather he connects it to global trends in governance.<sup>25</sup>

According to hypothesis 4 problems in domestic preference formation and political representation have become stand-alone inputs into the integration process and give explanation of the integration paradox. Starting with a broader approach, Bickerton and his co-authors trace back the enhanced integration in the Post-Maastricht era to the changing political economy in Europe in the early 1980s, stating that the post-war economic consensus between business and labour has been disappeared due to the economic pressures of the 1970s and that a convergence of the member states' preferences appeared. Realizing the limits of national strategies and solutions, member states' elites have turned towards European framework which aims to achieve collective goals while taking into consideration national differences.<sup>26</sup>

Besides the changing political economy of Europe, other circumstances have pushed as well the political elite of the member states towards more integration, namely the end of the permissive consensus, furthermore the crisis of preference formation and political representation. While the early decades of the integration could be characterized by the so-called permissive consensus, a state, conceived by Leon Lindberg and Stuart Scheingold, in which the project of European integration is largely an elite affair, and the European population does not take much interest in European politics, but supports the broad goals of the integration project,<sup>27</sup> in the post-Maastricht period permissive consensus has disappeared due to the growing Euroscepticism and populism.<sup>28</sup>

Difficulties in preference formation and political representation refer to that phenomenon that the links between interests of the society and the representative organisations has been loosened.<sup>29</sup> Anger, frustration and concerns about representative democracy have put a challenge to national elites, whose authority and legitimacy have weakened as a consequence. The uncoupling of governments and national elites in general from societies has led the formers to look to the EU not only as a more effective forum to handle the changing political economy mentioned above, but as a site of legitimation and

<sup>23</sup> SCIPIONI, MARCO: *De Novo Bodies and EU Integration: What is the Story behind EU Agencies' Expansion?*. Journal of Common Market Studies, Vol. 56. No.4. pp. 770–776.

<sup>24</sup> SCHIMMELFENNIG 2015, p. 724.

<sup>25</sup> BULMER, SIMON: *Understanding the New Intergovernmentalism. Pre- and Post-Maastricht EU Studies*. In: Bickerton, Chirstopher – Hodson, Dermot – Puetter, Uwe (eds): *The New Intergovernmentalism. States and Supranational Actors in the Post-Maastricht Era*. Oxford University Press, London 2015. p. 300.

<sup>26</sup> BICKERTON – HODSON – PUETTER 2015a, pp. 22–25.

<sup>27</sup> LINDBERG, LEON – SCHEINGOLD, STUART: *Europe's Would-be Polity: Patterns of Change in the European Community*. Prentice-Hall. 1970. p. 62.

<sup>28</sup> BICKERTON – HODSON – PUETTER 2015a, p. 26.

<sup>29</sup> SCHMITTER, PHILIPPE.C. *The changing Politics of Organized Interests*. West European Politics, Vol. 31. No.1-2. June 2008. p. 208.

authority. At the same time, the declining permissive consensus of the society on the EU makes European elites reluctant to delegate powers to supranational institutions.<sup>30</sup>

*Liesbet Hooghe* and *Gary Marks* came a different conclusion regarding the consequence of the decline of the permissive consensus, namely that it hasn't resulted more, but indeed less integration comparing to the past.<sup>31</sup>

Nevertheless, decline of permissive consensus and its effect on the European integration is not a stable point of new intergovernmentalism. As it is pointed out by *Achim Hurrelmann*, permissive consensus still performs well which is underpinned, among others, by the Eurobarometer data which show, on EU average, considerable amount of trust in EU institutions, especially comparing to the trust in national institutions.<sup>32</sup> Data of *Standard Eurobarometer 90* underpin *Hurrelmann* conclusions as well, since on the one hand, trust in the EU comparing to national institutions (national parliament and government) was constantly considerably higher between 2004 and 2018, and on the other hand distrust in EU was significantly lower comparing both to national parliaments and governments in the same period.<sup>33</sup> In autumn 2018 a clear majority of Europeans (56 percent) wanted more decisions to be taken at EU level, while 34 percent opposed it and 10 percent didn't know. Regarding the future of the EU 58 percent of the respondents were optimistic, 37 percent pessimistic and 5 percent didn't know.<sup>34</sup>

Hypothesis 5 claims that the difference between high and low politics have been blurred in the post-Maastricht era. *Bickerton et al.* stress that nowadays "EU policy-making rarely triggers threats of ultimate withdrawal from European integration or serious attempts to fully isolate a given domain of domestic decision-making from EU-influence". Still, member states tend to monitor closely EU decision-making and are wary of the supranational institutions' activity on sensitive domains of national policy-making.<sup>35</sup>

However, we have witnessed several examples of the opposite, such as the Brexit, or the heated debate over the relocation mechanism between the EU and Hungary as well as Slovakia and Poland, and most recently the Hungarian and Polish political veto regarding the multiannual financial framework 2021-2027 and the Next Generation EU recovery programme. In the case of the relocation mechanism, Hungarian, Slovakian and Polish governments not only argued against the mechanism, but openly denied implementing the relocation decisions, even after the dismissal decision of the Court of Justice, stating that only member states should decide over who they are letting into their territories. In the debate over the new rule of law conditionality mechanism which connects EU financial issues to rule of law, Hungarian and Polish governments have referred to, among others, the

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<sup>30</sup> BICKERTON – HODSON – PUETTER 2015a, pp. 25–27.

<sup>31</sup> HOOGHE, LIESBET – MARKS, GARY: *A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus*. *British Journal of Political Science*, 39. p. 14.

<sup>32</sup> HURRELMANN, ACHIM: *European Democracy, the 'Permissive Consensus' and the Collapse of the EU Constitution*. *European Law Journal*, Vol. 13, No. 3, pp. 352–353.

<sup>33</sup> STANDARD EUROBAROMETER 90: *Public opinion in the European Union*. Autumn 2018 Report. 42. p. Available at: <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/standard/surveyky/2215> (2022. 07. 13.).

<sup>34</sup> STANDARD EUROBAROMETER 90 2018, 160; p. 165.

<sup>35</sup> BICKERTON – HODSON – PUETTER 2015a, p. 34.

different national legal identities to be protected. As a result, the European Council conclusion which has put an end on the debate and political stalemate finally, claims that the regulation on a general regime of conditionality for the protection of the Union budget “is to be applied in full respect of Article 4(2) TEU, notably the national identities of Member States inherent in their fundamental political and constitutional structures”.<sup>36</sup>

Last but not least, hypothesis 6 stresses that post-Maastricht EU is in a state of *disequilibrium* which refers to the unstable combination of socio-economic transformation and political development described in hypothesis 4. The successive crises of the EU raise the questions why the EU is so prone to crises, and whether it can survive in the future without finding ways to address the concerns over its legitimacy and effectiveness.<sup>37</sup> For the proponents of new intergovernmentalism Treaty of Maastricht is both a response to, and a contributory factor to the legitimacy deficit of the EU which is considered to be the main factor of its disequilibrium. Both policy-coordination, as the main way of the cooperation among member states on the new areas of the integration managed mostly in informal and not public sessions of intergovernmental institutions and bodies at several levels, as well as the co-decision procedure, which results early agreements via inter-institutional agreements, undermine deliberation and transparency in decision-making.<sup>38</sup>

*Bulmer* tends to accept that the European integration is in *disequilibrium* which is the source of successive crises, but he seems to be more optimistic, stating that it is surprising how resilient the integration has been being since its creation especially in the shadow of the World War II, and in the course of the Cold War serving as a structure of political opportunities that have been being able to offer to the member states’ governments “solutions to the dilemma of managing international independence while responding to pressures from domestic politics.”<sup>39</sup>

### *III. Testing the Hypotheses of New Intergovernmentalism on the Area of Common Security and Defence Policy*

One of the new areas of EU activity after the Treaty of Maastricht is the common security and defence policy (CSDP) created in the framework of the common foreign and security policy (CFSP) in the end of 1990s. As being in the heart of state sovereignty, this policy is still strictly under intergovernmental cooperation, however, member states are seeking for more and more cooperation on this policy field, taking just as an example the recent years’ defence initiatives such as the permanent structured cooperation (PESCO), the European

<sup>36</sup> EUROPEAN COUNCIL: *European Council meeting (10 and 11 December 2020) – Conclusions*. Brussels, 11 December 2020. EUCO 22/20 1. p. Available at: <https://www.consilium.europa.eu/media/47296/1011-12-20-euco-conclusions-en.pdf> (2022. 07. 16.).

<sup>37</sup> BICKERTON – HODSON – PUETTER 2015a, pp. 36–39.

<sup>38</sup> BICKERTON, CHRISTOPHER – HODSON, DERMOT – PUETTER, UWE: *Conclusions. The Post-Maastricht Period and Beyond*. In: Bickerton, Christopher – Hodson, Dermot – Puetter, Uwe (eds): *The New Intergovernmentalism. States and Supranational Actors in the Post-Maastricht Era*. Oxford University Press, London 2015, pp. 314–315.

<sup>39</sup> BULMER 2015, 301. p.

Defence Fund (EDF) or the Coordinated Annual Review on Defence (CARD). Consequently, it is interesting to examine how the hypotheses of new intergovernmentalism are applicable to this policy.

Regarding deliberation and consensus-seeking, we have to note that because of the intergovernmental nature of this policy, decisions in the EU Council and in the European Council have to be made unanimously only with a few exceptions. At the same time, these exceptions of qualified majority voting cannot be applied to decisions having military or defence implications.<sup>40</sup> In other words, member states are constrained by the decision-making system itself, if they intend to have an effective and responsive security and defence policy. For that reason, since the beginning of the 2000s many forums have been created for deliberation, both regarding military and civil dimensions of security and defence.

For the majority of scholars Political and Security Committee (PSC) is the central policy-shaper, the “linchpin”<sup>41</sup> or the “script writer”<sup>42</sup> of CSDP, in which deliberation and consensus-seeking have unambiguously become behavioural norms. Despite PSC is situated in the Council institutional pyramid, and devoted to represent member states’ interests, this consensus-generating nature of the body makes it a case study of “supranational intergovernmentalism” as it phrased by *Jolyon Howorth*.<sup>43</sup> There are many factors which are conducive to deliberation and consensus-generation in the PSC. *Christoph Meyer* emphasizes the “club atmosphere” which emerged within the PSC based on the high level of personal trust among its members and their common commitment to “pioneer cooperation in a new, labour-intensive and particularly sensitive policy-field”.<sup>44</sup> As *Howorth* points it out, based on interviews he conducted with ambassadors of the PSC, this personal mutual trust refers to the belief that whatever compromise is possible they will find it, since all members of the PSC will bend any effort to achieve it. As a contrast “it is often sufficient for one of the group to be replaced by his or her deputy for the trust-based group dynamics to break down and for consensus to be more difficult to achieve”.<sup>45</sup>

Another contributing factor is the frequency of PSC sessions. “It meets twice a week, and more often if necessary,”<sup>46</sup> so ambassadors can discuss and deliberate security and defence related issues continually. It worthy to stress that PSC has intensive communication and relations to other actors involved into the CSDP decision-making as well.<sup>47</sup>

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<sup>40</sup> Article 31 point 4 of the Treaty on the European Union.

<sup>41</sup> DUKE, SIMON: *The Linchpin COPS: Assessing the workings and institutional relations of the Political and Security Committee*. European Institute of Public Administration Working Paper, No. 05 2005. Available at: <http://aei.pitt.edu/5914/> (2022. 07. 16.).

<sup>42</sup> HOWORTH, JOLYON: *The Political and Security Committee: a case study in “supranational intergovernmentalism”*. Les Cahiers européens de Sciences Po. 2010. No. 01. p. 2.

<sup>43</sup> HOWORTH 2010 and HOWORTH, JOLYON: *Decision-Making in Security and Defence Policy. Towards Supranational Intergovernmentalism?*. KFG Working Paper, No. 25. 2011. Available at: [http://userpage.fu-berlin.de/kfgeu/kfgwp/wpseries/WorkingPaperKFG\\_25.pdf](http://userpage.fu-berlin.de/kfgeu/kfgwp/wpseries/WorkingPaperKFG_25.pdf) (2022. 07. 17.).

<sup>44</sup> MEYER, CHRISTOPH: *The Quest for a European Strategic Culture: Changing Norms on Security and Defence in the European Union*. Pelgrave Macmillan. New York. 2006. p. 124.

<sup>45</sup> HOWORTH 2011, p. 17.

<sup>46</sup> COUNCIL OF THE EUROPEAN UNION: *Political and Security Committee (PSC)*. Available at <https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/political-security-committee/> (2022. 07. 17.).

<sup>47</sup> MÉRAND, FRÉDÉRIC – HOFMANN STÉPHANIE C. – IRONDELLE, BASTIEN: *Governance and State Power: A Network Analysis of European Security*. Journal of Common Market Studies, Vol. 49, No.1. p. 131.

Timing and the confidentiality of the PSC sessions help as well brokering a compromise among the member states. Since the sessions of PSC precedes the Foreign Affairs Council meetings, ambassadors can inform foreign or defence ministers in advance what seems to be the consensual option for the decision avoiding the situation in which ministers, usually as a response to the question from journalists, declare about the support for another option, making it difficult later to switch to the consensual option without loss of face.<sup>48</sup>

Due to this consensus-generating capacity, vast majority of the issues are decided in the PSC, and it is quite rare that because of dissensus among the ambassadors, a case is forwarded to the Permanent Representatives (COREPER) or to the Foreign Affairs Council (FAC). *Ana Juncos* and *Christopher Reynolds* came to the conclusion, that PSC became so influential in the shaping of the national interest that they phrased its activity as “governing in the shadow”.<sup>49</sup>

At the same time, as a result of the reforms of the Lisbon Treaty, *Heidi Maurer* and *Nicholas Wright* point it out that the PSC’s agenda setting capacity is getting to be more and more constrained by the activism of the High Representative (HR) and the European External Action Service (EEAS). Furthermore, by the emergence of the European Council in the day-to day decision-making, its “script writer” role has been declining as well. However, their conclusion is that PSC remains a central actor in the CSDP structure, since “it is gaining alternative relevance through an emerging oversight role, which has implications for member states’ EU foreign policy engagement”.<sup>50</sup>

*Puetter* emphasizes the expanding activity of the European Council on the area of foreign, security and defence policy as well, stating that it is involved regularly into deciding concrete policy issues. Recent crises in general and regarding foreign and security issues too have contributed to the increasing number of the European Council sessions and its involvement into day-to-day policy-making. Foreign, security and defence policies belong to the core of member states’ sovereignty, so policy coordination on the highest political level ensures the most authority to discuss differences and make a final decision.<sup>51</sup> Examining the European Council agenda between June 1992 and June 2012, *Puetter* has found that issues relating to the new areas of EU activity such as economic governance, CFSP and CSDP, employment and social policy coordination, justice and home affairs accounted for more than 65% of the total number of agenda items. Behind economic governance, foreign and security policy was the second most popular agenda item.<sup>52</sup>

Regarding the claims of hypothesis 2 that supranational institutions are not hard-wired to seek ever closer union, but they are rather “complicit” in the expansion of the decentralized

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<sup>48</sup> HOWORTH 2010, p. 18.

<sup>49</sup> JUNCOS ANA – REYNOLDS, CHRISTOPHER: *Political and Security Committee: Governing in the Shadow*. European Foreign Affairs Review, Vol.12, Issue 2. 2007. Available at: <https://kluwerlawonline.com/journalarticle/European+Foreign+Affairs+Review/12.2/EERR2007014> (2022. 07. 18.).

<sup>50</sup> MAURER, HEIDI – WRIGHT, NICHOLAS: *Still governing in the shadows? Member states and the Political and Security Committee in the post-Lisbon EU foreign policy architecture*. Journal of Common Market Studies. 2021. Volume 59. Number 4. p. 856.

<sup>51</sup> PUETTER, UWE: *The European Council – the new centre of EU politics*. Swedish Institute for European Policy Studies, European Policy Analysis, No. 16 pp. 1-4.

<sup>52</sup> PUETTER 2013, pp. 6-7.



modes of decision-making and the ever-growing role of the European Council on the new areas of EU activity, many scholars have found that the European Commission, despite of its marginalized formal competencies regarding CSDP, has managed to influence this policy area beyond its delegated powers.<sup>53</sup> *Chantal Lavalleyé* claims that on the one hand, constitutional background of CSDP remained stable since its creation preserving the intergovernmental decision-making regime, but on the other hand transgovernmental processes among diplomats and military personnel are shaping the policy, in which the European Commission serves as a meeting point, playing a coordinating role. Another contributing factor to the Commission's involvement into defence and security issues is the interdependence among EU external policies which constrains reluctant member states to increase the interaction and cooperation with the European Commission.<sup>54</sup> As an empirical pillar of the examination, she studied the role of the European Commission in the creation of the European Security Research Programme and the Instrument for Stability, as well as in the regulation of European defence procurement.<sup>55</sup>

*Marianne Riddervold* uses three hypotheses, examined through two case studies namely the naval CSDP operation Atalanta and the EU maritime security strategy (EUMSS), to examine how the European Commission exactly influences CSDP issues. The first hypothesis, rational institutionalist perspective assumes, that the Commission seeks to "maximize its own interests by using whatever bargaining tools it has at its disposal". The second hypothesis builds on the communicative action theory and suggests that the European Commission tends to influence via justifying its proposals by expert arguments, while the third hypothesis stresses that the European Commission "circumvents" the formally intergovernmental decision-making of the CSDP co-operating "directly with national bureaucrats to hereby indirectly influence the Member States' positions", and influencing "decision-making outcomes by co-operating with other EU institutions such as EEAS".<sup>56</sup> *Riddervold* finds that the European Commission was strongly involved both in the Atalanta and EUMSS decision-making, in the first case mostly drawing on its expertise, while in the second case it used bargaining tools, expert argumentation and circumventing as well.<sup>57</sup>

*Pierre Haroche* gives a strongly neofunctionalist critique of new intergovernmentalism regarding the role of the European Commission in the course of the examination of its role in the creation and the governance of the European Defence Fund (EDF). *Haroche*, in contrast to the assumption that the European Commission has given up with the concept of ever closer union and proposes only those plans which are highly likely to be accepted by

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<sup>53</sup> SMITH, MICHAEL. E.: *Institutionalization, Policy Adaptation and European Foreign Policy Cooperation*. European Journal of International Relations, Vol. 10, Issue 1. March 2004.; LAVALLEÉ, CHANTAL: *The European Commission's Position in the Field of Security and Defence: An Unconventional Actor at a Meeting Point*. Perspectives on European Politics and Society Vol. 12, No. 4. November 2011; DIJKSTRA, HYLKE: *Approaches to Delegation in EU Foreign Policy: The Case of the Commission*. In: Karolewski, Ireneusz Pawel – Wilga, Maciej. (eds.) *New Approaches to EU Foreign Policy*. London. Routledge 2016.; RIDDERVOLD, MARIANNE: *Not in the Hands of the Member States: How the European Commission Influences EU Security and Defence Policies*. Journal of Common Market Studies, Vol. 54, Number 2. March 2016.

<sup>54</sup> LAVALLEÉ 2011, pp. 371–373.

<sup>55</sup> LAVALLEÉ 2011, pp. 351–381.

<sup>56</sup> RIDDERVOLD 2016, pp. 356–358.

<sup>57</sup> RIDDERVOLD 2016, pp. 362–366.

the member states, points it out that in the case of EDF the Juncker Commission was insisting on the old plan of the Commission about financing defence research and procurement via EU budget including those which has military dimension, and has surprised the member states by its supranational initiative.<sup>58</sup> From *Haroche* point of view EDF is the example of “offensive functional spill-over”,<sup>59</sup> when supranational institutions take advantage of the dysfunctionality of the intergovernmental governance method on a non- or less integrated area such as CSDP, and introducing supranational elements of governance to achieve more easily the policy goals. He concludes that “contrary to new intergovernmentalism expectation, this mechanism implies delegation in favour of supranational institutions at the expense of intergovernmental procedures and agencies.”<sup>60</sup> In the case of EDF the Commission took the advantage of the deficiencies of the activity of the European Defence Agency, an intergovernmental *de novo* body in financing defence research and development projects. While EDA relies on voluntary national contributions to finance its projects, in the framework of EDF the Commission “reversed the logic of defence industrial cooperation: instead of looking for money to finance a project, it is about looking for projects to be financed by a given budget.”<sup>61</sup>

*Pollak* and *Slominski* emphasized that since the Treaty of Lisbon the European Parliament has managed to gain considerable ability to influence the formally still strictly intergovernmental domain of CFSP/CSDP via its budgetary power, its role in the appointment of the HR, and the indirect effects its already existing co-decision power in other domains. They are taking the example of the establishment of the European External Actions Service (EEAS). While initially the EP had preferred that the EEAS should be incorporated within the European Commission, since this scenario would have guaranteed “clean mandate” to the EP to use its co-decision and budgetary powers, later it chose a pragmatic strategy to be able to influence the most the creation and operation of this *de novo* body, after it became clear that member states are reluctant to empower the European Commission. As the creation of the EEAS required amendments concerning the staff regulations of the EU and financial regulations, and both of this issues fall under co-decision, the EP insisted on handling all of the issues related to the creation of the EEAS as a single package. As a consequence, while formally the EU had only consultative rights in the adoption of the Council decision on the EEAS, in practice the process was resembled rather to co-decision due to the level of involvement of the EP.<sup>62</sup>

Claims of new intergovernmentalism about the increasing number and role of *de novo* bodies and the supranational institutions’ eventually supportive attitude in this process can be confirmed with some reservations regarding CSDP. First of all, we have witnessed high

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<sup>58</sup> HAROCHE, PIERRE: *Supranationalism strikes back: a neofunctionalist account of the European Defence Fund*. Journal of European Public Policy. Volume 27, Issue 6. 2020. pp. 853–855.

<sup>59</sup> Defensive spill-over occurs when policy goals of an integrated area cannot be achieved without expanding integration to new related sectors. This type of functional spill-over “relies on the incentive to protect an already integrated sector from the negative effects generated by its dependence on less or non-integrated sectors”. HAROCHE 2020, p. 856.

<sup>60</sup> HAROCHE 2020, p. 857.

<sup>61</sup> HAROCHE 2020, pp. 861–862.

<sup>62</sup> POLLAK – SLOMINSKI 2015, pp. 254–255.

level of agencification on the area of European security and defence policy. Although European Defence Agency (EDA) and European External Action Service (EEAS) are the best known examples, other *de novo bodies* were established as well, such as the European Union Institute for Security Studies or the European Union Satellite Centre, not to mention those so-called CSDP-structures which were established to implement the civil and military dimensions of this policy. As *Michael E. Smith* points it out “EU member states found enough consensus to create the CSDP mechanism and embed it within the EU’s body of treaty law”, but delegation to the European Commission was not an option.<sup>63</sup>

However, the level of autonomy of this *de novo bodies* and the scope of competence delegation vary on a wide spectrum. While the EDA falls under the authority of the EU Council and it is to support the “Council and the Member States in their effort to improve the Union’s defence capabilities,”<sup>64</sup> EEAS is functionally autonomous body separated both from the EU Council and the European Commission with the aim to “support the High Representative in fulfilling his/her mandates and assist the President of the European Council, the President of the Commission, and the Commission in the exercise of their respective functions in the area of external relations.”<sup>65</sup>

Regarding “complicity” of the supranational institutions in the creation of agencies we can speak about pragmatism rather than complicity. As *Daniel Fiott* pointed it out in connection with the EDA, the European Commission believed in 1996, in the absence of any kind of defence agency at that time, that it could function as a defence industrial cooperation platform at EU level. At the same time, member states, especially Great Britain, emphasized that any future agency would be intergovernmental in its nature. As a consequence, the European Commission changed its position fearing that “that the Member States would further steer defence-industrial co-operation away from the EU altogether”, and it started to encourage the establishment of an EU defence agency.<sup>66</sup>

Taking hypothesis 4 which is supposed to explain the integration paradox in the post-Maastricht era, we have found another weak point of new intergovernmentalism, since permissive consensus towards this policy exists as Eurobarometer data show. Since 2004 more than 70 percent of the respondents are in favour of “a common defence and security policy among EU Member States”, since autumn 2016 it is constantly 75 percent. The proportion of opponents varies between 13 and 20 percent, while those who don’t know are between 6 and 11 percent. Only one policy was supported more than CSDP among those nine encompassed by the survey, the free movement of EU citizens, which was supported by 82 percent by the respondents in the spring 2018. Interestingly, the support for a common foreign policy, which serves as a framework for the CSDP, is considerably lower, 66 percent in the spring 2018, while the proportion of the opponents were 25 percent and those who

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<sup>63</sup> SMITH, MICHAEL. E: *The New Intergovernmentalism and Experimental Learning in the Common Security and Defence Policy*. In: Bickerton, Christopher – Hodson, Dermot – Puetter, Uwe (eds): *The New Intergovernmentalism. States and Supranational Actors in the Post-Maastricht Era*. Oxford University Press, London 2015. pp. 114–115.

<sup>64</sup> Article 1 and 2 of Council Decision 2015/1835.

<sup>65</sup> Article 1 and 2 of Council Decision 2010/427/EU.

<sup>66</sup> FIOTT, DANIEL: *The European Commission and the European Defence Agency: A Case of Rivalry?*. *Journal of Common Market Studies*, Volume 53, No. 3. pp. 546–547.

don't know 9 percent. Expectedly, there is a significant difference among the member states regarding the support of CSDP, the highest in Cyprus (90%), Latvia (87%) and Germany (86%) and the lowest in Austria (57%), Sweden and the United Kingdom (both 63%)<sup>67</sup>

*Kajja Schilde, Stephanie Anderson and Andrew Garner* went further in their analysis contesting the concept of permissive consensus, stating that actually the European public has coherent preferences over the use of force and the common security and defence policy at the European level. Consequently, they argue, the slow progress and integration without supranationalism in this area are due to the reluctance of the political elites and not to the decline of permissive consensus as new intergovernmentalism interprets.<sup>68</sup>

According to hypothesis 5, the difference between high and low politics has been blurred in the post-Maastricht era, and it is rare that member states intend “to fully isolate a given domain of domestic decision-making from EU-influence.”<sup>69</sup> At the same time, CSDP is still fully under intergovernmental regime demonstrating the reluctance of the member states to give up the very core of their national sovereignty, even if public opinion supports a real common defence and security policy. Elements of new intergovernmentalism such as deliberation and policy coordination, or delegation certain remits to *de novo bodies* mean a shift from the mechanisms of old intergovernmentalism such as hard bargaining, threatening with veto or insisting on national interest, but still it guarantees the control of member states and making all efforts to keep away supranational institutions and decision-making from this policy domain, although these efforts fail sometimes.

Hypothesis 6 about the state of disequilibrium seems to be valid on the area of CSDP, although one of its sources, the lack of permissive consensus can be questioned based on the public opinion polls data as we have seen above. Contrary, rather member states those are still reluctant to move towards supranational integration on this area because of sovereignty concerns.

Growing interdependence on defence issues, and the subsequent crises such as budgetary restrictions after the economic and financial crisis, the Brexit, mass migration inflow, as well as Russian expansive foreign policy made it necessary for the member states to seek opportunities for closer defence cooperation. This has resulted in the defence initiatives, namely the coordinated annual review on defence (CARD), the permanent structured cooperation (PESCO) and the European Defence Fund (EDF). At the same time, only in case of EDF we can witness the growing role of the European Commission and the stealth of supranationalism. CARD is a voluntary mechanism for the member states under the coordination of the EDA, while PESCO, embodying policy coordination, establishes legal commitments for the participating member states, but it is hardly likely that non-compliance would have any consequences. As *Sven Biscop* stresses there is a “culture of non-compliance in CSDP which affects PESCO as well”<sup>70</sup> As the EU Council has pointed

<sup>67</sup> STANDARD EUROBAROMETER 89: *The views of Europeans on the European Union's priorities*. Spring 2018 Report. Available at: [https://data.europa.eu/euodp/en/data/dataset/S2180\\_89\\_1\\_STD89\\_ENG](https://data.europa.eu/euodp/en/data/dataset/S2180_89_1_STD89_ENG) (2022. 07. 13.)

<sup>68</sup> SCHILDE KAJJA E. – ANDERSON, STEPHANIE B. – GARNER, ANDREW D.: *A more martial Europe? Public opinion, permissive consensus, and EU defence policy*. European Security, Vol. 28, No. 2. 2019. p. 153.

<sup>69</sup> BICKERTON – HODSON – PUETTER 2015a, p. 34.

<sup>70</sup> BISCOP, SVEN: *European Defence and PESCO: Don't Waste the Chance*. EUIDEA Policy Papers No.1. 5 May 2020 p. 3.

it out in its conclusions on the PESCO strategic review in which it assessed the initial phase of PESCO (2018-2020), participating member states (PMS) should respect the collective benchmarks for defence spending, especially in the shadow of the financial consequences of the COVID-19 pandemic, use better PESCO projects, strengthen the Union's operational effectiveness, develop capabilities in line with the EU Capability Development Priorities<sup>71</sup> These deficiencies in the fulfilment of PESCO commitments coupled with the fact that out of the 47 PESCO projects only 12 have delivered concrete results or reached their initial operational capability show the limited efficiency of the defence initiatives so far. Taking into consideration that it's only the initial phase of the implementation of these defence tools many scholars agree that mechanism of new intergovernmentalism is one of the sources of inefficiency and consequently disequilibrium in post-Maastricht era<sup>72</sup>

#### *IV. Conclusions*

After the overview of the theoretical framework of new intergovernmentalism we can find some weak points in general, such as the decline of permissive consensus or the "complicity" of supranational institutions in the growing role of European Council and the creation of *de novo bodies*, as well as their non-commitment to an ever closer union.

These weak points exist in connection with CSDP as well. The most important observation here is, that according to the public opinion polls, against the growing Eurosceptic forces and atmosphere, permissive consensus is still exists, and in case of CSDP, public support for common European security and defence policy is consistently and significantly high, which undermines the main assumption of new intergovernmentalism regarding decreasing permissive consensus. Rather, member states are still reluctant to give up the core part of their sovereignty including defence and security matters, which is contrary to another hypothesis of new intergovernmentalism, namely the blurring differences between low and high politics.

Nevertheless, majority of the observations and assumptions of new intergovernmentalism seem to be valid regarding the security and defence policy at EU level, such as the growing dominance of the European Council, the increasing number and role of *de novo bodies*, or the process and nature of policy coordination. It is still a big question if new intergovernmentalism means really a separate phase of the European integration as its proponents assume or it is rather an interim phase in which supranational actors can find the way to "get their feet in the door" and stealth into the domain of core state powers such as defence and security. It is important issue from the efficiency and transparency point of view as well, since as we have seen above in the case of EDA and PESCO the mechanisms and elements of new intergovernmentalism may have counterproductive results.

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<sup>71</sup> COUNCIL OF THE EUROPEAN UNION: *Council Conclusions on the PESCO Strategic Review*. 2020 Brussels, 20 November 2020 13188/20 3-8. pp. Available at: <https://www.consilium.europa.eu/media/46859/st13188-en20.pdf> (2022.07.27.).

<sup>72</sup> BISCOP 2020; SMITH 2015; BICKERTON – HODSON – PUETTER 2015b.

JUHÁSZ KRISZTINA

AZ ÚJ KORMÁNYKÖZISÉG ELMÉLETE ÉS A KÖZÖS  
BIZTONSÁG- ÉS VÉDELEMPOLITIKA

(Összefoglalás)

A tanulmány egyrészt az integrációelméletek egy új irányzatának, az új kormányköziség állításainak és hipotéziseinek, valamint az elméletet ért kritikáknak a szintézisét kívánja nyújtani, másrészt az új kormányköziség hipotéziseinek érvényesülését vizsgálja az Európai Unió közös biztonság- és védelempolitikája területén. A témával kapcsolatos szakirodalmi áttekintés és elemzés alapján azt találjuk, hogy bár az új kormányköziség hipotéziseinek többsége általánosságban és a közös biztonság- és védelempolitika vonatkozásában is megerősíthető, ugyanakkor vannak vitatható pontjai is a megközelítésnek, mint például a megengedő konszenzus csökkenésére vonatkozó megállapítások, illetve azok, amelyek a szupranacionális intézményeknek az egyre szorosabb unió iránti elkötelezettsége csökkenésére figyelmeztetnek.

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## Spuren des römischen Zollwesens in Pannonien

*Inscription eines Zollsiegels aus Savaria (AE 1968, 423)*

### 1. Einleitung

Die heutige ungarische Region, die als das „Land jenseits der Donau“ (Transdanubien) bezeichnet wird, gehörte beinahe vier Jahrhunderte lang zum Römischen Reich (*Imperium Romanum*).<sup>1</sup> Während der Regierungszeit des Augustus (27 v. Chr. – 14 n. Chr.) begann die Eroberung der Provinz Pannonien, aber die endgültige Ausbreitung der römischen Herrschaft über diese Region vollzog sich nur Schritt für Schritt.<sup>2</sup> Der Text der sog. *Res gestae divi Augusti*<sup>3</sup> enthält für uns wertvolle Informationen bezüglich der Geschichte der Provinz Pannonien (Mon. Ancyr. 30):

*Pannoniorum gentes, quas ante me principem populi Romani exercitus nunquam adit, devictas per Ti. Neronem, qui tum erat privignus et legatus meus, imperio populi Romani subieci, protulique fines Illyrici ad ripam fluminis Danui.*

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<sup>1</sup> Aus diesem Grund sind die – rechtlich relevanten – Inschriften, die im Gebiet des ehemaligen Pannoniens entdeckt wurden, den ungarischen Romanisten besonders interessant. Obwohl wir aus diesen Quellen keine neuen Rechtseinrichtungen kennenlernen, aber dadurch bekommen wir einen direkten und lebhaften Einblick im Alltagsleben. In der Vergangenheit haben sich mehrere ungarischen Römischrechtler mit den – in Ungarn gefundenen – Inschriften, die Spuren des römischen Rechts aufweisen, befasst, siehe z. B.: DIÓSDI, GYÖRGY: *A jogtanítás nyomai Pannoniában* [Spuren des Rechtsunterrichts in Pannonien]. *AntTan* 8 (1961), 99 ff.; VISKY, KÁROLY: *A római magánjog nyomai a magyar földön talált római kori feliratos emlékeken* [Spuren des römischen Privatrechts auf die in Ungarn gefundenen epigraphischen Quellen aus der Römerzeit]. In: Andor Csizmadia (Hg.): *Jogtörténeti Tanulmányok V*, Budapest, 1983. 353 ff.

<sup>2</sup> MÓCSY, ANDRÁS: *Pannonia a korai császárság idején* [Pannonien in der frühen Kaiserzeit]. Budapest, 1974. 7. ff.; HAVAS, LÁSZLÓ – HEGYI W., GYÖRGY – SZABÓ EDIT: *Római történelem* [Römische Geschichte]. Budapest, 2007. 786 f.

<sup>3</sup> Siehe dazu STAEDLER, ERICH: *Zur staatsrechtlichen Tragweite der Datierungsweise in den Res gestae Divi Augusti*. *ZRG RA* 65 (1946), 327 ff.; SCHÖNBAUER, ERNST: *Die Res gestae Divi Augusti in rechtsgeschichtlicher Beleuchtung*. Wien, 1946, 7 ff.; BORZSÁK, ISTVÁN: *Res Gestae Divi Augusti*. *AntTan* 1 (1954), 323 ff.; KOZÁK, DÁNIEL: *Isteni önéletrajz. A res gestae divi Augusti műfajai és kontextusai* [Eine göttliche Autobiographie. Gattungen und Kontexte der res gestae divi Augusti]. *Ókor* 14/1 (2015), 23 ff.

„Die Völker Pannoniens, mit denen kein Heer des römischen Volkes jemals zusammengetroffen war, bevor ich der erste Mann des Staates wurde, habe ich der Herrschaft des römischen Volkes unterworfen, nachdem sie von Tiberius Nero<sup>4</sup>, der damals noch mein Stiefsohn und mein militärischer Stellvertreter war, besiegt worden waren. Ich habe damit die Grenzen vom Illyricum bis ans Ufer der Donau vorgeschoben“. (Übersetzt von M. Klönn.)

Laut dem Text steht es außer Frage, dass die Provinz Pannonien von Anfang an keine selbständige Verwaltungseinheit war, sondern zu der ungeteilten Provinz Illyricum gehörte. Der ungarische Althistoriker, Jenő Fitz hat – anhand von epigraphischen und literarischen Quellen – überzeugend dafür argumentiert, dass Illyricum erst nach dem Tod des Augustus (gest.: 19. August 14 n. Chr.) aufgeteilt wurde.<sup>5</sup> Aber zu jener Zeit trug die Provinz noch nicht den Namen Pannonia, sondern sie hieß Illyricum inferius. Dies lässt sich aus einer Ehreninschrift feststellen, die im Gebiet des heutigen Kroatiens gefunden wurde und deren Text wie folgt lautet (CIL 3, 1741):

*P(ublio) Corne[lio] / Dolabell[ae co(n)s(uli)] / VIIviro epuloni / sodali Titiensi / leg(ato) pro pr(aetore) divi Augusti / et Ti(beri) Caesaris Augusti / civitatis superioris / provinciae {H}Illyrici*

Laut dem zitierten Inschriftentext war Publius Cornelius Dolabella Statthalter (*legatus Augusti pro praetore*) der Provinz Illyricum superius. Er hatte diese Statthalterschaft von 14 bis 19 oder 20 inne.<sup>6</sup> Aus dieser Quelle lässt sich – logischerweise (*argumentum e contrario*) – darauf schließen, dass auch eine Provinz Illyricum inferius existierte.<sup>7</sup> Die Provinz Illyricum wurde also – vermutlich aus militärischen Gründen – spätestens im ersten Drittel des ersten Jahrhunderts n. Chr. geteilt.<sup>8</sup> Seit Mitte des ersten Jahrhunderts erscheint Illyricum superius unter dem Namen Dalmatien und Illyricum inferius unter dem Namen Pannonien in den Quellen. Und später fand – während der Regierungszeit des Kaisers Trajan (98-117) – eine Zweiteilung der Provinz Pannonien statt, wodurch Oberpannonien (*Pannonia superior*) und Niederpannonien (*Pannonia inferior*) zustande kamen.<sup>9</sup>

Bevor ich mich der zentralen Quelle meiner Abhandlung zuwende, lohnt es sich noch einen Blick – in groben Zügen – auf die wirtschaftliche Bedeutung der Provinz Pannonien zu werfen. Es steht außer Frage, dass bei der römischen Eroberung die militärstrategischen

<sup>4</sup> *Scil.* der spätere Kaiser Tiberius (14 – 37 n. Chr.).

<sup>5</sup> FITZ, JENŐ: *Die Verwaltung Pannoniens in der Römerzeit I*. Budapest, 1993. 32–41.

<sup>6</sup> RUMPF, ANDREAS: s. v. *Cornelius* (II. 14.). In: *Der Kleine Pauly*. Lexikon der Antike in fünf Bänden, Band 1, München, 1979, 1316. Siehe noch: Vell. 2,125,5: *Cuius curam ac fidem Dolabella quoque, vir simplicitatis generosissimae, in maritima parte Illyrici per omnia imitatus est.*

<sup>7</sup> Siehe zu dieser Quelle DOBÓ, ÁRPÁD: *Publicum portorium Illyrici*. Arch. Ért. 3/1 (1940), 145; KOVÁCS, PÉTER: *Oppidum Scarbantia Iulia*. AntTan 46 (2002) 179 f.

<sup>8</sup> Vgl. HAVAS – HEGYI W. – SZABÓ 2007, 790.

<sup>9</sup> Siehe dazu FEHÉR, BENCE – KOVÁCS, PÉTER (Hg.): *Pannonia története Kr. u. 54-166 közt* [Geschichte Pannoniens zwischen den Jahren 54-166 n. Chr.]. Budapest, 2003. 177. und 194.



Erwägungen die Hauptrolle gespielt haben. Dabei dürfen aber die wirtschaftlichen Interessen nicht unterschätzt werden, obwohl Pannonien in wirtschaftlicher Hinsicht nicht eine bedeutende Provinz des Römischen Reiches war.<sup>10</sup> Die Provinz hatte nämlich keine nennenswerten Naturschätze, jedoch ihre Handelsverbindungen waren doch von Belang.

Die Eroberung des Gebietes zwischen der Drau, der Save und des Mittellaufes der Donau war für den landwirtschaftlichen und industriellen Export der norditalienischen Hafenstadt Aquileia von besonderer Bedeutung. Aus Aquileia führte die bedeutende Handelsroute, die Linie Emona über Poetovio – Savaria – Scarbantia – Carnuntum bis zur Ostsee,<sup>11</sup> wo der als Luxusartikel geltende Bernstein angeschafft wurde (sog. „Bernsteinstraße“, *via Sucinaria*). Die Provinz Pannonien lag also an einer wichtigen Handelsstraße und daraus folgt, dass dieses Land von einem intensiven Handelsverkehr geprägt wurde. Diesbezüglich schrieb der Althistoriker Árpád Dobó: „die Völker Pannoniens lieferten Vieh, Getreide und Holzmaterial. Auch der Transithandel vom Barbaricum aus – durch Pannonien – nach den übrigen Teilen des Reiches war nicht zu unterschätzen“.<sup>12</sup>

Daran besteht kein Zweifel, dass die sog. Zölle und die Zollerhebung in einem solch lebhaften Handelsmilieu eine wichtige Rolle spielten. Grundsätzlich gilt für die gesamte Kaiserzeit, dass der römische Staat auf Warentransporte durch sein Territorium Gebühren einforderte. Es ist allgemein akzeptiert, dass die antiken Begriffe *portorium*,<sup>13</sup> und in einem weiteren Sinne *vectigal*,<sup>14</sup> unserem Verständnis von Zoll am nächsten kommen,<sup>15</sup> dabei aber auch noch weitere Abgaben beinhalten können (wie z. B. Durchfahrtsgebühr oder Brückenmaut).<sup>16</sup>

<sup>10</sup> MÓCSY, ANDRÁS: s. v. *Pannonia*. In: Der Kleine Pauly. Lexikon der Antike in fünf Bänden, Band 4, München, 1979, 463 betonte: „P. gehörte nie zu den Provinzen, die im Wirtschaftsleben des Reiches eine Rolle spielten“.

<sup>11</sup> Siehe dazu CSERMÉNYI, VAJK – TÓTH, ENDRE: *Der Abschnitt der Bernsteinstrasse in Ungarn*. Savaria 16 (1982), 283 ff.

<sup>12</sup> DOBÓ, ÁRPÁD: *Die Verwaltung der römischen Provinz Pannonien von Augustus bis Diocletianus*. Budapest, 1968. 170.

<sup>13</sup> Siehe dazu ausführlich VITTINGHOFF, FRIEDRICH: s. v. *Portorium*. In: Pauly – Wissowa Realencyklopädie der klassischen Altertumswissenschaft 22., Stuttgart, 1953, 346 ff.

<sup>14</sup> KLINGENBERG, GEORG: *Commissum. Der Verfall nichtdeklarerter Sachen im römischen Zollrecht*. Graz, 1977. 36: „[e]s ist unumstritten, dass die Zölle (*portoria*) zu den bedeutendsten Einnahmequellen des römischen Staates innerhalb der indirekten Abgaben (*vectigalia*) zählten“. An dieser Stelle muss jedoch darauf hingewiesen werden, dass die Begriffe von *portorium* und *vectigal* keinesfalls synonym verwendet wurden, vgl. ØRSTED, PETER: *Roman Imperial Economy and Romanization. A Study in Roman Imperial Administration and the Public Lease in the Danubian Provinces from the first to the third Century AD*. Kopenhagen, 1985. 257.

<sup>15</sup> An dieser Stelle muss auf die Auffassung von Peter Kritzinger – KRITZINGER, PETER: *Das römische Steuersystem in der Kaiserzeit: Überlegungen zur Begrifflichkeit und zum Einzug*. In: Sven Günther et al. (Hg.): *Marburger Beiträge zur antiken Handels-, Wirtschafts- und Sozialgeschichte*, Band 36 (2018), Rahden, 2019, 128 – hingewiesen werden: „[z]unächst bleibt festzuhalten, dass eine Übersetzung der termini technici des römischen Steuersystems wenig sinnvoll, ja geradezu verwirrend ist. Das heißt, die Begriffe *portorium*, *publicum*, *stipendium*, *tributum*, *ultra tributa* und *vectigal* sollten meines Erachtens nicht übersetzt werden“.

<sup>16</sup> Vgl. PEKÁRY, TAMÁS: s. v. *Vectigal*. In: Der Kleine Pauly. Lexikon der Antike in fünf Bänden, Band 5, München, 1979. 1150. Es lässt sich hier – wie auch KLINGENBERG 1977, 36 schrieb – betonen, „daß die Römer unter dem Begriff *portorium* nicht nur Grenzzölle im heutigen Sinne verstanden, sondern alle jene

Das Römische Reich (*Imperium Romanum*) bildete aus zollrechtlicher Perspektive keine Einheit. Das heißt, dass das *Imperium Romanum* in Zollgebiete mit verschiedenen Größen eingeteilt wurde, die sich in aller Regel über mehrere Provinzen erstreckten und sich wenigstens etwas an den ökonomischen Gegebenheiten orientierten. Zum Beispiel das sog. „illyrische Zollgebiet“ war das gewaltigste, es umfasste nämlich alle Donauprovinzen.<sup>17</sup> Innerhalb der größeren Zollgebiete wurden – aus praktischen Gründen – mehrere Zollbezirke errichtet. Das Zollkontrollverfahren wickelte sich in den Zollstationen (*stationes*) des Zollbezirkes ab. Kam ein Reisender oder ein Händler also an eine Zollgrenze, so musste er die nächste Zollstation (*statio*) aufsuchen.<sup>18</sup> Die Waren mussten von den Reisenden in der *statio* („im Zollamt“) – schriftlich oder gegebenenfalls mündlich – deklariert (*profiteri*) werden.<sup>19</sup> Die Abwicklung des Zollprozesses wurde von Frank Ausbüttel in anschaulicher Weise dargestellt: „[g]egenüber dem Zöllner musste der Reisende (...) alles angeben, was er mit sich führte, auch vom Zoll befreite Güter, ggf. erfolgte auch noch eine schriftliche Deklaration. Der Zöllner registrierte die Güter, nahm den veranschlagten Zoll entgegen (...)“.<sup>20</sup>

## 2. AE 1968, 423

Mit dieser – oben – angeführten Tätigkeit lässt sich das antike Siegel in Verbindung bringen, das in dem ehemaligen Territorium von Savaria<sup>21</sup> gefunden wurde. Dieser archäologische Fund wurde am 2. Juli 1960 auf dem Gebiet des Ruinengartens „Járdányi Paulovics

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Abgaben, die beim Passieren einer bestimmten Linie auch innerhalb des staatlichen Wirtschaftsgebietes zu entrichten waren, also insbesondere die Binnenzölle“.

<sup>17</sup> VOLKMANN, HANS: s. v. *Portorium*. In: Der Kleine Pauly. Lexikon der Antike in fünf Bänden, Band 4, München, 1979. 1072: „[d]er Zolldistrikt p. Illyrici, der Stationen aus dem N. Italiens mit solchen der O.-Küste der Adria umfasste, wurde (...) nach Spaltung der Provinz in Illyricum superius und inferius zum *publicum portorii Illyrici utriusque*. In der Mitte 2 Jh. mit dem *p. ripae Thraciae* verschmolzen umfaßte dann das *publicum p. Illyrici* die Länder von der ‚Quelle der Donau bis zum Pontischen Meer‘ (App. Ill. 6): Dalmatien, Raetien, Noricum, Pannonien, Moesien, Dacien, Adriaahäfen und Ostalpen“. Siehe zu dieser Frage noch GABLER, DÉNES: *A belső vámok szerepe a rajnai és a dunai provinciák importált kerámiaspektrumában* [Die Rolle der Binnenzölle im importierten Keramikspektrum der Rhein- und Donauprovinzen]. *DissArch* 3/2 (2014), 55 ff.

<sup>18</sup> KRITZINGER, PETER: *Das römische Zollsystem bis in das 3. Jh. n. Chr.* In: Peter Kritzinger – Frank Schleicher – Timo Stickler (Hg.), *Studien zum römischen Zollwesen*, Duisburg, 2014. 19; SCHLEICHER, FRANK: *Der römische Zoll in der Spätantike*. In: Peter Kritzinger – Frank Schleicher – Timo Stickler (Hg.), *Studien zum römischen Zollwesen*, Duisburg, 2014. 77.

<sup>19</sup> Zur Umfang der Deklarationspflicht siehe KLINGENBERG 1977, 65 ff.

<sup>20</sup> AUSBÜTTEL, FRANK: *Die Verwaltung des römischen Kaiserreiches. Von den Herrschaft des Augustus bis zum Niedergang des Weströmischen Reiches*. Darmstadt, 1998, 93. Siehe dazu noch KRITZINGER 2014, 19 ff.

<sup>21</sup> FITZ, JENŐ: s. v. *Savaria*. In: Der Kleine Pauly. Lexikon der Antike in fünf Bänden, Band 4, München, 1979, 1576 schrieb, dass diese annonische Stadt ein Knotenpunkt der Straßen „Aquileia – Carnuntum“ (Bernsteinstraße) war.

István“ in Szombathely (Savaria)<sup>22</sup> ausgegraben.<sup>23</sup> Das Siegel hat einen Durchmesser von 8,6 cm und eine Stärke von 0,4 cm<sup>24</sup> und es trägt die folgende Inschrift (AE 1968, 423):<sup>25</sup>

*C(aius) Tit(us) | Ant(onius) Peculiari(s) co(n)ducto(r) vect(igalis) oct(avae)  
Pann(oni(arum) II (duarum) | ann(o) XII*

„Caius Titus Antonius Pecularis Pächter der Achtelteilabgabe der beiden Pannonien. Im zwölften Jahr der Pacht“.

Nach herrschender Meinung hat Caius Titus Antonius Pecularis<sup>26</sup> die obengenannte Zollabgabe (das heißt: das *vectigal octavae*) in der zweiten Hälfte des zweiten Jahrhunderts – noch vor der Regierungszeit des Septimius Severus (193 – 211) – gepachtet.<sup>27</sup> Die Inschrift bezeugt, dass Caius Titus Antonius Pecularis als *conductor vectigalis octavae* tätig war. Hier stellt sich die erste Frage: Was dürfte die Rolle eines *conductor vectigalis octavae* in dem pannonischen Zollsystem zu dieser Zeit gewesen sein. Wie allgemein bekannt ist, erfolgte die Einhebung der Zölle während der Republik und des frühen Prinzipats durch staatliche Verpachtung an mächtige *societates publicanorum*,<sup>28</sup> die – wie Georg Klingenberg schrieb – sich der „staatlichen Kontrolle weitgehend zu entziehen verstanden: dies gilt insbesondere für die Provinzen“.<sup>29</sup> Das selbständige Agieren der Zollpächter führte immer wieder zu Ausschreitungen, deshalb ist die Prinzipatszeit von dem Bestreben gekennzeichnet, das Zollwesen stärker unter staatlichen Einfluss zu bringen.<sup>30</sup> Im zweiten Jahrhundert n. Chr. traten die Einzelunternehmer (*conductores*) an die Stelle der Steuerpachtgesellschaften, deren Geschäftsumfang bei weitem nicht an den großen *societates publicanorum* heranreichte.<sup>31</sup>

Es ist eine weitverbreitete These in der Fachliteratur, dass eine tiefgreifende Veränderung im Pachtsystem erst während der Regierung des Marcus Aurelius (161 – 180)

<sup>22</sup> Vor der Entdeckung dieses Siegels war es bereits allgemein bekannt, dass eine Zollstation (*statio*) in Savaria existierte, vgl. z. B. CIL III 4155. (eine Weihinschrift eines *contrascriptor*).

<sup>23</sup> P. BUOCZ, TERÉZIA: *Vámbélyegző Savariából* [Zollsiegel aus Savaria]. *Vasi Szemle* 23/2 (1969), 300.

<sup>24</sup> P. BUOCZ 1969, 300.

<sup>25</sup> An dieser Stelle lässt es sich anmerken, dass ein – in gewissem Sinne ähnlicher – archäologischer Fund auch im Gebiet von Aquincum entdeckt wurde. Dieser Fund war ein Bronzesiegel [Inventarnummer 69.12.19. (BTM Aquincumi Múzeum)], dessen – von Zoltán Havas rekonstruierter – Text wie folgt lautet: *P(ublicum) XX (vicesimae) lib(ertatis) (per) Raet(iam) Nor(icum) Dalm(atiam) Pan(n)oni(as) II (duas) / Concord(iam) Aq(uileiam) Histr(iam) Lib(urniam) an(no) III*. Siehe hierzu HAVAS, ZOLTÁN: *A publicum vicesimae libertatis bronz bélyegzője Aquincumból* [Das Bronzesiegel des *publicum vicesimae libertatis* aus Aquincum], *SEP* 5 (2013), 59 ff.

<sup>26</sup> Zu ihm siehe ausführlich FISHWICK, DUNCAN: *The Career of C. Titus Antonius Pecularis*. *ZPE* 130 (2000), 257 ff.

<sup>27</sup> ØRSTED 1985, 259; FITZ 1993, 425; SCHLEICHER 2014, 65 f.

<sup>28</sup> Siehe dazu ausführlich MALMENDIER, ULRIKE: *Societas publicanorum. Staatliche Wirtschaftsaktivitäten in den Händen privater Unternehmer*. Köln – Weimar – Wien, 2002, 37 ff.

<sup>29</sup> KLINGENBERG 1977, 37.

<sup>30</sup> KLINGENBERG 1977, 37.

<sup>31</sup> DOBÓ 1940, 149 und 151, KLINGENBERG 1977, 38.

eintrat.<sup>32</sup> Der Staat übernahm nämlich das Zollgebiet in unmittelbare Verwaltung und ließ es durch *procuratores* verwalten. Aber diese Reform bedeutete nur die Übernahme der Zollverwaltung, nicht aber der Zollerhebung.<sup>33</sup> Die Zolleintreibung vereinzelter Zoll- oder Steuergattungen wurde nach wie vor an Privatunternehmer verpachtet.

Anhand des Inschriftentextes pachtete Caius Titus Antonius Pecularis die sog. *vectigal octavae* in dem Zollbezirk der beiden Pannonien [*co|nd(uctor) vect(igalis) oc|t(avae) Pann(oniarum) II (duarum)*], d. h. sowohl in Ober- als auch in Niederpannonien (Pannonia superior und inferior).<sup>34</sup> Es stellt sich hier die Frage, was wir unter dem Begriff *vectigal octavae* verstehen sollen. Peter Ørsted betrachtet die *octava* als eine Bodenabgabe in seinem monumentalen und detailreichen Werk über Public Lease System in the Danubian Provinces.<sup>35</sup> Gegen diese These sprechen jedoch manche Quellen: einerseits das oben erörterte Zollsiegel und andererseits die folgende Inschrift, die auf dem Gebiet des antiken Brigetio in Nordungarn gefunden wurde. Der Text dieser Inschrift lautet (RIU 389).<sup>36</sup>

*Genio com/merci et neg/otiantium / Primiti(v)us / Iuli Proc(u)li / cond(uctoris) VIII ser(vus) / vil(icus) XX*

„Dem Genius des Handelsverkehrs und der Händler, Primitivus, des Verwaltersklaven des Julius Proculus, des Pächters des Achtheils und der Erbschaftssteuer“.<sup>37</sup>

Brigetio war eine bedeutende Handelsstadt<sup>38</sup> in Oberpannonien an der Limesstrecke zwischen Vindobona und Aquincum, und Primitivus stand als *servus vilicus*<sup>39</sup> vermutlich an der Spitze einer der vom seinen Herrn gepachteten Zollstationen.<sup>40</sup> Der Inschrift gemäß hat Primitivus als Verwaltersklave eines *conductor octavarum* einen Kalksteinaltar dem Schutzgeist (*genius*) des Handelsverkehrs und der Händler geweiht. Aus dem Text dieser Weihinschrift geht hervor, dass der Verwaltersklave und sein Eigentümer mit den Händlern – aber nicht mit den Bodeneigentümern – im ständigen Kontakt stan-

<sup>32</sup> DOBÓ 1968, 181, KLINGENBERG 1977, 39.

<sup>33</sup> SCHLEICHER 2014, 69: „[d]iese Verwaltung wird sich aber eher auf die Aufsicht beschränkt haben, die Abgabeneintreibung selbst wurde auch nach der Herrschaft Marc Aurels – zumindest in Teilen – weiterhin verpachtet“, und 84 f.

<sup>34</sup> P. BUOCZ 1969, 303.

<sup>35</sup> ØRSTED 1985, 260: „[t]he most obvious interpretation is then that Pecularis leased the collection of *uectigal*, in this case land taxes (...)“.

<sup>36</sup> CIL 3, 4288 = ILS 1861.

<sup>37</sup> SZABÓ, MELINDA: *Pannonia kereskedelmének társadalmi háttere*. [Der soziale Hintergrund des Handelsverkehrs Pannoniens], (Doktorarbeit), Budapest, 2021, 161 Fn. 886 bemerkt hierzu, dass nicht nur die Erbschaftssteuer 5 % betragen habe. Als Beispiel erwähnte sie die Freilassungssteuer (*vicesima libertatis*). Sie deutet noch darauf hin, dass in der Inschriftenpraxis es üblich gewesen sei, im Fall der Steuerpacht der Erbschaftssteuer das Wort *hereditatium* hinzuzufügen [z. B.: CIL 3, 4064: *XX hereditatium*]. Aus diesen Gründen äußerte Szabó Bedenken hinsichtlich der Übersetzung von „Erbschaftssteuer“.

<sup>38</sup> SZILÁGYI, JÁNOS: s. v. *Brigetio*. In: Der Kleine Pauly. Lexikon der Antike in fünf Bänden, Band 1, München, 1979, 945.

<sup>39</sup> Im römischen Altertum ähnelte die Rolle eines *servus vilicus* der eines modernen Managers vgl. GLARE, P. G. W. (ed.): *Oxford Latin Dictionary* (i. F.: OLD). Oxford, 1992 s. v. *vilicus*.

<sup>40</sup> Vgl. DOBÓ 1940, 154.

den.<sup>41</sup> Dies deutet also darauf hin, dass diese *octava* eine die Handelswaren belastende Abgabegattung war, wobei die Höhe des Zollsatzes bei 12,5 % des Warenwertes lag.

Es ist eine weitere Inschrift überliefert, die darauf folgern lässt, dass dieser Primitivus später – allem Anschein nach – freigelassen wurde. Auf einem Sarkophag, der ebenfalls in Brigetio gefunden wurde, liest man nämlich die folgende Inschrift (RIU 575):

*Matronae innocen/tissimae Primiti(v)us / Ael(iae) Valerian(a)e coniug(i) / actor octavar(um) coniugi carissimae.*

„Der rechtschaffensten Dame Aelia Valeriana, Ehefrau des Primitivus, des actor des Achtheilsabgabe, teuerste Gattin“. (Übersetzt von F. Schleicher.)

Anhand dieser Inschrift lässt es sich annehmen, dass Primitivus vermutlich einen großen sozialen Aufstieg gemacht hat, er war nämlich kein Sklave mehr, indem er mit einer würdevollen Dame (also einer Matrone) verheiratet war.<sup>42</sup> Wenn er nämlich weiterhin ein Sklave gewesen wäre, hätte er Aelia Valeriana, die ihrem Namen nach eine freie (freigeborene oder freigelassene?) Frau war, nicht *matrona* und *coniuga*, ehrenhafte Dame und Ehefrau (in einem *matrimonium iustum*) nennen können.<sup>43</sup> Bezüglich des Status der Protagonisten dieser Inschrift kann man jedoch einwenden, dass sie nicht mit den römischen *tria nomina* angeführt wurden.<sup>44</sup> Diese Problematik soll hier jedoch ausgeklammert bleiben.

Für das vorliegende Thema ist von Interesse, dass hier Primitivus als *actor* der Achtheilsabgabe (*actor octavarum*) fungiert. Hier stellt sich die Frage, was die Rolle eines *actor* gewesen sein dürfte. In diesem Zusammenhang lässt sich eine Parallele zum § 23 (Zeile 56-57) der *lex portorii Asiae*<sup>45</sup> ziehen, deren Text wie folgt lautet (lex port. As., § 23):

ἐν οἷς ἂν τόποις κατὰ τοῦτον τὸν νόμον τελώνιον δημοσιῶνου ὑπάρχη, ἐν τοῖς τόποις τούτοις τέλος ἢ μισθὸν [δημοσιῶν ἢ ἐπί]τροπος λαμβανέτω

<sup>41</sup> Vgl. SCHLEICHER 2014, 66 f.

<sup>42</sup> SCHLEICHER 2014, 67.

<sup>43</sup> Vgl. SCHUMACHER, LEONHARD: *Slaves in Roman Society*. In: Michael Peachin (ed.): *The Oxford Handbook of Social Relations in the Roman World*, Oxford, 2011, 591. PÓLAY, ELEMÉR: *Die Sklavenehe und das römische Recht*. Acta Jur. et Pol Szeged 17/7 (1967), 13 und *Rabszolgák „házassága“ az ókori Rómában* [„Die Ehe“ der Sklaven im antiken Rom]. Acta Jur. et Pol Szeged 34/4 (1985), 17 deutet aber darauf hin, dass die eheähnliche Lebensgemeinschaft zwischen Freien und Sklaven in der Kaiserzeit nicht selten gewesen sei.

<sup>44</sup> Zu den römischen Namen siehe VISKY, KÁROLY: *A személynevek a római jog világában* [Die Personennamen in der Welt des römischen Rechts]. AntTan 28/2 (1981), 191 ff.

<sup>45</sup> COTTIER, MICHEL et al. (Hg.): *The Customs Law of Asia*. Oxford, 2008, 16. Diese Inschrift wurde im August 1976 in Selçuk (Türkei) entdeckt und sie enthält verwaltungs- und zollrechtliche Regelungen für die Provinz Asia aus dem 1. Jahrhundert n. Chr.

„An welchen Orten es diesem Gesetze gemäß eine Station eines Zöllners gibt, an diesen Orten soll der Zöllner oder sein Vertreter (ἐπίτροπος) Zoll oder Strafe erheben“.<sup>46</sup>

In dem Kommentar zu diesem Gesetz schreiben Engelmann und Knibbe, dass der jeweilige Zollpächter (δημοσιώτης) einer anderen Person (einem „Angestellten“) die Befugnis übertragen könne, die Zollstation in seinem Auftrag zu leiten und alle anfallenden Geschäfte auszuführen.<sup>47</sup> Nach Ansicht der Kommentaraufsteller dürfte das griechische Wort ἐπίτροπος mit dem lateinischen Wort *actor* gleichbedeutend sein; und beide sollen auf Deutsch mit dem Wort „Vertreter“<sup>48</sup> wiedergegeben werden.<sup>49</sup> Aufgrund dieser Erwägung lässt sich vermuten, dass Primitivus der Vertreter (Sklave oder Angestellte) eines Pächters der *octava* (vermutlich des Iulius Proculus) war. Heute würde man von einem „Manager“ reden.<sup>50</sup>

Jetzt kehren wir zum Zollsiegel zurück.<sup>51</sup> Bezüglich seiner Funktion erhebt sich die Frage, wozu dieses Zollsiegel in der alltäglichen Zollpraxis gedient haben dürfte. Diesbezüglich äußerte Peter Kritzinger die überzeugende Vermutung, dass die Transporte vermutlich mit Frachtpapieren ausgestattet gewesen seien. Kritzinger betont in seiner umfassenden Abhandlung: „[i]m Normalfall orientierten sich die Zöllner an den Angaben in den Frachtpapieren und nur im Zweifelsfall mussten Plomben, Stempel, *tituli picti* und ähnliche Signierungen an den Waren selbst den Beweis erbringen, ob die Angaben in den Papieren korrekt waren“.<sup>52</sup> Es liegt nahe, dass die Deklaration (*professio*) der Produkte aufgrund von diesen „Frachtpapieren“ erfolgte. Nach der rechtmäßigen (erfolgreichen) Deklaration hat der Zöllner den Händlern die Zollsumme auferlegt.

Nachdem die Reisenden (die Händler) die Zollgebühr bezahlt hatten, musste – aller Wahrscheinlichkeit nach – die Erfüllung dieser Zahlschuld vom Zöllner offiziell beglaubigt (quittiert) werden. Wahrscheinlich wurden von den Zollbeamten sog. Quittungsurkunden ausgestellt, die in den Provinzen nördlich der Alpen vermutlich überwiegend auf Holztäfelchen (meistens *tabulae ceratae*) festgehalten wurden. Diese haben die Liste der bereits verzollten Waren und die bezahlte Zollgebühr offiziell dokumentiert. Diesbezüglich lässt es sich vermuten, dass diese Dokumente – ähnlich wie z. B. die Militärdiplome und die meisten Geschäftsurkunden – sog. Doppelurkunden waren. Die Doppelurkunden bestehen aus zwei Teilen: Aus einer frei zugänglichen Außen-

<sup>46</sup> ENGELMANN, HELMUT – KNIBBE, DIETER: *Das Zollgesetz der Provincia Asia. Eine neue Inschrift aus Ephesos*. Epigraphica Anatolica 14 (1989), 85.

<sup>47</sup> ENGELMANN – KNIBBE 1989, 85.

<sup>48</sup> Vgl. HEUMANN, HERMANN GOTTLIEB – SECKEL, EMIL: *Handlexikon zu den Quellen des römischen Rechts*. Jena, 1907, 10: s. v. *actor* (u. a.): „Geschäftsführer, Verwalter, Stellvertreter“.

<sup>49</sup> COTTIER 2008, 121: „the ἐπίτροπος of 57 is his [*scil. publicanus* – Anmerkung von N. P.] *procurator*“.

<sup>50</sup> Vgl. SCHLEICHER 2014, 67 Fn. 45: „[d]er Beruf des *actors* ist aber sehr selten bezeugt und muss m. E. eher über dem des *vilicus* anzusetzen sein“.

<sup>51</sup> Zur antiken Praxis der Siegelung und Stempelung von Urkunden es siehe ausführlich WENGER, LEOPOLD: *Die Quellen des römischen Rechts*. Wien, 1953, 135 ff.

<sup>52</sup> KRITZINGER, PETER: *Was Bleisiegel über das römische Zollwesen aussagen*. In: Peter Kritzinger – Frank Schleicher – Timo Stickler (Hg.), *Studien zum römischen Zollwesen*, Duisburg, 2014, 220.

schrift (*scriptura exterior*) und einer verschlossenen Innenschrift (*scriptura interior*).<sup>53</sup> Die verschlossene Innenschrift enthält den offiziellen Urkundentext und dieser Text wird in der Außenschrift wiederholt. Aufgrund der notariellen Praxis der privaten Urkunden kann man zu Recht vermuten, dass die Tafeln der Innenschrift (*scriptura interior*) von den Angestellten des Zollpächters mit Zollstempel gesiegelt wurden,<sup>54</sup> um die Integrität der Beschriftung zu sichern und den Urkundentext vor etwaige Fälschungen zu schützen.<sup>55</sup>

### 3. Kurze Exegese von C. 4,65,7

Zum Schluss möchte ich auf die kurze Exegese einer kaiserlichen Konstitution, eines Reskripts, eingehen, das ungefähr aus der Zeit spanne stammt, in der das oben erörterte Zollsiegel entstanden ist. Der Text des dargestellten Reskripts lautet wie folgt (C. 4,65,7):

*Si, cum Hermes vectigal octavarum in quinquennium conduceret, fidem tuam obligasti posteaque spatio eius temporis expleto, cum idem Hermes in conductionem ut idoneus detinerentur, non consensisti, sed cautionem tibi reddi postulasti, non oportere te posterioris temporis periculo adstringi competens iudex non ignorabit.*

„Wenn du, als Hermes das vectigal octavarum (den Zoll des achten Teils) auf fünf Jahre pachtete, dich verbürgt hast, alsdann aber, nach Ablauf dieser Zeit, nicht eingewilligt hast, da eben derselbe Hermes, als ein tauglicher Mann als Pächter beibehalten wurde, vielmehr deine Kautions zurückgefordert hast, so wird ein kompetenter Richter nicht ignorieren, dass du der nachherigen Zeit für die Gefahr nicht haftest“. (Übersetzung nach F. Schleicher.)

Die erörterte Quelle ist ein Reskript vom Kaiser Alexander Severus (222-235), das im Jahr 227 an einem gewissen Terentianus gerichtet wurde. Die Reskripte (*rescripta*) waren bedingte Rechtsgutachten, die vom Kaiser – eigentlich: von Juristen der kaiserlichen Kanzlei im Namen des Kaisers – für Einzelfälle erlassen wurden. Der Sachverhalt kann gemäß der im oben angeführten Praxis der Zollpacht rekonstruiert werden. Der Staat hat die Erhebung des sog. *vectigal octavarum* eines Zollbezirkes (oder einer Zollstation) wahrscheinlich durch Versteigerung<sup>56</sup> an einem gewissen Hermes auf fünf Jahre (*lustrum*) vergeben. In solchen Verträgen war immer ein pauschal festgelegter Pachtzins vorgeschrieben, es lässt sich auch für die *locatio conductio* des Hermes vermuten. In dieser rechtlichen Konstruktion trug der Pächter (*conductor*) das Risiko (*periculum*) der Zollerhebung bis auf den versprochenen Betrag. Der Staat hat immer Sicherheiten (z. B.

<sup>53</sup> Vgl. WOLF, JOSEPH, GEORG – CROOK, JOHN, ANTHONY: *Rechtssurkunden in Vulgärlatein aus den Jahren 37-39 n. Chr.* Heidelberg, 1989, 11.

<sup>54</sup> Dagegen HAVAS 2013, 90.

<sup>55</sup> Vgl. WENGER 1953, 142.

<sup>56</sup> Vgl. MALMENDIER 2002, 91 ff.

*praedia et praedes*)<sup>57</sup> verlangt: „Tu“ verbürgte sich für den Hermes. In der Regel musste der Pächter den Pachtzins dem Staat in jährlichen Raten auslegen.

Aus dem Quellentext geht es auch hervor, dass der Bürge eine sog. *cautio* leisten musste. Meiner Meinung nach versteht man unter dem Wort *cautio* in diesem Kontext eine schriftlich festgelegte Bürgschaftsstipulation („Bürgschaftsschein“),<sup>58</sup> die vom Bürgen vermutlich für den Vertreter des Staates (z. B. für einen *procurator*) ausgestellt wurde. Es scheint, dass nach Ablauf der vereinbarten Pachtfrist der Staat mit dem Pächter „zufrieden“ war, deshalb beibehielt ihn als Pächter weiterhin. Das heißt, dass der Staat das Pachtverhältnis „verlängerte“. Es geht aus dem Text nicht eindeutig hervor, ob Hermes aufgrund einer neuen Ausschreibung beibehalten wurde. Dagegen spricht, dass überhaupt die Problematik einer „automatischen Übertragung“ der Bürgschaft auftauchen konnte.

„Tu“ möchte aber für Hermes nicht mehr als Bürge haften und er (das heißt: „Tu“) informierte den Staat rechtzeitig über seine Entscheidung dadurch, dass er seine *cautio* (seinen „Bürgschaftsschein“) zurückforderte (*cautionem tibi reddi postulasti*).<sup>59</sup>

Nach „Verlängerung“ des Pachtvertrages geriet der Pächter in Zahlungsverzug, deshalb wollten die Behörden „Tu“ als Bürge haften lassen. „Tu“ berief sich bestimmt im Prozess darauf, dass er sich nur auf ein *lustrum* verbürgt habe, aber die Klageerhebung erst nach dem Ablauf dieser Zeit erfolgte, und er (als Beklagte) bat den Richter (*iudex*) die Klage abzuweisen.

Auf diese Rechtsfrage wurde vom Kaiser die folgende Antwort erteilt: *non oportere te posterioris temporis periculo adstringi competens iudex non ignorabit*. Zusammenfassend: Der Richter kann den Bürgen wegen der Forderungen, die nach dem Ablauf der fünf Jahre entstanden sind, nicht haftbar machen. Meiner Meinung nach liegt die rechtliche Erklärung auf der Hand. Die „Verlängerung“ des zu sichernden Vertrages wirkt nicht auf den Sicherungsvertrag aus. Es handelt sich hier nämlich um zwei Verträge. Der erste Pachtvertrag ist mit Ablauf der Frist erloschen, und wegen der Akzessorietät der Bürgschaft erlischt auch die Obligation des Bürgen. Die Möglichkeit der stillschweigenden Verlängerung kommt für die Bürgschaft nicht in Betracht. Deshalb hat sich „Tu“ dagegen gewehrt, dass er weiterhin für den Pächter haften sollte. Das Bürgschaftsverhältnis zwischen den Parteien lässt sich nicht ohne die ausdrückliche Willensäußerung (neue *cautio*) des Bürgen „verlängern“.

Diesem Quellentext gemäß lässt sich vermuten, dass es eine bestehende Praxis war, das *vectigal octavarum* auf fünf Jahre (*lustrum*) zu verpachten. Anhand der Inschrift des Zollsiegels (AE 1968, 423) pachtete Gaius Titus Antonius Pecularis das *vectigal octavarum* schon zwölf Jahre lang, das heißt der Staat hat mit ihm zweimal das Pachtverhältnis verlängert. Aus dieser Tatsache lässt sich darauf schließen, dass Gaius Titus Antonius Pecularis in Pannonien ein zuverlässiger Vertragspartner des Staates war.

<sup>57</sup> Siehe z. B. *lex parieti faciendo Puteolana* (FIRA III Nr. 153): *qui redemerit praedes dato praediaque subsignato duumvirum arbitrato*.

<sup>58</sup> Vgl. HEUMANN – SECKEL 1907, 61 s. v. *cautio*; OLD: s. v. *cautio*: „written undertaking (...), a document containing a *cautio*“.

<sup>59</sup> HEUMANN – SECKEL 1907, 442 s. v. *postulare*



POZSONYI NORBERT

## A RÓMAI VÁMÜGYEK NYOMAI PANNONIÁBAN.

*Egy vámbélyegző felirata Savariából (AE 1968, 423)*

(Összefoglalás)

Magyarország dunántúli régiója közel négy évszázadon keresztül a Római Birodalom (*Imperium Romanum*) területéhez tartozott. Ebből az okból kifolyólag a magyar jogi romanisták számára különösen érdekesek azok az egykori Pannonia provincia területén talált feliratos emlékek, amelyek római jogi relevanciával is bírnak (utalok e körben Diódsi György: *A jogtanítás nyomai Pannoniában*. AntTan 8 (1961), 99skk. és Visky Károly: *A római magánjog nyomai a magyar földön talált római kori feliratos emlékeken*. in: Csizmadia Andor (szerk.): *Jogtörténeti Tanulmányok V*, Budapest, 1983, 353skk. című tanulmányokra). Megjegyzendő, hogy a magyar területeken felszínre került epigráfiai leletek által nem ismerhetünk meg újabb jogintézményeket, azonban e források tanulmányozása során mégis – mint egyfajta „történeti időablakon” keresztül – bepillantunk az antik hétköznapiakba, és ezáltal – talán – egy apró lépéssel közelebb kerülhetünk e korszak mélyebb megértéséhez.

Pannonia provincia lépésről-lépésre épült ki a történelem folyamán. Augustus császár írja politikai végrendeletében (*Res gestae divi Augusti*), hogy (Mon. Ancyr. 30) „Illyricum határait előre vittem egészen a Danuvius folyó partjáig” (Borzák István fordítása). Az egységes Illyricumot később – feltehetően Tiberius császár uralkodásának kezdeti időszakában – két részre osztották: Illyricum superiusra és Illyricum inferiusra. Ezeket az igazgatási egységeket nevezték át később Dalmatiára és Pannoniára. Később pedig Traianus császár az egységes Pannonia provinciát ismét két igazgatási egységre bontotta: Pannonia superiorra (Felső-Pannoniára) és Pannonia inferiorra (Alsó-Pannoniára).

A Pannonia superior területén az észak-itáliai Aquileiából kiindulva Savaria – Scarbantia – Carnuntum útirányon keresztül vezetett északra a „borostyánút” elnevezést viselő kereskedelmi útvonal. A kereskedelmi útvonalakat vámállomások (*stationes*) szegélyezték. Fontos megemlíteni, hogy a vámterületek nem feltétlenül estek egybe a provincia területével. A pannóniai provinciák az ún. Illyricum vámterületbe tartoztak, amely egyesítette magában valamennyi Duna menti provinciát.

A vámterületeket („Zollgebiete”) igazgatási okokból vámkerületekre („Zollbezirke”) osztották fel. A vámmellenőrzésre – mint fentebb arra utaltam – a vámállomásokon (*stationes*) került sor. Kezdetben a vámbeszédést tőkeerős társaságok (*societates publicanorum*) végezték, amelyek szinte mentesek voltak az állami kontrolltól, később – hozzávetőlegesen a II. század derekától – az adóbeszedést inkább egyszemélyi bérlőknek (vállalkozóknak, *conductores*) adták ki, akik már fokozott állami ellenőrzés alatt álltak.

Szombathelyen 1960. július 2-án – a Járdányi Paulovics István Romkert területén – a régészeti feltárások során egy ilyen állami „adóbérlői” tevékenységhez kötődő feliratos emlék került a felszínre. Ez a lelet egy – feltehetőleg még Septimius Severus uralko-

dása előtti időszakból származó – vámbélyegző volt, amely az alábbi feliratot viselte (AE 1968, 423): *C(aius) Tit(us) | Ant(oni)us Peculiaris co|nd(uctor) vect(igalis) oc|t(avae) Pann(oni)arum II (duarum) | ann(o) XII* [fordítás: Caius Titus Antonius Pecularis, a két Pannonia nyolcadvámjának bérlője, (a bérlet) 12. évében].

Ezt a vámbélyegzőt tehát egy Caius Titus Antonius Pecularis nevű vállalkozó („vámbérlő”, *conductor vectigalis octavae*) alkalmazottai használhatták a Kr. u. II. század második felében egy Savariában működő vámállomáson (*statio*). A *vectigalis octavae* az ún. „nyolcados áruvámot” jelölte, amely azt jelentette, hogy az átutazó kereskedőknek a szállított áru értékének nyolcadrészét (12,5 %-át) vámként meg kellett fizetnie a római állam részére. Mint arra fentebb utaltam, az adó- és vámszedést a rómaiak nem szakosított igazgatási szerveiken keresztül végezték, hanem ezt a tevékenységi kört – nyilvános állami árverés útján – kiadták (*locatio conductio operis*) magánszemély vállalkozóknak (*conductores*), akik ellenszolgáltatásként vagy egy fix árat ígértek vagy pedig a bevétel meghatározott százalékát fizették az államnak. Mindenesetre ez a tevékenység jövedelmezhető lehetett a vállalkozó számára, tekintettel arra, hogy a vámbélyegzőn szereplő *conductor* a Pecularis, azaz a „vagyonos” *cognomen* viselte.

A bélyegzőből azt is megtudjuk, hogy a vállalkozó az illyricumi vámterületen belül mindkét pannoniai vámkörzet – azaz: Pannonia inferior és Pannonia superior – nyolcados vámjának a bérlője volt, amely tevékenységet már 12. éve folytatott (*anno XII*).

Ha fellapozzuk a jusztiinianuszi Codexet, akkor találunk egy későbbi – de a vizsgált vámbélyegzővel hozzátétőlegesen azonos korszakból származó – császári leiratot (*rescriptum*), amelyet Alexander Severus a Kr. u. 227. évben adott ki (C. 4,65,7). Ebből a forrásból következtetést tudunk levonni a nyolcados vám bérbeadásának állami gyakorlatára, amely szerint ezen állami bevételek beszedését általában öt évre (*lustrum*) adták ki, és az állam azokkal a vállalkozókkal, akikkel elégedett volt – feltehetően „pályázat” kiírása nélkül – szerződést hosszabbíthatott. Erre tekintettel feltételezhetjük azt, hogy Pecularis egy *conductor idoneus*, azaz „alkalmas vállalkozó” lehetett [v.ö. C. 4,65,7: *si, cum Hermes vectigalis octavarum in quinquennium conduceret, (...) posteaque spatio eius temporis expleto, cum idem Hermes in conductionem ut idoneus detinerentur*], mivel e modell alapján már két alkalommal meghosszabbításra került az állami szerződése (figyelemmel arra, hogy a pecsét tanúsága alapján 12. éve folytatta ezt a vállalkozási tevékenységet).

Felmerül még a pecsét funkciójának a kérdésköre. E vonatkozásban csak hipotéziseket állíthatunk fel. Álláspontom szerint életszerű kiindulási helyzet az, hogy a vámeljárás végén, miután az „ügyfél” (kereskedő) lefizette a kirótt vámot, arról az eljáró „vámalkalmazott” nyugtát állított ki. Azt valószínűsítem, hogy ez a nyugta – a katonai diplomákhoz vagy a legtöbb ügyleti okiratokhoz hasonlóan – ún. „kettős okirat” („Doppelurkunde”) lehetett. A kettős okiratoknak az volt a lényege, hogy ezek a dokumentumok két részből álltak: egy szabadon hozzáférhető külső iratból (*scriptura exterior*) és egy lezárt belső iratból (*scriptura interior*). E dokumentum tartalmazhatta a vámkezelt áruk tételes felsorolását, esetlegesen a becsült értékét, illetőleg a lerótt vám összegét. Az elméletem szerint a belső iraton (*scriptura interior*) helyezhették el lezáráskor ezt a viszonylag nagy alakú pecsétet (amelynek átmérője: 8,6 cm), abból a célból, hogy – a hitelesség okán – az írás integritását biztosítsák, és annak tartalmát megóvják az esetleges hamisítástól.

**BÉLA RÉVÉSZ\***

## **Political Persuasion in the First Period of “Cold War”**

1. The era of a spectacular technological breakthrough in mass communications after the Second World War coincided with the period when the demand for Cold War ideologies and the war of doctrines was born. On both sides, direct political expectations were served by the media, voluntarily or otherwise. The opposing ideologies tried to win popular support for the unquestionable superiority of their own system of values both at home and abroad, in the broadest circle and with the greatest possible effectiveness.<sup>1</sup> Throughout the Cold War, the task of winning “hearts and minds” around the world was of great importance to Soviet and American leaders. Both sides fought a cultural Cold War via radio waves, (later) television transmissions, propaganda, and other forms of psychological pressure.

Of the various branches of the media, it was the currency of radio broadcasting that rocketed sky-high in particular; in theory, broadcasting stations could reach an unlimited number of listeners in the target countries, quickly and risk-free, and also, last but not least, in a relatively cost-effective way. With a slight exaggeration, we could even claim that this was the reason why the 1950s were seen as the golden era of radio broadcasting.<sup>2</sup> The number of programs broadcast over the borders multiplied. Each country was at the same time a target country for other states’ radio stations and an active participant in this strange propaganda war through its own broadcasting activities.

At the end of the 1940s, Hungary, bent on building the dictatorship of the proletariat at home, was actively engaged in this media war – in both capacities. The authorities tried to inform their potential audience, in Hungarian as well as in other languages and in countries near and far (from the Far East to South America), of the glorious achievements of both the people’s democracies and the “camp of peace-loving nations”. The foreign radio stations broadcasting in Hungarian were equally busy disseminating the news of the free world in Hungary. A memorandum prepared for the Politburo of the HWPP in late 1954 summed up

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<sup>1</sup> NELSON, MICHAEL: *War of the Black Heavens: The Battles of Western Broadcasting in the Cold War*. Syracuse University, 1997.

<sup>2</sup> The phrase see BARNOUW, ERIK. *A History of Broadcasting in the United States*. New York: Oxford University Press, 1966. pp. 167–170.

the situation as follows: “At the moment, we receive propaganda broadcasts from Radio Free Europe, Voice of America, London, Paris, the Vatican, Rome, Ankara, Madrid and Tel-Aviv. Broadcasting on 110 to 120 different frequencies, the enemy wages a propaganda war against us in a total of 150 to 160 hours a day.”<sup>3</sup>

Radio Free Europe, which had been on the air since the autumn of 1951, caused serious headache to the one-party state, and not just for the almost round-o-clock broadcasting on a large number of frequencies. The prime reason why this particular radio station was thought to be especially dangerous was that – save its direct propaganda – Radio Free Europe was able to present real news in the language of ordinary people. In an age when internal news broadcasting and public access to information were limited by the authorities, every alternative source of news – merely by the virtue of its existence – questioned the unconditional acceptance of absolute and total power. It was even more dangerous, when the listeners’ everyday experiences directly reconfirmed the authenticity of the alternative news of the “free world”.

Throughout the four decades that the Hungarian department of Radio Free Europe was broadcasting its programs, it attracted the closest attention of the political leadership of Hungary. In their efforts to discover what information had been leaked out about the internal affairs of Hungary’s top leaders, the authorities relied on the media screening services of the Hungarian Broadcasting Bureau first and the Hungarian News Agency later. Furthermore, they also wanted to know about the events, information and facts that the public was able to learn, despite all the efforts by the state to retain information and spread disinformation.

During the fifty years of one-party-rule in Hungary, the authorities developed and employed various strategies to counter the effects of hostile radio broadcasting. These attempts included jamming the radio signals, putting spies on show trials and effecting the wholesale Marxist indoctrination of the public.

*a)* In the 1950s, the authorities’ aim was to completely block out radio broadcasts from the West with the means of technology. By the end of 1948, they had stopped the production, import and sale of radio sets capable of receiving hostile radio broadcasts, as they only allowed the production of the so-called “people’s radio” suitable for the reception of the existing Hungarian radio programs<sup>4</sup>. In the early 1950s, the government embarked on a program to build up a cable network. By the mid-1950s, there had been roughly half-a-million households in Hungary, where the only program people could listen to was transmitted through the central receiver set up at either the local Communist party headquarters or the local government office.<sup>5</sup>

Despite all these efforts, roughly one-third of the approximately one and a half million privately owned radio sets in Hungary were suitable for the reception of western radio broadcasts – mostly transmitted on short waves. In order to put an end to this, and to cover the entire range of hostile radio broadcasts, the people’s democracies joined forces to set up a powerful jamming station in Eastern Europe.<sup>6</sup>

<sup>3</sup> National Archives of Hungary (hereafter NAH) M-KS-276. f. 54/350. ő. e.

<sup>4</sup> NAH M-KS-276. f. 55/18. ő. e.

<sup>5</sup> NAH M-KS-276. f. 54/119. ő. e.

<sup>6</sup> NAH M-KS-276. f. 89/256. ő. e.

b) From the mid-1960s, the party leadership stopped the jamming of radio broadcasts in Hungarian. Instead, they decided to launch a full-scale ideological offensive to combat the "enemy's subversive actions" with the help of political agitation and propaganda. A contemporary document issued by the Communist party distinguishes between four different forms of hostile propaganda by RFE:

- destructive propaganda: designed to raise doubts as well as hostile, nationalist and anti-Soviet feelings;
- thunderous propaganda: instead of dealing with fundamental issues, our politics and aims are attacked indirectly, in a blatant, repetitious and loud manner;
- whispering propaganda: in order to generate an atmosphere of distrust, fabricated stories are spread as inside news before important events, often about the imminent replacement or appointment of public figures;
- objective information: although this form of propaganda may contain bits and pieces of factually correct information, it is accompanied by hostile commentary; its aim is deliberate disinformation.

Against such a coordinated strategy directed from the top and mobilizing substantial intellectual and material resources "we must act in every area with a well-planned, coordinated and scientifically well-founded program,"<sup>7</sup> the contemporary party document concludes.

c) On the third level of countering the effects of these radio broadcasts, the authorities resorted to the methods of criminal prosecution. The administrative measures and the weapon of criminal prosecution came to be used in the fight against the western radio broadcasting station at a time, when these radio stations were classified "en masse" as cover agencies for the intelligence services of western imperialist states. After that, any association with them – including the act of listening to them in a group – was made punishable under criminal law. Albeit with varying severity, the criminalization of the listeners of western radio stations continued all through the four decades.<sup>8</sup>

The situation is faithfully illustrated by a document produced by the Ministry of Interior in the mid-1950s: "To measure directly the effectiveness of the RFE broadcasts, or to put a figure on the number of their listeners, would be difficult. Indirect estimates could be inferred from the fact that there are very few people in Hungary who have never heard of RFE; also, in almost every case of unlawful association, incitation, illegal border-crossing and spy investigations, references to the RFE broadcasts come up. It can also be concluded from the investigation of unlawful association cases that the reactionary or the wavering social groups regularly listen to the broadcasts, quite often in group. On the basis of all this, we must conclude that the RFE is a powerful weapon in the hands of the imperialists and, therefore, we must increase our activities against it in the area of both state security and propaganda."<sup>9</sup>

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<sup>7</sup> NAH M-KS-288. f. 5/401. ó. e.

<sup>8</sup> RÉVÉSZ, BÉLA: *Criminalization of Proletarian Dictatorship's Ideological Function*. Acta Jur. et Pol. Szeged, 1997.

<sup>9</sup> Ministry of Interior Central Archives (hereafter MI CA) 36-213/1954.

Further research work in the fields of political sciences, media history and sociology is needed to uncover hidden facts and information germane to any studies about the activities and programs of Radio Free Europe and the relevant opinions and attitudes of the audience. Possible sources for such studies would include reports, accounts and interrogation transcripts produced by the Ministry of Interior in the course of investigating people charged with listening to the enemy's propaganda broadcasts and passing on the news. Despite their apparent biases, the documents produced by various top-level party organizations, as well as the regularly compiled reports on public morale for the party leadership, would be of paramount importance.

Any study attempting to clarify the above mentioned problems would initially necessitate research fieldwork of the sources; held in various archives, these sources usually have not yet been researched; also, they are incomplete and only occasionally appear in registries. Through a number of documents selected from the few sources already researched, we wish to illustrate the more important tendencies of this research, indicating that the first steps towards a comprehensive and systematic research have been made.<sup>10</sup>

2. The most important institute for studying the history of RFE in Hungary is at the Blinken Open Society Archives.<sup>11</sup> The prehistory of Blinken OSA started in 1949 with the post-war division of Europe. The local communist parties seized power in all of the countries in Central and Eastern Europe which were controlled and/or occupied by Soviet troops in 1944–45. Central and Eastern European emigrants – former politicians and influential public figures, once members of the domestic political, social, and cultural elite who had to leave their own countries due to these post-war political developments – decided to form a common organization, the Free Europe Committee (originally founded as the National Committee for a Free Europe). The initiative was approved and subtly encouraged by the US government. Thus, at the beginning the Free Europe Committee presented itself as a private organization. The activists tried to raise funds among people within the American upper and middle classes, and also among well-to-do emigrants who believed that the struggle against communism was of crucial importance. The declared aim of the Committee was to promote the “containment” doctrine of US foreign policy as well as to advance the liberation of the people under Soviet rule in Central and Eastern Europe by peaceful means.<sup>12</sup> The Committee had a double task: it aimed to keep alive the public interest in the

<sup>10</sup> An important step towards a complex and systematic research was a conference on cold war broadcasting impact organized by Hoover Institution and Cold War International History Project, Woodrow Wilson Center, with support from the Center for East European and Eurasian Studies, Stanford University in Stanford, California, October, 2004. in the following issues:

- Goals and Content of Western Broadcasts – VOA, BBC, RIAS.
- Impact of the Broadcasts: Estimating Audiences
- Impact of the Broadcasts in Eastern Europe: Evidence from the Archives
- Impact of the Broadcasts: Regime Countermeasures

<sup>11</sup> LESZEK PUDŁOWSKI – IVÁN SZÉKELY: *Open Society Archives*. Open Society Archives at Central European University, Budapest, 1999.

<sup>12</sup> See HOLT, ROBERT, T.: *The Origins of Radio Free Europe*. In: Holt, Robert, T.: *Radio Free Europe*. University of Minnesota Press, Minneapolis, 1958. 9–16. pp.

West towards the problems of their homelands, and at the same time they strived to maintain and reinforce the spirit of hope and resistance within the oppressed countries. Therefore, the Committee specialized in organizing research projects and conferences, accumulating information from behind the iron curtain from all available resources, and editing and publishing books, essay collections and information bulletins for the academic audience and for the broader public. The Committee set up an information center in New York which consisted of a small library and an archives that was continuously updated and enlarged.<sup>13</sup> The archival center aimed to serve both the emigrant organizations and Western scholars, experts and decision-makers. However, the mere collection of information did not seem efficient, and was unsatisfactory for the founders. It became clear very early that the Committee had to find and take advantage of other means that might produce the desired effects upon the communist world. The real task was to break the information monopoly of the communist propaganda machinery within the Eastern bloc. Under the aegis of the Free Europe Committee several actions and projects were started that tried to spread information and propaganda among the people who lived "beyond" and were completely cut off from sources of real news and information – even about themselves and about their own lives. Two ways seemed feasible. The traditional type, widely used during the Second World War, involved dropping leaflets and other propaganda materials from jets or balloons.

The experts and staff – editors, speakers, political analysts, archivists and librarians – were primarily recruited from among natives, many of whom were newcomers to the West. Former politicians, famous journalists and scholars who had left, or rather were forced to leave their own countries gravitated toward the Radios. The newly established national editorial desks of the Radios enjoyed a wide range of sovereignty in determining the structure and the content of their programs<sup>14</sup>. Yet, the ultimate professional and political control still remained in the hands of the American supervisors, who were politically responsible and accountable for what was put on the air. The Directory Board regularly issued strategic and tactical guidelines that basically followed the actual directives of the US State Department.

Radio Free Europe targeted the Soviet satellite states in Central and Eastern Europe – Bulgaria, Czechoslovakia, Hungary, Poland, Romania, and (shortly) Albania – while Radio Liberty broadcast toward the Soviet Union. RL had services in most of the languages of the Soviet republics – in Baltic, Moldavian, Belarusian, Ukrainian and also in Caucasian languages and Turkic languages of Central Asia. In addition, they had services in Tartarian and Bashkirian as well.

The embryonic forms of the various national research sections that were merged into the RFE/RL Research Institute in 1990 were established parallel with the Radios' editorial desks in the early 50s. In 1959, the "research" function of the RFE news department was separated and the management established independent units reporting to each of the broadcast desks. As for Radio Liberation, the research section, which became the Soviet

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<sup>13</sup> *National Committee for the Free Europe*. June 1, 1949. Woodrow Wilson Center. 1998. 23. p.

<sup>14</sup> Organization, personnel, and setting. *Ibid.* pp. 30–56.

“Red” Archives, started working in 1953 and later remained administratively under the jurisdiction of the Radio Liberty.<sup>15</sup>

The idea was that the research sections would serve the programming and editorial work of the national desks. Thus, some of the research units, for instance the Hungarian Unit, started functioning even a few months before the first programs were put on the air. The research activities were divided into national sections, which roughly meant that each national editorial desk was supported by native analysts and archivists who collected, arranged, interpreted and transmitted the necessary up-to-date information for the editors. However, these units were not intended to operate indefinitely. Like the Radios themselves, they were supposed to be temporary establishments, which would operate until the collapse of communism within the Soviet satellite states. The prevalent opinion was that the collapse would come soon. This was why the founders of the research sections had not considered the establishment of a uniformly regulated archival machinery. At the beginning, the research staff worked on a day-by-day basis. Even rules for mandatory preservation had not been laid out. Without having a unified system and processing rules the national sections existed and functioned separately, but still parallel to each other. The lack of unified organization meant that the processing and organizational principles, the archival methodology, the code systems, the finding aids and the accessories of the national departments were almost accidental and differentiated slightly from each other, although some general features and characteristics could be detected.<sup>16</sup>

In most cases the research units were separated into two independent parts: the research and analysis sections and the evaluation sections. The first worked directly for the Programming Section and for the national desks, and elaborated actual press analyses of domestic and Western publications on the political, economic and cultural issues of the target country. From 1952 (in some cases from 1956), the Evaluation and Research sections started to regularly publish Background Reports, which consisted of longer essays about actual events and about the political and social situations in several countries. Soon each country had its own Background Report bulletin written in English, making the information available for everybody at the Radios.

In the beginning, the Background Reports were written on an ad hoc, irregular basis and concerned not only the five countries to which RFE broadcast but also Albania, the GDR, Yugoslavia, the non-ruling communist parties of the West, and East-West political relations. Later, the periodicals were prepared with an increasing frequency, until they became monthly, then bi-weekly periodicals, Situation Reports that were written separately for each of the eight countries.

During the early period, the work of the Evaluation Sections seemed to be more important than research on printed and electronic sources. Their task was to analyze and evaluate reports and interviews sent to Munich by the local Field Offices. The series of these reports became known as Items. The Items were recorded in Western refugee camps and immigration offices by the agents of the field offices located in several European capitals and major cities. On the letterhead of the Items Roman numbers identified the office from

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<sup>15</sup> MICHIE, ALLAN A.: *Voices through the Iron Curtain: the Radio Free Europe Story*. New York, N. Y.: Dodd, Mead & Co., 1963. 304. p.

<sup>16</sup> Policy formulation and programing. Holt, op. cit. pp. 57–62.



which the report was sent to the center in Munich: I. was Munich, II. was Stockholm, III. was West Berlin, IV. was Paris, V. was Athens, VI. was Rome, VII. was Linz, VIII. was Salzburg, IX. was Vienna, X. or XI. was Istanbul and XII. was London. The best and most reliable reports not surprisingly arrived from the field offices located in Linz, Salzburg and Munich, where the biggest refugee camps functioned and the most effective information control could be exercised. Unlike pre-elaborated questionnaires, the Items contained complete stories as told by the "source". The structure of each information Item was as follows: source, date, evaluation summary, evaluation comment and text.<sup>17</sup>

The idea was quite interesting: the field offices surrounded the communist bloc like "military bases" and conducted information warfare. On the other hand, it was even more characteristic that the Radios tried to base the information acquisition on "independent" sources. But the within communist countries which all operated a centralized propaganda machine, only the information received from average people, i.e. the refugees, seemed to be independent and reliable. That practice could also be interpreted as a demonstrative gesture of the democratic commitment of the Radios: while the communist regimes used politics and propaganda against their own people, RFE/RL based its work upon and in favor of the very same people.

These stories were not taken completely at face value. The primary task of the evaluation sections was to control them: the experts tried to compare details of these stories to the information received from other sources (domestic radio, official press or other Items). They also tried to filter out the elements of exaggeration, personal revenge etc. At the national research units, the reports were carefully checked for accuracy and plausibility. Only those reports which passed the various filtering systems were recommended as subjects to be used in producing radio programs. Collection of the Items went on until 1972, when the scandal over RFE/RL broke out in the US Congress<sup>18</sup>. Then the Radio leadership, urged by the higher authorities in the US, decided to destroy them.

In the early period the Items were among the most important sources of information. The other main source was the Monitoring Department, also established at the beginning. Every day the Radios' staff monitored and recorded the programs of the official state radios of the target countries. The recorded broadcasts were transcribed, and the editors found a copied selection on their desks each morning.

It was quite natural that the Radios acquired information from other radios, and the daily reports compiled from the Radios' monitoring served as a source of information, though not exclusively or primarily, since those were produced from totalitarian propaganda. They rather served as references: they contained the "facts" that RFE and RL had to know in order to battle communism effectively. The monitoring provided a clear picture of the elements and phenomena that the official propaganda in the Eastern bloc wanted to emphasize on the one hand, and what it wanted to hide on the other. RFE/RL particularly concentrated upon just these elements. In this little game of propaganda and

<sup>17</sup> See SEBODE, GERHARD: *Hungarian Refugees in Germany*. IM CA 1-a-950/1964.

<sup>18</sup> The right to know: report of the Presidential Study Commission on International Radio Broadcasting. Washington, D. C.: U. S. Government Printing Office, 1973. p. 91. Quoted by BORBÁNDI, GYULA: *Magyarok az Angolkertben: a Szabad Európa Rádió története*. Európa, Budapest, 1996. p. 365.

counter-propaganda, RFE/RL and the communist radio stations always responded, reflected, and even indirectly edited each other's programs.<sup>19</sup>

During this period the traditional archival work of collecting and arranging information from the printed and electronic media perhaps was not a focus of the Research and Evaluation Sections of the Radios (although the situation was probably different in the various national sections). However, these kinds of archival activities had started from the beginning, and became increasingly systematic and important. The processing of written sources, Western and Eastern newspapers, and news agency reports was initially based on a Card File system covering various subjects, including institutions and persons. The basic references were recorded cards that indicated the original sources, which could be traced back with the help of the cards.

In the 50s the collection of news clippings was rather accidental.<sup>20</sup> The archivists and researchers mostly relied upon the cards, together with the material in the newspaper and periodical collection cited by the cards. But soon a more sophisticated subject clipping system was requested, and this enabled the archives to fulfill demands of the national desks much more rapidly.<sup>21</sup>

After the first few years the management of the archives became more and more professional. The experiences of the Hungarian and Polish uprisings in 1956 brought about the major changes in this respect. These historic events made clear both the importance and the responsibility of the Radios in the region, and also proved that this venture would not be merely a temporary one. It became clear that communism would stay in these countries, and the division of Europe was a long-term historical phenomenon.<sup>22</sup> This new recognition invoked the reorganization of the Radios and the research units as well.

From 1958 on, the structures of the latter were reorganized step by step, as the traditional archival work became more and more important in information acquisition. This shift of emphasis from accidental sources to regular ones required a much more organized system for processing information. The various national sections elaborated their own filing system (the Subject Code system), according to which they clipped, arranged and processed the documents and data coming from printed and electronic media. Additionally, at this time the operational structure of research and evaluation was unified, and the systematic collection and processing of the Subject Files and biographical clippings really started. The general policy was to file the same article under all of the relevant subject titles as well as in the Biographical Files if the article concerned a relevant person. The result was an extremely effective and sophisticated network of information in which data and problems could be identified and approached via divergent routes. This was also the time when the separate national archives gained a predominantly similar structure. The same elements could be

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<sup>19</sup> CRITCHLOW, JAMES: *Radio Hole-in-the-head/Radio Liberty: An Insider's Story of Cold War Broadcasting*. Washington, D.C.: American University Press, 1995. passim.

<sup>20</sup> It was more systematic in the case of the archives of Radio Liberty, the "Red" Archives.

<sup>21</sup> "The Hungarians have worked out a special rotation system of handling important speeches so that programing can have them immediately." Holt, op. cit. p. 99.

<sup>22</sup> "The most serious charge that has been made against RFE is that it has incited listeners to suicidal action." Ibid: p. 206.

found in all of the national subfunds: Subject Files, the series of Background Reports and Situation Reports, Biographical Files, Press Surveys and Monitoring Files.<sup>23</sup>

The research units<sup>24</sup> operated until the mid-90s. During 45 years of continuous activity, they accumulated an archives of millions of documents both in paper and micro-format about the Soviet Union and the former Eastern bloc. The amount of archival materials exceeds 2,500 linear meters, despite the unfortunate fact that the research sections regularly sorted out parts of the collections that were supposed to be irrelevant in the future. After more than four decades the archives became the major source of information about the post-war history of the region. In the meantime, communism collapsed with an unexpected rapidity, and this changed the role of the RFE/RL Archives and redefined its function and mission<sup>25</sup>. From an information database that served the programming needs of an electronic medium with the ultimate purpose of undermining the communist regimes, the materials of the Research Institute became an archives, a historical collection of the bygone communist regimes, a product of and a memorial to communism.

The core collection of the Open Society Archives, the documents and records accumulated by Radio Free Europe/Radio Liberty are the residue of the Cold War, remnants of the longest propaganda war in modern history<sup>26</sup>. The documents in part were produced and collected in order to aid and cover a large covert operation of the agencies that stood behind, and at the same time helped, the work of the Radios.

The holdings of the Open Society Archives are both smaller and more extensive than the Radios’ original archive.<sup>27</sup> Not everything came to Budapest from Munich and New York when, after the end of the Cold War – when the Radios had fulfilled their original mandate and made themselves obsolete – the US Congress decided to downsize the operation and cut the budget. The final destination of the “Corporate Archive” – the administrative documents, the correspondence between the Radios and the different offices of the American government, as well as the directives sent to the Radios – was the Hoover Archive at Stanford. Blinken OSA does not have the still-classified, partly CIA documents, which could testify about “one of the [CIA’s] most successful covert operations” as a well-informed insider addressed the Radios retrospectively. The core of the collection under the ground in Budapest is a typical product of the Cold War period: it does not directly reveal much about the organization that produced the documents, but one can learn much inferentially by studying the materials the Radios and the agencies behind them had collected and stored.

The programs, or “production tapes” the different desks of the Radios had produced did not come to Blinken OSA, but instead remained for the time being at the Radios, which moved to Prague in 1995. A large number of the copies of the Polish and Hungarian radio programs were later donated to Polish and Hungarian national archives<sup>28</sup>, and a plan to copy

<sup>23</sup> MICKELSON, SIG: *America's other voice: the story of Radio Free Europe and Radio Liberty*. New York: Praeger, 1983. passim.

<sup>24</sup> From 1990 the unified Research Institute.

<sup>25</sup> See ARCH, PUDDINGTON: *Broadcasting Freedom: The Cold War Triumph of Radio Free Europe and Radio Liberty*, University of Kentucky, 2000.

<sup>26</sup> See LINDAHL, RUTGER: *Broadcasting across borders: a study on the role of propaganda in external broadcasts*. (Goteborg studies in politics 8.) Goteborg: C W K Gleerup, 1978.

<sup>27</sup> LESZEK PUDŁOWSKI, IVÁN SZÉKELY: *ibid*, passim.

<sup>28</sup> A duplicate set of the texts and recordings of the RFE Hungarian Service from 1952 through October 1993 has been transferred to MI CA in Budapest. See I. Chapter, 2. 3.

the Russian language programs and donate the copies to an institution in Russia has not yet been abandoned. The destination of the transcripts of the so-called “monitoring tapes”, however, was Budapest.

Besides collecting clippings from Central and Eastern European official newspapers, diplomatic post reports, interviews with refugees from the region, descriptions by tourists and sensitive and clandestine information with the help of different intelligence agencies, the Radios closely followed the events in the so-called “target countries” by listening to and recording the official radio broadcasts coming through the air from the communist world. The broadcasts were then transcribed during the night, and by the time the programs resumed in the early morning, the transcripts were already on the tables of the people in charge of the political and ideological direction of the programs.<sup>29</sup> The Radios immediately reacted to the news coming from behind the iron curtain, where, at the same time, agents working for the other side, for the communist jamming/monitoring stations, listened attentively to the broadcasts of the “enemy stations” like Radio Vatican, Voice of America, Deutsche Welle, Radio Free Europe, Radio Liberty and, later, Radio Tel-Aviv, Radio Tirana, Radio Peking and others as well.

Monitoring the “enemy broadcasts” was made difficult by the political need to jam the very same programs at the same time. Jamming took either the form of transmitting a continuous noise on the same frequency as the “enemy station”, or broadcasting a mixture of speech, music, and atmospheric noise designed to overwhelm the incoming broadcast. According to the one-time director of the Hungarian secret jamming agency, right before 1956, each day 218 hours of enemy broadcasting trespassed the Hungarian airwaves on 214 frequencies. The jamming agency, with the modest code-name “Post Office No. 118”, did not have the capacity to jam all incoming programs, and even if it had possessed the necessary technical means, it would not have been allowed to do so, as a consequence of the need to monitor the enemy broadcasts.<sup>30</sup> During the night, while the transcribers worked at RFE/RL, scribes were busy transcribing the recorded programs of the enemy stations inside secret offices in the communist countries. The transcripts were delivered in due time to desks in the ministries of interior, the offices of the secret police and the propaganda and agitation department of the party headquarters. Orders and directives were sent in turn to the official media including the radio stations: how to respond to the propaganda of the enemy.

Looking at the archives of the national news agencies of the former communist countries or the archives of the former secret police, one would find the recorded or transcribed versions of those program tapes that did not come to Budapest with the core collection. Blinken OSA and these secret archives together form a full and peculiar picture of the way the Cold War, communism, the West, and the East were jointly fashioned and produced by the enemy Radios and the national radios of the “target countries”. There was a constant, ongoing dialogue in the air with both sides reflecting on the recorded, transcribed and analyzed propaganda of the other. What the secret listeners, who tried to comprehend the broadcasts behind the constant curtain of noise perceived about their world, about

<sup>29</sup> Monitoring can be looked upon as the “ear” of RFE – a large, sensitive, mechanical ear that picks up the voices from behind the Iron Curtain.” Holt, op. cit. p. 98.

<sup>30</sup> Author's interview with Gusztav Gogolyak on 26 March, 1996. See BÉLA RÉVÉSZ: *Political Persuasion in the First Period of “Cold War”*. Hungary and the “Radio Free Europe” 1950–1956. Acta Jur. et Pol., Szeged, 1996. 58–64. pp.

communism, was in large part supplied by the descriptions they gathered from the “enemy radios”, RFE/RL being most prominent among them. RFE/RL conceived its programs largely as a response to the programs produced behind the iron curtain.

Blinken OSA acquired a few amateur tapes with records of RFE programs recorded inside the “target countries”, that preserved the noise of the jamming. Superimposed on the voices in the programs, covering the message, is the noise that was transmitted in order to neutralize, to eliminate and to erase all meaning. Instead of erasure, instead of an acoustic black hole, however, the result turned out to be noise as message, as meaningful information: “for despite the death it contains, noise carries the order in itself; it carries new information. This may seem strange. But noise does in fact create meaning: first because the interruption of a message signifies the interdiction of the transmitted meaning, and signifies censorship and rarity; second, because the very absence of meaning in pure noise or in the meaningless repetition of a message, by unchanneling auditory sensations, frees the listener’s imagination... The presence of noise makes sense and makes meaning. It makes possible the creation of a new order on another level of organization, or a new code in another network.”<sup>31</sup>

The Open Society Archives houses thousands pieces of carefully assembled information, obtained, collected and smuggled out in clandestine ways from countries with rulers who tried to hermetically seal them and isolate them from the other side, from the outside world. Most of the information stored underground, on levels minus-1 and minus-2 in Budapest, is blatant and obvious lies: forged election results, forged production statistics, forged birth and death rates, doctored maps and photographs and censored descriptions of events that never happened. Analysts at the Radios frantically searched for meaning behind the stereotypical topoi, trying to decode the allegedly coded messages, since it was difficult to imagine that anyone of sound mind – even in a completely boring totalitarian regime – would produce such unbelievable stories, news and information. But the cryptanalysis was in most cases done in vain: there was nothing behind the message; the message, as in the case of the noise, was the information itself.

Communism was built on, and eventually ruined by, such metatruths: on noises that warned the listeners that the jamming agency, the Party was there – even in the air, controlling not only the propaganda of the enemy but the eager listeners as well. Yes, the Party was there but paralyzed; capable only of making a cacophony in the air, merely creating the appearance of being there. If one wants to learn the truth about communism, the truth about the Cold War, the world of propaganda and appearances, and the most important reason for the Fall, an informed choice is to study this fake world, and the files and documents of which Blinken OSA is the guardian.

Not all the documents in the holdings of the Open Society Archives testify about paralysis and impotence: the Russian, Polish and Hungarian samizdat collections prove that there were some who questioned the lies, who chose not to remain silent, who under the dark sky had hopes even against hope. The Archives however houses documentation not only of individual dissent but of open resistance, the sometimes naive, romantic, but

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<sup>31</sup> *Noise: The Political Economy of Music*. Minneapolis, University of Minnesota Press, 1985. p. 33. Quoted by ISTVÁN RÉV: *Just Noise*. A lecture given at a conference on The Impact of Cold War Broadcasting was organized in October 2004 by the Hoover Institution at Stanford University in the U.S. Manuscript.

nevertheless heroic attempts: the Polish and Hungarian uprisings in 1956, Prague in 1968 and Poland, the strikes along the Baltic coastline, Solidarity.<sup>32</sup> The documents from the Fall, the peaceful revolutions, the transition, the End, which resulted in the Archives move from Munich and New York to Budapest, to the basement of the Central European University which is itself a product of the abrupt and unexpected changes.

Blinken OSA is not an archives frozen in time. It actively collects, solicits and acquires important collections and documents on the afterlife of communism and issues connected to human rights. This is why Blinken OSA houses the archives of Index on Censorship<sup>33</sup>; this is why the records of the UN Expert Commission on war crimes on the territory of the former Yugoslavia<sup>34</sup> found a place in the Open Society Archives; this is why the decision was made to continue the monitoring activities of the Radios and systematically record the nightly news programs of Serb, Croat, and Bosnian television during the war in Yugoslavia.<sup>35</sup> Blinken OSA has a growing collection of new materials, but like the core collection of RFE/RL, most of the newly acquired documents testify about despicable acts, cruelty, the breach of democratic rules of law and grave breaches of the Geneva Conventions and other international humanitarian law.

3. The radios came into being after World War II in response to the thousands of displaced persons throughout Western Europe, a large number of whom were housed in refugee camps in West Germany, while others had fled to Paris, London, New York, and Washington from Eastern Europe and the Soviet Union in advance of the Red Army or as the result of communist takeovers. Many had been incarcerated in POW<sup>36</sup> camps and refused to be repatriated to lands controlled by the Soviets after the war ended.

As communist governments took over in Eastern Europe, the U.S. government realized that these émigrés represented a powerful force against their communist-controlled homelands and it recruited them as writers, speakers, and in other capacities to facilitate the return of democratic governments.

George Kennan of the State Department asked Ambassador Joseph C. Grew to enlist prestigious civilians to lead an anticommunist organization dedicated to returning democracy to Eastern Europe<sup>37</sup>, using the talents of the refugees. This organization, the National Committee for a Free Europe<sup>38</sup>, later the Free Europe Committee, was established in 1949 with several objectives: find work for the democratic émigrés from Eastern Europe; put émigré voices on the air in their own languages; and carry émigré articles and statements

<sup>32</sup> See LÉVESQUE, JACQUES: *The Enigma of 1989. The USSR and the Liberation of Eastern Europe*, University of California Press, Berkeley, Los Angeles, London, 1997.

<sup>33</sup> *Records of the Index on Censorship*. Blinken OSA Fonds HU Blinken OSA 301.

<sup>34</sup> *Records of the International Human Rights Law Institute Relating to the Conflict in the Former Yugoslavia*. Blinken OSA Fonds HU Blinken OSA 304.

<sup>35</sup> *Video Recordings of the Proceedings of the International Criminal Tribunal for the Former Yugoslavia*. Blinken OSA Fonds HU Blinken OSA 319.

<sup>36</sup> Prisoners of War and Missing in Action Servicemen. See 35. footnote.

<sup>37</sup> Letter from George Kennan to Joseph C. Grew, February 4. 1949. Quoted by Holt, op. cit. p. 10.

<sup>38</sup> National Committee for a Free Europe (Hereafter: NCFE).

back to their homelands through the printed word. These objectives were realized through the establishment of a publishing division, Free Europe Press, and a broadcast division, Radio Free Europe.<sup>39</sup>

### *The Crusade for Freedom*

Funded primarily by Congress through the CIA until 1972, the NCFE maintained a public identity as a private corporation of freedom-loving American citizens. A separate organization, the Crusade for Freedom, was formed in 1950 to promote the NCFE and to raise money for its activities. President Dwight Eisenhower announced, in a nationwide radio address: "The Crusade for Freedom will provide for the expansion of Radio Free Europe into a network of stations. They will be given the simplest, clearest charter in the world: 'Tell the truth'."<sup>40</sup>

The Crusade for Freedom took as its symbol a bell resembling the American liberty bell, designed by Walter Dorwin Teague of New York. It had a laurel wreath symbolizing peace encircling the top and a frieze of five figures representing the five races of humankind passing the torch of freedom. An inscription quoted Abraham Lincoln: "That this world under God shall have a new birth of freedom."<sup>41</sup>

The 10-ton bell arrived from the British foundry of Gillett and Johnston to a ticker tape parade in New York City. The bell then visited 21 American cities, and people in every state were encouraged to sign Freedom Scrolls and contribute money for RFE. The bell then traveled to West Berlin, where it was permanently installed on United Nations Day, October 24, 1950. More than 400,000 Berliners filled City Hall Square to witness the dedication ceremonies. General Lucius Clay, chairman of the Crusade for Freedom, gave a speech, then pushed the button that started the bell ringing. Its deep tones were heard throughout East Berlin and into East Germany. The East German Communist Party denounced the Freedom Bell, with Politburo member Hans Jendretsky warning, "The rope of the death bell will become the gallows rope for those who ring it."<sup>42</sup>

Although the Crusade for Freedom never raised enough money to fund more than a small part of the RFE budget, its ubiquitous advertising, along with parades, public forums, and slogans such as "Fight the Big Lie with the Big Truth" and "Help Truth Fight Communism", served to mobilize American support for the Cold War.<sup>43</sup>

<sup>39</sup> See National Committee for a Free Europe, Inc., "Portion of Introductory Statement to the Press by Joseph C. Grew", June 1, 1949. (mimeo.) pp. 1–2. Quoted by Holt, op. cit. p. 11.

<sup>40</sup> Quoted by BROADWATER, JEFF.: *Eisenhower and the Anti-Communist Crusade*. Chapel Hill, University of North Carolina Press, 1992. p. 48.

<sup>41</sup> Lincoln never let the world forget that the Civil War involved an even larger issue. This he stated most movingly in dedicating the military cemetery at Gettysburg: "that we here highly resolve that these dead shall not have died in vain – that this nation, under God, shall have a new birth of freedom – and that government of the people, by the people, for the people, shall not perish from the earth". Speech at Gettysburg, Nov. 19, 1863. Quoted by HELEN COTHRAN: *Abraham Lincoln*. San Diego, Calif. Greenhaven Press, 2002. p. 87.

<sup>42</sup> Quoted by CISSIE DORE HILL: *The Story of Radio Free Europe and Radio Liberty*. Hoover Digest, 2001. No. 4. p. 45.

<sup>43</sup> *Ibid.* p. 39.

*The Early Broadcasts*

RFE initiated broadcasting when a 7.5-kilowatt shortwave transmitter, nicknamed Barbara and formerly used by the Office of Strategic Services during the war, was installed in West Germany at Lampertheim, near Frankfurt. On July 4, 1950, the first 30 minutes of news, information, and political analysis was sent to Czechoslovakia, to be followed later that year by programs to Romania, Hungary, Poland, and Bulgaria<sup>44</sup>.

A larger transmission facility was completed the following year at Holzkirchen, near Munich, with the official inauguration on May 1 celebrating 11.5 hours of daily broadcasting to Czechoslovakia. This inaugural date was chosen because May 1 – May Day – was a widely celebrated communist holiday honoring workers. According to C. D. Jackson, the president of the NCFE, “We thought that would be a good day to launch our station and to let some people know out loud, and quite loud, the difference between workers and slaves.”<sup>45</sup> Although the rhetoric moderated over the ensuing decades, the purpose of RFE and its sister station, Radio Liberty (RL), remained the same: to act as uncensored national media, offering an alternative to the highly censored Radio Warsaws and Radio Moscows of the communist world.

RFE’s broadcasts were produced in New York, sent to Europe, and transmitted from Lampertheim and Holzkirchen in West Germany. A European production site, however, was essential if broadcasts were to be timely. West Germany, sharing a border with Czechoslovakia, had the best location and was still occupied by American forces; Munich, the second-largest city within the U.S. zone, was a center for East European émigrés, many of whom had experience in writing, editing, broadcasting, and the technical aspects of radio. In November 1952, at a site on the edge of Munich’s English Garden, RFE opened a complex with 22 studios, six control rooms (including master control, editorial, and technical spaces), and a maintenance service.

*Balloon Warfare*

While RFE programming was getting under way, the publishing arm of the NCFE was also busy. In 1951, Frank Wisner, the head of the Office of Policy Coordination, that section of the CIA responsible for RFE, inherited a stockpile of weather balloons left over from World War II. He immediately imagined a flotilla of balloons dropping millions of leaflets produced by the Free Europe Press, whose job it was to produce documents about Eastern European affairs.<sup>46</sup>

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<sup>44</sup> See Holt, *op. cit.* pp. 14–15.

<sup>45</sup> Quoted by Cissie Dore Hill: *op. cit.* p. 40.

<sup>46</sup> Projects was created in 1948. Soon afterwards it was renamed the Office of Policy Coordination (OPC). This became the espionage and counter-intelligence branch of the Central Intelligence Agency. Wisner was told to create an organization that concentrated on “propaganda, economic warfare; preventive direct action, including sabotage, anti-sabotage, demolition and evacuation measures; subversion against hostile states, including assistance to underground resistance groups, and support of indigenous anti-Communist elements in threatened countries of the free world”. Quoted by Nelson, Michael: *op. cit.* p. 37.



A trial project took place over a two-week period in 1951. The prevailing west to east wind patterns carried the hydrogen-inflated balloons sailing over the border of Germany, where they dropped their payload of more than 11 million leaflets on Czechoslovakia.<sup>47</sup>

Following Stalin's death in 1953, a series of demonstrations by factory workers in several eastern bloc countries encouraged the NCFE to try a coordinated four-day radio/balloon campaign called Operation Prospero. German civilian laborers readied 6,500 balloons and 12 million leaflets at launching sites near the Bavarian border village of Tirschenreuth. As leaflets fell, the Prague regime ordered jet fighter planes to shoot down the balloons (they hit only three). Meanwhile the leaflets dropped on isolated villages, where radios were rarities, as well as population centers.

In 1954, RFE, calling itself the "voice of the opposition," urged regime leaders to give Czech and Slovak citizens a way to veto that year's election. Operation Veto developed a platform and 10 limited demands, all possible within the constraints of a communist state. Gummed stickers with the number 10 were dropped by balloons, turning up on government walls, telephone booths, and the doors of police buildings. When voting took place, at least 5 percent voted against the single slate of candidates by putting the number 10 on their ballot.<sup>48</sup>

A Hungarian version of Operation Veto, named Operation Focus, was carried out in 1956; it was the last balloon project. A total of more than 300 million leaflets had gone over the Iron Curtain.<sup>49</sup>

The first balloons were launched in August 1951 in an open field only 3 miles from the Czechoslovak border, when the Free Europe Committee used the Free Europe Press (FEP) to print up millions of propaganda leaflets. This test operation was on a stand-alone basis, i.e., the balloons were not part of a coordinated programming effort with Radio Free Europe. The leaflets contained such slogans as "A new hope is stirring," and "Friends of Freedom in other lands have found a new way to reach you".

Famed American newspaper correspondent Drew Pearson was a major proponent of the balloon launching program in his US newspaper columns. He and C. D. Jackson, President of Free Europe Committee, and other prominent guests were in attendance. Weather research balloons, about four feet in diameter carrying "friendship" leaflets were launched into Czechoslovakia over a two week period. Each balloon carried about 3000 leaflets, and when the weather was favorable, about 2000 balloons were launched each night. In total, over 11,000,000 leaflets were dropped. Both the regime and citizens seemingly ignored the leaflets.<sup>50</sup>

Though not politically successful, the FEC (and the CIA) gained valuable practical experience in balloon launching. Ballooning had become a cost-effective means of delivering printed propaganda. FEP used different types and sizes of helium filled balloons from round to pillow shaped. Pillow balloons, for example, used a remarkable timing device: dry ice. Cartons filled with leaflets were attached to the bottom of the hydrogen-filled balloons. The loosely-covered cartons were held upright through the use of envelopes

<sup>47</sup> HOLT, R. T.: *Operation from the Berlin to the Poznan riot*. In: Holt, R. T. op. cit. 145–165. pp.

<sup>48</sup> Czechoslovakia – Guidance No. 10. June 30, 1953. Holt, R. T. op. cit. p. 145.

<sup>49</sup> RICHARD H. CUMMINGS: *The Psywar Society. Balloons Over East Europe. The Cold War Leaflet Campaign of Radio Free Europe. The Falling*. Leaf Magazine. Autumn 1999. Volume XLII, No. 3.

<sup>50</sup> Czechoslovakia – Guidance No.16. Czechoslovakia: Regime Press and Radio Response to Western Broadcast and Leaflets. January – April, 1955. Holt, R. T. op. cit. p. 152.

containing dry ice. As the dry ice evaporated, the cartons tipped over, thus dropping the leaflets. To try and hit an intended population target, the balloon launchers developed an ingenious system that calculated the weight of the dry ice, the amount of hydrogen, weight of the leaflets, direction and velocity of the wind. FEP estimated that 500 balloons carrying 2 to 7 pounds of leaflets could be filled and launched hourly at the stations.

The balloon launching, with coordinated Radio Free Europe programming, operations that followed were called "PROSPERO," "VETO," "FOCUS," and "SPOTLIGHT". Three major launching sites were constructed in Bavaria to launch the balloons in round-the-clock operations in good weather. The balloon launching station at Freyung, Bavaria, for example, had a plaque that read, in part, "Free Europe Press... permitting the addition of the written word to Radio Free Europe's spoken communications with the people behind the Iron Curtain."

PROSPERO was the code name for the RFE balloon program in the summer 1953, when in a time span of only four days, 6,500 balloons with over 12,000,000 RFE leaflets were launched into Czechoslovakia. The balloon launching started approximately at midnight on 13 July in the small Bavarian town Tirschenreuth. RFE broadcast news of the launching during the first news broadcasts at 6:00 AM. This was the first time balloons were launched in conjunction with specific radio programs. RFE was critical of the regime's just installed currency reforms. Included in the leaflets were aluminum replicas of a newly-introduced Czechoslovak coin. The Freedom Bell and the inscription, "All Czechs and Slovaks for Freedom--all the Free World for Czechs and Slovaks" were stamped on the coin replicas.

The regime responded to PROSPERO by using military aircraft and anti-aircraft weapons along the border to shoot down the balloons the day after the first launching. In fact on July 15, the FEP staff actually saw the military aircraft shooting down the balloons as they first crossed the border into Czechoslovakia. Police cars in Prague and elsewhere used loudspeakers ordering citizens to turn in all the leaflets. Both the Czechoslovak and Soviet media attacked this balloon program. Because of the violent reaction and the media attacks, RFE inadvertently discovered that the balloon program was more successful than first planned and paved the ground work for even greater balloon efforts with specific programming in the following years.

For the first time, PROSPERO proved the value of combining the spoken word of RFE and written word of FEP for effective propaganda.<sup>51</sup>

#### *4. Jamming<sup>52</sup>, as a radio protection tool*

4. 1. E. H. Gombrich, one of the most influential art historians of the twentieth century, one-time director of the Warburg Institute in London, worked as a so-called monitor and

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<sup>51</sup> Guidance during this period out explicitly that all scripts should be written in the light of RFE's basic policy. Listening audience were reminded that liberation could be achieved only by the operation of the confluence of forces." Holt. R. T. op. cit. p. 168.

<sup>52</sup> Jamming as an electronic warfare a technique to limit the effectiveness of an opponent's communications and/or detection equipment.

later as a monitoring supervisor, between 1939 and 1945 at the “Listening Post” of the B.B.C. In his Creighton Lecture in 1969 he summarized his experiences, later published under the title *Myth and Reality in German War-Time Broadcasts*. Gombrich claimed that “I am not sure that German home broadcasts ever got away from the basic conception of the loudspeaker as an amplifier of the political meeting. Throughout the first year of the war its professed highlights were the carefully managed relays of Hitler's or Goebbels' speeches which were invariably held in front of responsive and well-drilled audiences”.<sup>53</sup>

Until the early 1960s the propaganda machinery of the Communist world tried hard to follow the German example: “People were encouraged to listen in groups, in factories and barracks, for the idea of the hearer alone in the privacy of his room and able even to switch off was anathema to this theory.”<sup>54</sup> In the first half of the 1950s in East and Central Europe, governments and local party bosses aimed at preventing private, solitary listening, and organized instead communal, compulsory listening events at work-places, before, after, and even during working hours, in order to prevent even half-overheard critical remarks, to provide opportunities for trained expert agitators to interpret the official voice of the regime. The public loudspeaker was a familiar object in the streets and squares, not only in small villages but even in Budapest.<sup>55</sup>

A few years later, however, Marshall McLuhan in his *Understanding Media* recognized that “Radio affects most people intimately, person-to-person, offering a world of unspoken communication between writer-speaker and the listener...That is the immediate aspect of radio. A private experience.”<sup>56</sup> The voice coming from the air, entering the solitude of the silent room, well before the beginnings of the television programs had peculiar and dangerous effects on the listener: “It is very far from the material world, so one does not apply material standards to it. The eye alone gives a very complete picture of the world, but the ear alone gives an incomplete one. So at first it is a great temptation for the listener to 'supplement' the broadcast from his own imagination, to add what is so obviously lacking in the broadcast”.<sup>57</sup> Radio stimulates fantasy; it feeds hope.

To measure the impact of the private experience of listening to international broadcasts, especially before the terminal weakening of the Communist regimes, was the constant preoccupation of politicians, broadcasters and researchers as well. Leo Lowenthal, a former member of the Frankfurt School, Research Director of the Voice of America, first in his talk at the American Association for Public Opinion Research in 1951, then in a paper in the *Public Opinion Quarterly*, reflected on the methodological problems “posed by the vast populations who are politically inaccessible to systematic polling.”<sup>58</sup> To overcome the

<sup>53</sup> E. H. GOMBRICH, *Myth and Reality in German War-Time Broadcasts* London, 1970. The Athlone Press, 1970. Quoted by István Rév: op. cit. p. 12.

<sup>54</sup> Ibid. p. 4.

<sup>55</sup> TIBOR VALUCH: *A Cultural and Social History of Hungary 1948–1990* In: *A Cultural History of Hungary* edited by László Kósa. Corvina-Osiris, Budapest, 2001. p. 264.

<sup>56</sup> MCLUHAN, MARSHALL: *Understanding Media: the Extensions of Man*. London, Sphere Books, 1967. p. 154.

<sup>57</sup> RUDOLF ARNHEIM: *In Praise of Blindness*. Quoted by Thomas Bass, *Balloons and Broadcasts: Infiltrating the Internationalist Barrier Dividing East from West. A Study in Metaphors*. mimeo, 1996. 15–16. pp. Quoted by István Rév: op. cit. p. 15.

<sup>58</sup> JOSEPH T. KLAPPER, LEO LOWENTHAL, *The Contribution of Opinion Research to the Evaluation of Psychological Warfare*. *The Public Opinion Quarterly*, Vol. 15. No. 4. p. 657.

barrier of the Iron Curtain, analysts, pollsters and researchers had to rely mostly on interviews conducted with recent immigrants, unsuspecting tourists, volunteer helpers, and undercover agents. In order “to obtain accurate information about large populations without systematic use of the populations themselves”<sup>59</sup>, analysts at the Office of International Broadcasting used two methods as compensatory approximations in the absence of more reliable techniques: the so-called “most like” approach, which “consists of using respondents who, while not actually members of the inaccessible group are of all available people 'most like' the subject group [this was the method used in interviewing refugees]...to obtain information about groups behind the Iron Curtain; ...and the 'qualified judge' approach [in the course of which] a person believed to know the group in question is asked to make certain estimates about the inaccessible group”.<sup>60</sup>

Probably the most ambitious use of both the “most like” and the “qualified judge” indirect approaches was the analysis of several hundred interviews conducted in 1951-52 with Polish, Czechoslovak and Hungarian refugees. The unclassified version of the study, written by Siegfried Kracauer, one of the most important twentieth century theorists of visual culture, photography and German cinema, and Paul L Berkman, was than published by the Bureau of Applied Social Research at Columbia University.<sup>61</sup>

Kracauer and Berkman tried to overcome the limitations of the existing literature on “Satellite mentality”, which either reflected on the general situation, the system itself or, based on subjective eye-witness report, with its “foreshortenings, super-impositions and omissions, on life within the system”, leaving the comprehensive characteristics of the system itself out of the picture<sup>62</sup>. By focusing on the inconsistencies of the answers, on the slips of the tongue, reading in-between the lines of the interviews, the analysts attempted to outweigh the inherent biases of the interviewees. (In most cases the tourists and especially the recent emigrants – waiting for their residency permits – tried to please the interviewer and said what was – according to their anticipation – supposed to be expected of them. The interviews made with recent migrants reveal, primarily, the notions the East Europeans from behind the Iron Curtain had about the supposed image of Communism in the West. It is also apparent, both from the hundreds of interviews Kracauer and Berkman analyzed and also from the “information items” in the Open Society Archives, originally from the archives of Radio Free Europe/Radio Liberty, the remnants of a collection of thousands of interviews with East Europeans, that the overwhelming majority of the interviewees had been, at least sporadically, listeners of RFE/RL. Their views about the West, their circular presuppositions about the Western image of Communism, – especially in the case of the Soviet migrants – had typically been formed by listening to the programs of the Radios. The Soviet Area Audience and Opinion Research Department of Radio Liberty periodically conducted systematic research on reactions to broadcast. In turn, the programmers at the Radios made use of the interviews when broadcasting anti-Communist propaganda to the East. The

<sup>59</sup> Ibid. p. 659.

<sup>60</sup> Ibid. pp. 659–660.

<sup>61</sup> *Satellite Mentality. Political Attitudes and Propaganda, Susceptibilities of Non-Communists in Hungary, Poland, and Czechoslovakia*. F. A. Praeger, New York, 1956. Quoted by István Rév: op. cit. p. 15.

<sup>62</sup> KRACAUER, SIEGFRIED – BERKMAN, PAUL L.: *Satellite mentality; political attitudes and propaganda susceptibilities of non-Communists in Hungary, Poland, and Czechoslovakia*. New York, F.A. Praeger, 1956. p. 76.

stories which were told in reply to the sometimes suggestive questions of the interviewers – who had good reasons to presuppose the anti-Communist learning of the refugees, testified to the effectiveness of self-fulfilling prophecies of Western broadcasts based on the information distilled from the severely biased "information items".<sup>63</sup>

Subsequent studies have tried to test and make use of both the "most like" and the "informed judge" approaches, and came to the half-tested conclusion that "it can be assumed with some confidence that the opinions of recent refugees... are not greatly different from the opinions of the home populations if we except from the latter the Communist minority... There is little ground left for doubt that these respondents, even allowing for some bias in their statements, are essentially reliable and valuable indicators of certain areas of opinion of their parent populations".<sup>64</sup>

The interviews, the opinion- and audience researchers, and analysts focused primarily on the private listener in his (the overwhelming majority of the refugees were young, single males) private – mostly not-owned but subtle, shared, communal – and crowded – home environment, listening secretly, mostly in the evening hours, to the voice of the Free World, be it the Voice of America, the Voice of Free Hungary, the Hungarian broadcast of the Israeli Radio, the Vatican, Monte Carlo, Radio Tirana, or whatever. The researchers concentrated on the solitary listener, who was worried, with very good reason, when the voice from the radio – the only secret connection to the world beyond the Iron Curtain – loudly announced more than once every hour: "This is Radio Free Europe on the 16th, 19th, 25th, 31st, 41st, and 49th short-wave bands". This was the moment when the listener, in horror, was almost convinced that he had been uncovered: the eavesdropping co-tenant in the shared bathroom of the communal apartment had certainly overheard the call-sign of the enemy radio station from the adjacent room. Judging from the "information items" collection, quite a few interviewees complained about indiscreet and loud announcements on the Radios, which were unusually audible despite the constant noise and jamming.<sup>65</sup>

Early communication theory considered noise the antithesis of message; the source of the difference between the transmitted and the received signal. Jacques Attali came up with a different notion: "A network can be destroyed by noises that attack and transform it, if the codes of the place are unable to normalize and repress them. ... Although the new order is not contained in the structure of the old, it is nonetheless not a product of chance. It is created by the substitution of new differences for the old differences. Noise is the source of these mutations to the structuring codes. For despite the death it contains, noise carries order within itself; it carries new information. This may seem strange. But noise does in fact create meaning: first, because the interruption of a message signifies the interdiction of rarity; and second, because the very absence of meaning in pure noise or in the meaningless repetition of a message, by unchanneling auditory sensations, frees the listener's imagination."<sup>66</sup>

<sup>63</sup> SIEGFRIED KRACAUER, *The Challenge of Qualitative Analysis*, In: *The Public Opinion Quarterly* Vol. 16. No. 4, pp. 631–642. Ibid.

<sup>64</sup> RICHARD C. SHELDON AND JOHN DUTKOWSKI, *Are Soviet Satellite Refugee Interviews Projectable?* In: *The Public Opinion Quarterly*, Vol. 16. 593–594. pp. Quoted by István Rév: op. cit. p. 17.

<sup>65</sup> "The Iron Courtain stands between RFE and its audience. Therefore, most of the techniques that have been developed to measure the effect of communication can not be used." Holt. R. T. op. cit. p. 121.

<sup>66</sup> *Noise: The Political Economy of Music*. Minneapolis, University of Minnesota Press, 1985. p. 33. Quoted by István Rév: op. cit. p. 19.

The sound that the East European jammers generated did not simply aim at making the enemy broadcasts inaudible; the noise also established and confirmed the presence of the Communist authorities in the air, and thus in the private sphere of the secret listener. The interviewees do not leave the jamming unmentioned: they return to it, sometimes several times in the course of one single interview, as if they had tried to decipher, retrospectively, the exact meaning of the noise even to themselves. The noise generated by Soviet noise generators did not just overwrite the message coming from the West but constantly reminded the listener of the continuous surveillance, of the fact that he was not alone even behind the closed doors of his apartment. Jamming meant negating the possibility of privacy, and aimed at establishing the appearance of the omnipresence of the Communist authorities: “The absence of meaning is in this case the presence of all meanings...The presence of noise makes sense, makes meaning. It makes possible the creation of a new order on another level of organization or a new code in another network”.<sup>67</sup> Listening to the barely audible broadcast behind the noise, the listeners could see themselves as resisters, who manage to outfox the earsplitting but impotent authority.

When on 24 October, 1956, on the second day of the revolution, Gusztav Gogolyak, head of “Post Office No. 118.”, the covert site of the technical headquarters of the jamming operation in Budapest, ordered the radio technicians all over the country to immediately close down all the facilities, shred the documents, and lock the doors of the jamming stations, surprised listeners were able for the first time to listen to the voice coming from Munich without to the signal of the presence of the Communist authorities.<sup>68</sup> The lack of intentionally generated noise in itself amounted to a clear statement: “we are here, and they have gone”. In this unforeseen moment the (lack of) noise was the immediately decipherable message, as unconditional promise. The disappearance of the noise of jamming was probably one of the most reassuring radio propaganda tools: there was no real need for other promises to convince the inhabitants of the country that help was on the way; the audible voice was already in the living rooms, and through the open windows, in the streets as well. It was difficult to imagine that western soldiers would not soon follow. But they did not.

4. 2. When after the defeat of the 1956 revolution, in the Spring of 1957 the ominous noise reentered the dilapidated apartments, it announced the return, the restoration and consolidation of the post-revolutionary Communist regime. On 1 May 1957, barely six months after the defeat of the revolution, János Kádár waved to the marching two-hundred-thousand-strong crowd from the tribune built on the site of the former Stalin monument<sup>69</sup>. The noise became once more the message: Communism was here to stay, the agreement that had allegedly been made in Yalta, had to be taken deadly seriously. It was sensible to comply.

Jamming continued until 1964, and was briefly resurrected after the invasion of Czechoslovakia on 21 August, 1968. As a result of the success of social conditioning, when jamming was replaced by undirected atmospheric noise after 1972, listeners continued to attribute the poor quality of reception to the deliberate countermeasures of the Communist

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<sup>67</sup> Ibid.

<sup>68</sup> Author's interview with Gusztav Gogolyak on 26 March, 1996. op. cit.

<sup>69</sup> See RIPP, ZOLTÁN: *The Legitimation of HSWP at the Beginning of the Kádár-era*. *Mozgó világ*, 1997. p. 11.

jammers. It was hard to believe that the authorities were not responsible for all the noise coming from the ionosphere.

The meeting of the Hungarian Socialist Workers' Party' (hereafter HSWP) Politburo on October 8, 1963 have got a report on the situation concerning the protection of the Hungarian language enemy broadcasts,<sup>70</sup> first of all RFE by Ministry of Transportation and Postal Services István Kossa.<sup>71</sup> The Ministry endorses the first variant and proposes that the Politburo should adopt this position. "We do not see any sense in supporting the second variant. Even if the jamming capacity were to be concentrated in certain areas or at certain times, we could only jam fractions of the programs broadcast by Radio Free Europe and Patrol. We need to get the equipment ready, and if the Ministry of the Interior deems it necessary, we can start jamming the station periodically. By the way, even if we jam the station, most of the jamming will be concentrated on the Budapest and Pécs regions. Otherwise, even if jamming were to be maintained, the hostile radio programs could be heard freely almost in the whole of Hungary."

János Kádár's first sceptical question was that does anybody have any information as to how this thing is handled in our friendly countries? What is the real difference between the first and the second variant from a technical and financial aspect?

István Szurdi stated: some comrades in this office had a chance to monitor for a few days how jamming was done in some friendly countries. The results of monitoring are as follows: the broadcasts of state-owned radio stations are not jammed in the Soviet Union, but the programs of private stations, including Radio Free Europe, are. In Czechoslovakia every Western station is jammed, even hostile programs targeting Poland in cities near the Polish border. Bulgaria also jams every Western station, so does the GDR, though they mostly jam broadcasts from West Berlin. In Poland only certain hostile programs are jammed that are broadcast in the Polish language. No broadcasts are jammed in the People's Republic of Romania.

At the moment I believe the second variant is to be favored – said Gyula Kállai: "As for the arguments that are brought up by the comrades to support the first variant – our system is stable, the political atmosphere is good in the country. I agree, but I think we should not underestimate the effects of these hostile radio programs." The international political situation is rather unstable, and we need to take into account that they could cause some trouble. The Soviet Union, where the system is more stable politically and the people can resist more firmly than in Hungary, stopped the jamming of state-owned stations only. Whichever variant will be adopted by the Politburo, he propose the following two things to consider before one of the two variants is implemented: 1.) They should consult with our friendly countries on this issue. What they are going to decide on is a very important political issue and it emerges as such in every country, as an extremely important political issue. The consultation he was proposing would be important also from the point of view of following a uniform procedure. 2.) If the jamming of state-owned radio stations is going to be stopped, Hungary should perhaps start negotiations with the BBC and the USA; that is, they should not stop jamming their stations without a "price". They should tell them that

<sup>70</sup> Of the meeting of the [HSWP] Politburo on October 8, 1963. NAH M-KS-288.f. 5/316.ő.e.

<sup>71</sup> The report October 1, 1963. to the HSWP Politburo on jamming hostile radio stations. see: RÉVÉSZ. BÉLA: "Failed clappers" (radio interception ceased in 1964). Beszélő, 1997. p. 6.

they will stop jamming their stations, and in return they should give up broadcasting hostile programs to Hungary. Kállai though this is a feasible proposition.

István Szirmai proposed that the Politburo should adopt the first variant and make a resolution of it. His arguments supporting this variant were as follows. It has been established that the efficiency of jamming in the periods most frequently listened to by people is 10% even with maximal efforts using all the apparatus at our disposal in our country, including foreign assistance. So anybody who wants to listen to these Western stations can do so even on a small radio. The whole thing has only political significance, and the Politburo should consider whether this political impact is positive or negative. In his view it is negative, so there is no point in jamming with an efficiency of 10% as far as our political power is concerned. The fact that the Soviet Union also jams stations is a different matter, for their efficiency is not 10% but much higher. However sophisticated technology were to be installed in Hungary, they would not be able to jam these station entirely. The territory of Hungary is small; this is why they made an agreement with the Czechs, the Poles and, the Romanians that they would jam the broadcasts from an appropriate distance. In case we decide to adopt the second variant – and here answering comrade Kádár's question –, it would not involve any budgetary deficit or require special austerity. It would simply mean that the available equipment would be used to jam only certain predetermined broadcasts. 143 wavelengths were used for such broadcasts but the available equipment is capable of jamming only 22. That means they could jam only 22 of the 143 wavelengths. They have eight jamming stations with a 15 kW capacity and one with 100 kW. These were not used to jam broadcasts targeting Hungary but rather Russian language programs targeting the Soviet Union on the basis of mutuality. These stations must be maintained in the future too. However, if possible, it would be a good idea to free this middle wave station and use it for broadcasting their own programs. In this context he would like to call the attention of the Politburo to the fact that – as has been amply demonstrated in the introduction to the report – enormous technical development is taking place in Western countries, while Hungarian radio technology is lagging behind and the capacity of the available radio stations is fully utilized. They have two 100kW broadcasting stations transmitting propaganda programs in 9 languages by the Hungarian Radio. So István Szirmai wanted to urge you to devote more attention to development.

One more thing that he wanted to add: He also believed that if the Politburo, and as a result, the government adopts the first variant, they should call the attention of the editors and the owners of hostile radio stations to this fact. Perhaps they should not enter into negotiations with them, but they should let them know when jamming will be stopped and make it clear to them that in return they expect them to strike a more objective tone in their programs. The Poles were in the same situation, and the broadcasts targeting them are much more objective now.

There was another proposal on the table that the jamming apparatus should be transferred to the Ministry of the Interior. Szirmai believed this was not a political issue, and it should belong to the Ministry of the Interior. It would be important to involve the leaders of the radio and the television in this work.

This proposal was submitted to the Politburo in 1957 – declared by Béla Biszku. The situation was different at that time. Then the apparatus was overseen by the Ministry of the Interior. He suggested that they should conduct consultations before they make a decision.



They have to inform the relevant friendly states that such a problem arose in Hungary and that he would like to consult with them on this issue. They should not underestimate this problem even if efficiency is only 10%. Whenever the situation gets more difficult, the enemy broadcasts immediately jump on rumors and it costs more to the country than the HUF 40 million mentioned in the report. He proposed that they should adopt the second variant.

There are at least two reasons why we need to consult with them – stated Miklós Ajtai. On the one hand Hungary should ask them of their opinion about the situation, and on the other they should ask them what to do with the 100kW station if we stop using it for jamming, since it practically works for them at the moment. Another question that they should work out a proposal by the middle of next year to develop the technical background for foreign language programs together with the leaders of the Hungarian Radio and Television and the Ministry of Transportation and Postal Services. He did not think the Politburo should accept this proposal in its present form. The preparation of a complex development plan of the Hungarian Radio and Television is underway which also includes the development of domestic and foreign language programs. This issue should be dealt with in this framework rather than separately. Final decision can only be made when the third five-year plan is approved, for extra investment is not feasible in the remaining two years of the current plan.

Rezső Nyers endorsed the first variant. The adoption of the second variant would entail that the situation would be maintained, and this is inconsistent. At the moment they are capable of jamming the stations in the central areas of Budapest, but even in such areas there are broadcasts that can be easily tuned to and freely listened to by anybody. He agreed with negotiating their plan with the socialist countries, though they have not conducted any such negotiations before. The Soviet Union did not discuss the issue with them either when it decided to partially stop jamming. The way the second variant is described is rather inaccurate, for the efficiency of jamming can not be enhanced without investment. The adoption of the second variant only makes sense if they make a decision on some investment. If they fail to do so, they can still say that any capacity that can be freed should be used to strengthen the existing capacity, but that will not make jamming any more efficient.

“All the time I was thinking how ignorant the Politburo is of some very important issues” – pondered János Kádár. The things contained in the report are an integral part of their propaganda campaign. When he read the report he was amazed to see what is going on in this respect. And he was sorry to have to say this – to comrade Szurdi – but instead of tapping phone lines for getting the required information negotiations should have been conducted with the friendly countries. He cannot comment on this issue because the actual situation is very different from what they all believed to be the case. This issue was raised first in 1957, and then they were told that they should jam these stations. They voted for it because that was proposed to them, though it cost a lot of money. Now it turns out that practically they are not jamming their stations. The present situation is – and this is the political significance of this issue – that listening to foreign radio stations is not forbidden by law in Hungary. However, the common view is that these broadcasts should better be listened to in secret. What they need to decide on was whether they are going to maintain the current situation or not. The comrades are telling them that it essentially involves only Budapest and Pécs; that is, they can only jam the stations in these regions. Making jamming more effective in the Budapest region would really be a substantial development, for it is a

long-lasting lesson from the past that if they can have a hold over Budapest, they can control the whole country. "Budapest is the center, and everything starts from here." There is another thing that he do not understand. He wonder why the results of surveying the efficiency of jamming show that the least effective period is from 3 PM to midnight, right when the most people listen to these programs.

István Szirmai answered, that is because external assistance is stopped during this period, for they are all engaged in doing their own jamming. János Kádár replied, Szirmai mentioned how intensive a development was carried out in the West. This should caution them, for if it is worth for them spending so much on it, it would also be worth for them being able to jam their broadcasts. So the issue is that either they jam the stations, and allocate the required money to it, or they do not continue with jamming. Common sense tells him they should not.

But there was another issue concerning Hungarian radio programs targeting foreign countries. These programs should be improved and developed, it is a good thing. But it is a totally different issue. In principle they should endorse the expansions of these broadcasts, for their sister parties also say that they are useful for them. However, they cannot make a decision on this issue now. Consultation should be given priority in the resolutions. The Poles stopped jamming at the end of 1957 but they asked Hungary to continue jamming. They should consult with every country with which Hungary collaborate: the Soviet Union, the Poles, the Czechs and the Romanians. They have to tell them honestly: the Politburo discussed a report on jamming and concluded that hostile stations could only be jammed – even with external assistance – with an efficiency of 10% in the most frequented periods. It incurs enormous costs and it seems that there is no point in continuing with the jamming. Therefore, as of January 1, 1964 jamming will be terminated and Hungary will no longer need the assistance that they provided for us. At the same time they are ready to provide assistance for them in the same framework in the future too. The issue of political supervision has also been raised. If the resolution of the Politburo holds the above, then it is only of secondary importance. The apparatus, the technical equipment should stay where it was at that time, and political supervision should be provided by the press subdivision of the party center. Hungary should talk with England and the USA, or rather they should send them a statement in which they say they have decided to terminate jamming temporarily, and if they are willing to broadcast programs with at least some sings of objectivity, Hungary will not resume it either. The consultations should be conducted within six weeks and the results should be brought to the Politburo for further discussion. "The Politburo should then confirm its position and the statement should follow! – closed the issue István Szirmai.

5. The western analysts were primarily interested in the effect of the broadcast on the target audience, narrowly defined as the groups of listeners and their relatives, friends, colleagues, and close acquaintances, who might be indirectly influenced through communication with the listeners. Besides these groups there was another, numerically modest, but politically very important, cluster of people, who were not able to ignore the impact of the enemy

broadcasts. The public opinion experts rarely ventured to investigate these individuals, despite the fact that they were regularly exposed to the programs of Radio Free Europe.<sup>72</sup>

MTI, The Hungarian News Agency, was already making use of the information acquired from foreign radio programs during World War II. The News Agency monitored the Hungarian, and even the Rumanian language broadcasts of the BBC (which started immediately after the beginning of the war, in the fall of 1939) and the programs of Radio Moscow. After the war the monitoring activities were extended to the Voice of America, Deutsche Welle, Radio Ankara, Vatican Radio, the English language broadcasts of the BBC, on so on. After 1953 monitoring took place in the building of the new headquarters of the News Agency, but in 1959 the monitoring department moved to Gödöllő, just outside Budapest. Here reception was ten times better than in the center of the city, where besides constant jamming, the equipment used at the Photo Agency of MTI also contributed to interference. The secret monitoring service, which reported to a special department of the News Agency under the control of the Ministry of Interior, transcribed the recorded programs and between 1951-1989 produced summary transcripts of the RFE Hungarian language broadcasts for the so called "daily confidential information bulletin", distributed among the select members of the highest leadership of the party. Between 1981 and 1991, besides the programs of RFE, the daily confidential bulletin included selected material from the programs of Voice of America, the BBC, Deutschlandfunk, Deutsche Welle, Radio Beijing, Radio Vatican and Israeli Radio. Each issue contains about 30-40 mimeographed pages, half of which are usually verbatim transcripts of RFE programs.

According to the directives, the technical personnel working at the monitoring station had to transcribe the recorded program word by word, without corrections, without adding or deleting anything from the recorded text. Until the beginning of the 1980s the transcripts were not edited; the Foreign Policy Desk, which was nominally in charge of publishing the daily bulletin, hired an editor to take charge of the transcripts only at the beginning of the decade. The transcripts show the signs of difficulties of comprehension, the distorting effects of jamming and atmospheric noise, and the spelling problems of the transcribers. Even obvious misunderstandings and misspellings had to be kept in the final text; sometimes only a (sic!) mark referred to an obvious distortion in the edited bulletin, unaccompanied by remarks, commentaries, or interpretations. The monitoring apparatus was instructed to transmit the verbatim text of the daily broadcasts directly to the political leadership.

The technical staff was directed to pay special attention to the following programs<sup>73</sup>:

1. Hungarian domestic issues and their foreign reception;
2. The activities of the opposition and the churches;
3. Interviews with and statements by the representatives of Hungarian emigration;
4. The life of the Hungarian minority in the neighboring countries;
5. International news and commentaries relating to Hungary (in the spheres of the economy, social policy, international statistics),

<sup>72</sup> The first measure the effectiveness of RFE and of audience response to RFE see DESSEWFFY, GYULA: *The Voice of Free Hungary*. (A Szabad Magyarország Hangja) Látóhatár, München, 1953. p. 2.

<sup>73</sup> IM International Dept. 41-Sz-1017/1976. HASSS 1-11-12. NKO 48/1/1997.

6. Reflexions on the publications of the Hungarian press (domestic issues, the economy, the activities of the government and the parliament, statements by Hungarian political leaders);
7. Opinion of foreign experts about the most important issues of Hungarian political and economic life;
8. The role of Hungarian-born businessmen;
9. Comparative international information programs, talkshows;
10. Presentation of Hungarian firms, companies, and economic actors.

The list was extensive and covered wide areas of contemporary political, social and economic life. Until the early 1980s the transcribers were instructed not to include texts about the private or even the public life of either Hungarian or other Communist leaders. It was explicitly forbidden to include texts, – even in the strictly confidential internal bulletins – which dealt with the problems of succession in Communist countries. According to the internal instructions, certain types of text had to be transcribed in full. These included manifestos and open letters by opposition groups, migrants and civil organizations, sent to RFE or to the BBC.

It is definitely not an overstatement to say that the Communist party leadership was far better informed about the programs of RFE than the most devoted subversive, anti-Communist private listener. His difficult situation can be seen in the resolution of the Politburo of HSWP on the experience of the fight against imperialist propaganda and its intensification in May 22, 1973.<sup>74</sup>

I. 1. The regular monitoring and evaluation of hostile propaganda targeting our country has been conducted by the Central Committee since the third quarter of 1969 on the basis of the resolution of the Politburo<sup>75</sup>. Since that time 15 quarterly reports and 5 thematic evaluations have been prepared. The materials are prepared by the so-called Evaluation Committee that works as a body coordinated to the Department of Propaganda of the Central Committee. The Evaluation Committee is made up of members representing the Department of Foreign Affairs, the Department of Public Administration, the Department of Science, Culture and Public Education of the Central Committee and also includes representatives of the Ministry of Foreign Affairs, the Ministry of Defense, the Ministry of the Interior, the Hungarian Press Agency, the Institute of Foreign Affairs and the Hungarian Radio. The six state bodies mentioned above analyze hostile propaganda along their own line and provide their own reports, which then make up the final report. This final report is sent to the members of the Politburo and the Secretariat, the heads of departments of the Central Committee and the leaders of the affected state organs.

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<sup>74</sup> NAH M-KS-288 f. 5/611 ö. E. Printed copy. The resolution adopted on May 22, 1973 as can be seen at the top of the first page – was declared invalid ten years later by a resolution made on October 11, 1983.

<sup>75</sup> The resolution that set up the Department of Propaganda of the Central Committee and defined its organization, tasks and working methods was adopted by the Politburo on March 10, 1969 (NAH M-KS-288. f. 7/323 ö. e.). The evaluation Committee was set up later. The first report of the Evaluation Committee was discussed by the Politburo as part of the »Miscellaneous« item on the agenda on December 16, 1969 (see NAH M-KS-288 f. 5/507 ö. e.).

This work has become an integral part of the political activities of the above-mentioned bodies, constituting an established system today. It is especially the reports prepared by the Ministry of Foreign Affairs, the Hungarian Press Agency, the Ministry of Defense and the Ministry of the Interior that show clear signs of regular data collection and deep analysis. The Hungarian Radio and the Institute of Foreign Affairs have been able to find the most suitable method only recently.

The evaluation in these reports is aimed at pointing out the main tendencies and changes. Therefore they can provide the political leadership with useful quarterly summaries concerning hostile propaganda and at the same time call the attention to possible tactical changes, based on the comparison of data in recent and earlier reports. The reports also provide good grounds for drawing the necessary conclusions.

However, one shortcoming of these reports is that the collection of data is not comprehensive enough (it does not even utilize fully the technical capacity of the monitoring station installed in Gödöllő) and the analyses are not deep enough. They often fail to amply show how the division of labor is managed by the various outlets of hostile propaganda, they do not call attention to the characteristic features of bourgeois propaganda that impact the various classes and layers of the society – especially the youth – and they do not investigate thoroughly as to how the policy of disintegration conveyed by this propaganda becomes manifest in the area of tourism. The level of synthesizing work is not satisfactory. Several of the bodies concerned are still trying to find the most suitable methods to participate in the analysis of hostile propaganda and they replace their representatives engaged in such work all too often. Most of the real work is done at the end of quarters, it is not operative enough and there are very few evaluations prepared in between the quarterly reports.

I. 2. The main goal of the analysis of hostile propaganda has so far been to provide information for the leaders of the party and the state. As a result, information flow was directed upwards and we failed to devote ample attention to two important tasks: providing information for the lower party organizations, which should be somewhat different from the reports sent to the highest leadership, and to the utilization of our experience gained through our fight against hostile propaganda in our political work, especially in our own propaganda activities.

I. 3. Our sister parties show a genuine interest in learning more about our experience in the evaluation of hostile propaganda. For instance, the Central Committee of the Soviet Communist Party has ordered the counselor of embassy of the Soviet embassy in Budapest to gather information at the Central Committee about our quarterly evaluation reports. Similar regular information is provided for the German Socialist Unity Party, and the Polish and Bulgarian diplomats are given occasional information. It would be practical, however, to send our sister parties a biannual report and request a similar evaluation from them.

II. 1. The main methodological and substantive experience gained through nearly four years of evaluation work shows that the hostile propaganda targeting our country intends to achieve the same goals by means of changing methods and tools with a view to the

conditions of peaceful coexistence and the ongoing ideological fight. This propaganda is less sharp in its tone today but much more extensive in its scope.

Some of the methodological and substantive changes can be demonstrated by the following:

- It was a striking feature of the period in question that in general the hostile propaganda was not trying to incite the people directly to overthrow the system instantly. It took great pains to be viewed as an “opposition” rather than an “outsider” or an “enemy”, which criticized the system from the “inside”, so its tone pretended to be more “loyal.” It intended to relate very closely to the everyday problems of our public life, to exaggerate our troubles and to support their messages by referring to facts and events of our daily life. These endeavors are manifest e.g. in their intention to incite dissatisfaction towards the policy of the party, to attack the leading role of the party, to turn the various classes and layers of society against each other, and to extol apolitical technocracy. They also try hard to frustrate our endeavors by trying to push our policy to the right, e.g. urging “capitalistic” reforms in the economy and “liberalizing” reforms in extending socialist democracy.
- Open, anti-Communist propaganda is more and more often replaced by campaigns heralding the “improvement” of socialism in which important issues of Marxism are also discussed, often using Marxist terminology. At the same time it frequently propagates so-called new models of socialism, overemphasizes the importance of the divergent national features of socialist development, incites nationalism and turns the socialist countries against each other. It also maintains – often with an openly anti-Soviet tone – that there exists a so-called Hungarian model.
- The foreign propaganda paints a distorted picture of the domestic situation also by setting domestic and foreign policy sharply against each other. It suggests that Hungary can continue to conduct its “liberal, reformist” domestic policy at the expense of an “orthodox, Soviet-friendly” foreign policy. It recommends the same to other socialist countries too. In this context its aim was to instigate distrust among our allies, and even the cooked-up potential clash between the “conservatives” and the “reformists” was represented as a “proof of the instability” of the socialist system. It talked about a “Hungarian dilemma”, a “crisis in the leadership”, and when – after the November Central Committee meeting<sup>76</sup> – the desired “disintegration” did not materialize, it started speaking about “a tightening domestic policy”, “shifting the points” and “putting the brakes on reforms.” It sticks to the same attitude even today. At the same time it takes a good stock of the tactical situation, which is illustrated by its reaction to the events of March 15<sup>77</sup> or to those that took place in Balassagyarmat. It is also to be noted that it speaks differently about Hungary to the audience of capitalist countries than to a Hungarian audience.

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<sup>76</sup> The November meeting of the Central Committee can indeed be regarded as the prelude to counter-reforms. In a wider context it was this development in domestic policy that underlay the procedures against some philosophers and sociologists in 1973.

<sup>77</sup> In 1972 young people started to commemorate the anniversary of March 15. On March 15, 1973 the people commemorating the event clashed with the police. Several people were beaten, detained and dismissed from their job.

- Within nationalist incitement the main goal of the propaganda has become to instigate anti-Soviet sentiments and to break away from the Soviet Union. A standard topic of this propaganda is the “Soviet pressure” on our domestic policy, “distrust on the part of Moscow”, the “superpower interests of the Soviet Union” and the “Brezhnev doctrine” as far as foreign affairs are concerned. It urges to challenge this doctrine and sets the Romanian foreign policy as an example. It describes the advantages of a possible “stronger orientation towards the West” and Hungary’s ability to “play the role of a bridge.” The fact that most of the propaganda broadcast to Hungary talks about the internal situation of other socialist countries, especially the Soviet Union, also demonstrates that the main goal is to set us against our allies.
- Imperialist propaganda pays increasingly more lip service to ultra-leftist views. It uses Maoist, Trotskyite “new leftist” ideas to demonstrate the “internal crisis of socialism” and speculates on making the most of the conflicts in international labor movement by exaggerating and sharpening them to an extreme degree. It encourages openly or potentially anti-socialist trends, various extremist groups and the pluralism of Marxism<sup>78</sup>.
- Utilizing the potentials of wide-ranging contacts between the East and the West it creates a lot of illusions about the capitalist system and Western lifestyle, and promotes the system of values prevalent in the capitalist world. The changes that have taken place in the policy of some capitalist countries as a result of the changes in the balance of powers are represented as if the nature of capitalist policy itself had changed, thereby giving rise to illusions about certain countries or politicians. This propaganda does everything it can to make the bourgeois mass media more appealing to a growing number of people.

## II. 2. The reasons for the changes in the content and methodology of hostile propaganda:

- the achievements of our domestic and foreign policy and the strengthening position of socialism which shattered any hope for a direct overthrow of the socialist system;
- the general crisis of the capitalist world and the decreasing appeal of it as a direct consequence of this crisis;
- accommodation to the tactics of disintegration and “selective gap-bridging”;
- social changes in our country and the recognition of developing socialist mentality;
- utilization of the potential of wide-ranging contacts between Hungary and the capitalist world.

II. 3. Among the various tools of imperialist propaganda the mass media continue to try to expand the range of people who tune in on their programs especially by playing the role of acceptable and trustworthy channels of information. Though their messages are essentially the same, there appears to be a certain division of labor among them in that for instance certain things that the radio of Washington is reluctant to say for political reasons are conveyed through the BBC or the Radio of Free Europe.

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<sup>78</sup> The debates over the pluralism of Marxism can be found in earlier documents.

In addition to the mass media an increasingly important role is played by the propaganda conveyed through cultural relations. The embassies of developed capitalist countries are becoming more and more active, and occasionally we also witness the propaganda activities of the right-wing emigration. The hostile propaganda makes use of the potentials in tourism through the training of western tourists visiting our country as well as by trying to exert an influence on the Hungarian tourists visiting their countries.

The tools used by the imperialist propaganda have undergone intensive modernization. The United States is already planning to introduce the use of satellites to broadcast television programs to socialist countries and the Federal Republic of Germany is going to install new, high-capacity radio stations.

II. 4. The evaluation of hostile propaganda targeting our country is an extremely complex task. Our society is constantly exposed to a wide range of concurrent effects. When weighing the impact of bourgeois propaganda, our essential starting point is that Hungarian public opinion is largely influenced by the achievements of socialist development and the major elements of socialist public thinking. However, we should not ignore – and overestimate or underestimate – some impact of bourgeois propaganda.

Bourgeois propaganda can achieve some results in issues related to some internal tension or problems in the country. For instance they have tried to give rise to some uncertainty and raise some concern over the future of our economic reforms and the correctness of our foreign policy. This propaganda also makes use of the weaknesses of our information policy. For instance, it wasted no time to grasp the opportunity when we were rather silent about the Vienna negotiations for quite a long time.

Its impact can be observed in three areas:

- some unfavorable features of public sentiment and attitude – nationalism, cynicism, adoration of the West, disparagement of the achievements of the socialist countries – can partly be attributed to the impact of western propaganda;
- hostile influence occasionally manifests itself in providing misleading information for the people;
- imperialist propaganda as a major tool of ideological subversion disseminates bourgeois ideas, conserves and revives bourgeois ideology.

This impact can be explained by the more intensive contacts between the two world systems, the ideological situation in our country, and our objective difficulties and subjective mistakes. The weak points of our work play an important role in its success: the shortcomings of our analyses and the failure to utilize our past experience. For this very reason priority should be given to a more offensive and active fight against hostile propaganda in the proper framework in addition to the currently ongoing evaluative and reporting activities.



*Resolution*

1. The Politburo accepts the report.<sup>79</sup> It states that the system of analyzing hostile propaganda has been established on the basis of the resolution of the Politburo and fulfills its tasks.

2. It is the achievements of socialist development and the main aspects of socialist public thinking that play the most decisive role in shaping Hungarian public opinion. The fight against hostile propaganda – due to earlier party resolutions – has become more lively, argumentative, polemical and sophisticated. The organs of the mass media have played a key role in this development both at home and abroad. However, due to the change in the balance of powers, the easing of tension and the widening range of contacts between the two world systems we expect that the ideological fight will sharpen, and hostile propaganda and bourgeois ideological subversion will intensify.

3. The fight against bourgeois propaganda is part of our entire political and ideological work. We need to counter the effects of this propaganda by representing and convincingly arguing for our achievements, ideas and values, and by providing creative responses to questions raised in real life. Our work cannot be restricted to merely rejecting bourgeois propaganda, and the fight should be fought from an offensive, positive position rather than from a defensive stand, using every tool that is offered by our domestic policy and by the propaganda campaigns targeting foreign countries.

In addition to the press and the radio we should make a better use of the television as a tool, provide verbal information for members and non-members of the party, and utilize political training and the mass organizations and movements so that our people can be amply protected both ideologically and politically against hostile propaganda.

Investigations should be conducted as to how efficient our political and propaganda work is among the emigrants living in western countries. Efforts should be made to exert an influence on the intelligentsia of capitalist countries (especially in Western Europe) that shape public opinion by means of high-quality publications (newspapers, books, scientific studies, etc.).

4. In regard to the main lines of the offensive of hostile propaganda our political work lays emphasis on the following aspects at this stage:

- The permanent and changing elements of our policy constitute unity; they can not be set into any opposition.
- The socialist nature of our society is getting stronger in every area; the socialist elements of public thinking are constantly increasing.
- The relationship between the party and the people is good and is based on confidence; the domestic political situation is stable.

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<sup>79</sup> The resolution was based on the report prepared by the Department of Propaganda for the Propaganda Committee. The text was hardly changed in the resolution, so its publication is not justified.

- We rely on cooperation and firm unity with the Soviet Union and the other socialist countries based on firm principles so that we can serve our national and international interests and protect our security and sovereignty; the Hungarian-Soviet friendship is unbroken.
- Peaceful coexistence between countries with a different social system means cooperation as well as fighting at the same time. We are ready to act against any shortsighted, sectarian isolation but will never allow to obscure the ideological differences and make any concession to anti-Marxist views.
- We endorse the exchange of cultural values between nations living under different social systems and promote the expansion of tourism and information flow but we reject any endeavors that are based on the principles and practice of the cold war and the false theory of the free flow of information and ideas.
- In regard to the developments in tourism we stress the importance of state discipline, responsibility and the obligations of our citizens, and we will firmly hold our citizens accountable for their behavior both at home and abroad.

5. In order to strengthen our fight against hostile propaganda we intend to accomplish the following:

a) establish a more coordinated and operative system of monitoring and analysis followed by drawing the necessary conclusions. The observations made at different places should all be used for the preparation of coordinated reports that include every possible aspects of monitoring work.

The various departments of the Central Committee that take part in the analysis should summarize their work and ensure that their results are utilized in the reports in a systematic way. In the future the State Office of Church Affairs and the National Information Council should also prepare reports on any hostile propaganda efforts that can be observed in their sphere of activity, and if needed, other state and social bodies and organization should do the same concerning their experience in this respect.

More thematic evaluations should be prepared in relation to certain important events. The bodies concerned should investigate the activities of hostile propaganda targeting the various classes and layers of our society, with special attention to the bourgeois propaganda targeting our young people. The analyses should investigate how the division of labor works between the various outlets of bourgeois propaganda (e.g. radio stations) and what sort of other tools this propaganda intends to utilize in addition to the outlets of mass media: tourism, relations with emigrants, propaganda among the national minorities.

The quarterly reports should be continued, but it is also important to process the incoming reports and any other information on a daily basis. To that end the monitoring of hostile radio broadcasts should also be developed. The personnel problem that hinders the full utilization of the monitoring radio station in Gödöllő should be promptly resolved. The full content of monitoring should be sent to the Hungarian Institute of Foreign Affairs. This institute should be turned into the scientific center of the long-term analysis of hostile propaganda.

The information materials concerning hostile propaganda coming from different sources should be coordinated, such as the press reviews prepared by the Ministry of Foreign

Affairs, the confidential materials of the Hungarian Press Agency and the various reports that process the materials published in the newspapers of the Hungarian emigration.

b) The experience gained from the analyses should be used more effectively in our domestic political work and foreign propaganda. By unveiling the slanders and false statements we should deprive bourgeois propaganda of its credibility. We should do our best to exert an influence on the public opinion of the capitalist countries by presenting our own arguments and facts. In the meantime we should be aware of the danger of letting the enemy to decide what questions and issues should be raised in our work. We should generally refrain from direct disputes and engage in arguments only if it is justified by our political interests.

Taking into consideration all the experience gained through the analysis of hostile propaganda and building on the quarterly reports made for the leading bodies we should prepare materials which contain data, arguments and facts that can be used to refute any falsification and assist the fight against hostile propaganda and send them to lower-level party organizations through existing information channels.

Regular recommendations should be made as to what sort of tasks should be performed in our political work in order to counter the effects of hostile propaganda effectively. We should specify concrete tasks in this respect for the mass media organizations working at home and addressing a foreign audience.

The special tasks of each relevant area (such as tourism, political work concerning the emigrants, the national minorities, etc.) should be regularly analyzed in the fight against hostile propaganda.

The Institute of Social Studies should take an active part in the analysis of hostile propaganda and point out the relationship between the bourgeois ideological subversion and this propaganda in its research studies and reports.

c) We should expand our cooperation with our sister parties. This should be achieved gradually, in a sensitive manner, through bilateral negotiations with each party. We should offer the option to the parties of all the European socialist countries (except for Albania) that in addition to the use of our existing channels for the exchange of information verbally we are ready to send them a written biannual report on our experience with hostile propaganda. We should also urge similar cooperation with those of our western sister parties in whose countries this hostile propaganda against our country is very sharp (Italian Communist Party, French Communist Party, German Communist Party, the Communist Party of the US, Austrian Communist Party).

6. The Politburo proposes that the Propaganda Committee should review the system and methods of the press-administration involved in countering the effects of hostile propaganda and take a position on its modernization.

7. The Politburo deems it necessary to establish a new political post at the Department of Propaganda of the Central Committee with the function to implement the provisions of the resolution and coordinate the analysis of hostile propaganda.

8. A *new report* of Central Committee Department of Propaganda was discussed by the Secretariat of Hungarian Socialist Worker's Party at its meeting on December 4, 1978. on

the execution of the resolution of the Politburo made on May 22, 1973 concerning the strengthening of the fight against imperialist propaganda; proposal for future tasks.<sup>80</sup>

8. 1. The imperialist propaganda targeting our country – during the five years since the Politburo made a resolution on strengthening the fight against imperialist propaganda at its May 22, 1973 meeting – has not changed substantially in its basic goals and main line. Most of its efforts are still focused on attacking the socialist system from the outside while trying to disintegrate it internally. At the same time it incites anti-Soviet sentiment, tries to turn the people against the other socialist countries and our sister parties and gives rise to illusions about capitalism. The hostile propaganda that intends to exert an influence on Hungarian public opinion is no different in a strategic sense from the imperialist propaganda that targets the other socialist countries.

However, the propaganda campaign of imperialism has found itself under new circumstances, both due to our internal development and as a result of geopolitical changes in world politics. International ideological fighting has received priority and become more complex. The imperialist power centers have decided to intensify their anti-socialist propaganda and the ideological tension between the two world systems. In certain issues – such as issues of human rights and democracy – they have even managed to take the initiative temporarily. The propaganda offensive that has emerged recently can not be traced back to the endeavors of some capitalist circles only, or to the transitional functioning of a particular government. What we should expect is that the offensive behavior of the imperialist propaganda centers will remain a lasting component of the struggle between the two world systems.

8. 2. There have been significant tactical changes in the imperialist propaganda targeting our country – while the strategic goals are still maintained – as a result of the concurrent impact of changing internal and external conditions of the ideological fight. The essence of these changes can be summarized as follows: the propaganda campaign has become more complex in its content, more extensive, versatile in its methods and more focused in using various tools. It paints a very distinct picture of Hungary, giving a semblance of a country which ‘maintains a system that is more acceptable than that of the other socialist countries, distancing herself from the Soviet model.’

The hostile propaganda campaign attacking Hungary relies heavily on the everyday problems of the people, practically ‘building on’ the practice of developing socialism and its existing conflicts. The propaganda campaign that was initiated in relation to the so-called new Hungarian model in our economic management system has gradually been extended to all aspects of domestic policy, using it as a tool to set our country against the rest of the socialist countries. The bourgeois propaganda centers take great pains to make it appear as if they were true representatives of the interests of our people.

These endeavors manifest themselves mostly in the campaign concerning human rights and national minority issues. Our country is not the main target of the campaign that was launched on the pretext of safeguarding human rights, but recently it has become more intense even in relation to Hungary. Nationalist incitement has intensified in the ethnic

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<sup>80</sup> NAH M-KS-288.f. 7/566. ő. e.

minority issue, because this area is regarded by the imperialist propaganda as the most suitable to turn part of the people against the policy of the party and incite conflicts among the socialist countries. These hostile propaganda centers are also busy working on establishing 'an opposition' in Hungary. They want to argue that the 'Hungarian opposition' is also part of the 'Central European opposition movement'. As a result of the stable internal situation and the political decisions made in concrete cases this imperialist propaganda could not fulfill its expectations. It is quite likely though that it will try to make the most of our economic problems in widening the scope of those who could act as 'the opposition' to our socialist system.

The imperialist propaganda organizations have undergone several structural changes in the past few years. In order to enhance their efficiency they want to use all their tools directed towards this aim on the one hand, and they intend to introduce new methods on the other.

As a new feature, the hostile radio stations broadcasting in Hungarian do their best to get official recognition in Hungary. Radio Free Europe announced that it would be willing to air critical opinions of their own programs.

There is a new development in the area of radio propaganda. The Radio of Beijing has started a Hungarian language program speaking sharply against the Soviet Union and détente, though poor technical conditions make the reception of its broadcasts difficult for the time being.

As far as propaganda through the television is concerned, the United States is currently broadcasting experimental programs through satellites. This means that within a few years Western television programs will probably be received easily in the socialist countries, including our country too.

8. 3. The hostile propaganda, which mainly targets the intelligentsia, young people, the lower middle-class and those with a petty bourgeoisie mentality, can not influence public opinion, political thinking and the frame of mind of the people in the country in any significant way. Hungarian public opinion is largely shaped by the results of socialist development, the policy of our party and the constantly strengthening elements of socialist public thinking.

The decrease in the listening rate of the programs of Radio Free Europe, and in general, Western radio broadcasts, is due – in addition to the stable political situation in Hungary – to the fact that the work of the mass media in the country is much more efficient and up-to-date, and the level of providing information for the people has improved significantly. However, the viewing and listening rate of hostile radio stations and television programs that can be received easily in the western and southern parts of the country may temporarily increase in relation to some domestic or international events that are ignored by the national mass media for some reason, or their reaction is somewhat subdued and late.

Wrinkles in socialist awareness, a still existing instinctive sentiment, remnants of bourgeoisie views and habits and their reproduction, occasional instances of intensifying individualism and acts and behaviors that violate the norms of socialist morals all create potentially favorable conditions for the imperialist propaganda campaigns. To some extent these factors, coupled with insufficient political-ideological vigilance and lack of effective propaganda, help maintain non-socialist view in public thinking, prejudices and a moral standing inherited from societies of the past, and manifestations of anti-social behavior.

However, it should be admitted that sometimes real mistakes and shortcomings are criticized, which are then attributed by many exclusively to the results of hostile propaganda.

Closely related to bourgeois propaganda is the intensification of nationalism, a still strong anti-Soviet sentiment, the occasional disparagement of the achievements of socialism, the entertainment of illusions about the capitalist system, the dissemination of false information and the overstatement of our internal and external problems. The hostile propaganda is especially efficient in making use of the shortcomings of our information system in relation to issues concerning the situation in each socialist country, to the position of the sister parties and the way in which relations among the socialist countries and the sister parties are viewed.

From time to time we give a head start to the bourgeois propaganda campaigns by failing to recognize the imperialist endeavors in time, due to subjective and objective reasons, by wasting time in drawing the necessary conclusions or by not making use of the right conclusions in our national and international propaganda. In certain cases there are international obligations that restrict our ability to provide the necessary information.

8. 4. On the basis of the resolution of the Politburo dated May 22, 1973 the fight against bourgeois propaganda has become an organic part of political and ideological work. The need for this fight has been confirmed by the 11<sup>th</sup> Congress of the party and by several resolutions of the Politburo and other party organs on information and emigration policy. As a result of the resolution of the Central Committee dated October 26, 1976 – specifying the current tasks and the further development of party propaganda – more emphasis has been given to a more effective ideological training of activists at local party organizations, which is a prerequisite for acting against the hostile views propagated by bourgeois propaganda.

Our national and international propaganda and information policy takes up the fight against hostile propaganda and ideology by representing our general policy in a more convincing fashion, by painting a more appealing picture of existing socialism, and by unveiling the true nature of imperialist policy and the reality of capitalism. We respond to western campaigns launched against us and the entire socialist community in specific issues in a very cool and principled manner by providing positive arguments. With certain exceptions we refrain from entering into direct disputes with outlets of bourgeois media.

In the past five years a harmonized and operative system of observing, analyzing and evaluating hostile propaganda has been established. The state organs responsible for monitoring foreign propaganda provide regular and scheduled reports. The Central Committee of KISZ (Communist Youth Organization) has recently started the regular monitoring and evaluation of bourgeois propaganda targeting the youth of our country.

The four departments of the Central Committee of HSWP involved in this work – the Departments of Propaganda, Public Administration, Foreign Affairs and Science, Culture and Public Education – and six other state bodies – the Ministry of the Interior, the Ministry of Defense, the Institute of Cultural Relations, the Ministry of Foreign Affairs, the Hungarian Radio, the Hungarian Press Agency – set up an evaluation team which fulfills its tasks well. The team constantly monitors hostile propaganda materials and broadcasts, and prepares a comprehensive evaluation report in every quarter.

Based on this well-established system the Department of Propaganda of the party conducts an up-to-date monitoring and evaluation of the hostile propaganda targeting our country. The data are utilized in the following five ways: quarterly summaries are prepared on the main tendencies; thematic summaries are prepared on the bourgeois reception of our political measures and statements; weekly reports are made on the hostile evaluation of events that influence public opinion in the country; occasional information on certain specific bourgeois propaganda campaigns; the various departments of the Central Committee are continuously informed of the bourgeois commentaries that are relevant to their work. As a result, the level of providing information for the leaders has improved significantly. However, the utilization of the conclusions that can be drawn from these analyses for our domestic and foreign propaganda work is still not sufficient.

In the past few years the members of our party have become more prepared and trained for the fight against hostile propaganda. The most important element of this increased competence is that they show ideological and political unity, they are well trained and informed about the propaganda targeting our country, and they are provided with information materials that contain some good argumentation. However, the members of the party, especially the activists working at the local organizations call for a more prompt response to the rumors of hostile propaganda at every level of the hierarchy of the party and require that they should be provided with ample information materials on a regular basis by the competent party committees and that the necessary information should be made available verbally to all the members of the party.

The work of the radio tapping station that monitors most of the propaganda against our country does not meet the increased requirements, mainly due to technical problems, the lack of political selection and personnel problems. The information about hostile propaganda is still not comprehensive enough, e.g. information concerning the experience that could be gained in areas like the churches, tourism and social organizations is still lacking. Furthermore, there is no evaluation or analysis that could predict the possible future tendencies of imperialist propaganda.

As a result of the work conducted in the scientific institutes of the Hungarian Academy of Sciences and the Institute of Foreign Affairs there has been some progress recently in the scientific analysis of the propagandistic machinations of bourgeois ideology. The institutes mentioned above have established extensive relations with similar institutes of our friendly countries. However, the coordination of their work at home is still not ensured, and there is no rational division of labor among them. Although it has prepared very valuable materials concerning certain important issues, the Institute of Foreign Affairs has not yet become a scientific center that can provide long-term analyses of hostile propaganda. Another unresolved issue is the investigation of the impact of hostile propaganda.

The system of press-administration that is used to protect our country from hostile propaganda works quite efficiently. Its tasks have multiplied by now, so the staff in this area is working under a lot of pressure. The technical and personnel background supporting their versatile work in organizing and selecting information requires considerable development.

The work concerning the protection of our country from hostile radio broadcasts should be revised. As a result of the resolution of the Politburo dated October 8, 1963 the jamming of the programs of western radio station in the Hungarian language was terminated as of January 1, 1964. However, the resolution also stipulated that the technical system used for

jamming should be maintained and re-installed, if necessary, within 48 hours. The transmitters, antennas and accessories that were installed 26 years ago are by now totally out-of-date, and for technical reasons some of them had to be eliminated. Under such circumstances, the system is only partly capable of fulfilling its task, if the need should arise for it. Without overall reconstruction and the replacement of missing devices, within a few years the whole system will become unable to meet any of the requirements set forth by the resolution of the Politburo. Full reconstruction and replacement would require significant financial resources.

Since 1968 our jamming stations – upon a Soviet request – jam western programs broadcast in the Czech and Slovakian languages. We have no information at all as to how efficient the jamming of these stations is, or whether jamming is still needed.

The exchange of views concerning hostile propaganda has become part of the ideological cooperation among the sister parties of the socialist countries. The party delegations visiting our country and the Budapest embassies of our friendly states regularly request and are provided with information about our experience gained in dealing with imperialist propaganda. We also receive such information from some of our sister parties through their embassies. We have also exchanged ideas on this issue with several western sister parties, such as the Italian Communist Party, the French Communist Party, the Austrian Communist Party and the German Communist Party. The relevant state bodies of socialist countries have also established a similarly comprehensive framework of cooperation. However, international experience is not utilized efficiently in our everyday work.<sup>81</sup>

The Secretariat accepted the report. It establishes that as a result of the execution of the resolution made by the Politburo at its meeting on October 8, 1963 the fight against imperialist propaganda, as an organic part of ideological and political work, has become more oriented towards its main goal and more argumentative and organized in its character.

The impact of propaganda targeting our country should continue to be countered – on the basis of the resolution of the Politburo – by firmly representing our policy, by presenting an authentic picture of our problems and accomplishments and by taking the initiative and the offensive in issues that demonstrate the advantages of a socialist system. The preparedness, discipline and alertness of party members, the provision of ample information within the party and the development of verbal propaganda are all of primary importance. To achieve this goal, regular information materials and recommendations should be worked out on the basis of the monitoring of hostile propaganda so that the activists of the party, the state and social organizations that are involved in propaganda work targeting the masses could argue more convincingly for our interests, position and policy and respond to hostile views more instantaneously. It is especially important to provide a better training for those who are involved in giving information to foreigners who visit our country, especially for tourist guides. The recommendations prepared quarterly or in relation to certain important events, which are meant to assist political work, should become an integral part of analyzing and evaluating hostile propaganda. When analyzing the attitude of the people on a regular basis the party organizations in Budapest and the counties should pay special attention to the views that reflect the actual presence and impact of foreign propaganda. On this basis they should draw the necessary conclusions for their own propaganda work.

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<sup>81</sup> NAH M-KS-288 f. 5/507 ó. e.



The scientific basis for the long-term analysis of hostile propaganda should be strengthened considerably. Since the strategy of hostile propaganda is unlikely to change and its tactics can be monitored by systematic methods, there is no need to set up a new and big staff for the long-term analysis of this propaganda. Instead most of the attention should be focused on a better utilization of the existing bodies and institutions and on establishing more effective cooperation among them. To this end, the Institute of Social Studies of the Central Committee should continue to investigate the trends of bourgeois ideology, while the Department of Foreign Affairs of the Central Committee and the Ministry of Foreign Affairs should ensure that the Hungarian Institute of Foreign Affairs continues to analyze the strategy and tactics of imperialist propaganda as part of its research activities. Building on the work of these two basic institutions our work should be concentrated on the systematic analysis of the relations between bourgeois ideology and propaganda, making use of information and experience that we gain through our party and state relations.

The Mass Media Research Center of the Hungarian Radio and Television should be provided with all the conditions that are necessary to conduct research into the effects of hostile propaganda by using tools of opinion surveys on a regular basis and with due care.

There is no need to further enhance the range of bodies and institutions that are involved in the analysis of imperialist propaganda campaigns. The main task is that the bodies and institutions of the party, the state and various social organizations involved in monitoring hostile propaganda should cooperate in their activities much more efficiently in the future. To this end the State Office for Church Affairs, the People's Patriotic Front, the National Council of Trade Unions, the Communist Youth Organization and the bodies supervising tourism should, in every quarter, make available all the information that they have to the team that is engaged in evaluating hostile propaganda.

In addition to periodical reports, special reports should also be prepared which investigate how a significant event related to Hungary has been received by hostile propaganda. In the future evaluation work should also be extended to the Chinese propaganda that targets our country. It should be ensured that the information on hostile propaganda campaigns provided for the highest party and state leadership is more to the point and coordinated. Monitoring work and evaluation should be followed by processing relevant information and experience and by drawing the necessary conclusions.

The network of jamming and monitoring hostile radio broadcasts targeting Hungary should be brought up to a level that can meet the new requirements today. The reception center of the Hungarian Press Agency stationed outside Budapest should gradually be developed into a high-capacity radio-monitoring center by installing modern devices in accordance with our available financial resources. In this way a new service should be set up that can meet the special demands of all the state organizations involved in monitoring hostile propaganda at a high political and technological level. In addition to monitoring hostile broadcasts, this center should also be responsible for recording the broadcasts of press agencies transmitted through radio waves and, very soon, through satellites as well as the Hungarian language programs broadcast by neighboring socialist countries. The Department of Propaganda, the Department of Public Administration and the Department of Foreign Affairs should consult with the affected bodies (National Defense Committee, Ministry of Defense, Ministry of the Interior, Ministry of Foreign Affairs, Information Office, Hungarian Press Agency) and based on these negotiations a development plan which

takes into consideration the realities of our economic possibilities should be made to set up a modern radio center – in several phases, if necessary – that can be used in several ways. The development plan should be submitted to the Secretariat by the Department of Propaganda in the second half of 1979.

The broadcasts of the Austrian Television that can be received in a significant part of the country and those of other western television stations received through Austria should be put on the list of programs to be monitored regularly, and the leadership should be informed of any aspects of these broadcasts that may involve Hungary. The Secretariat commissions the president of the Hungarian Television to work out the necessary system of monitoring in cooperation with the state bodies concerned. The party committees of the counties by the Austrian border should provide regular information on how these programs affect the people in their county.

Investigations should be conducted to assess the possible impact of broadcasting television programs directly through satellites, and the political and technical tasks in regard to this new development should be specified without delay.

The working conditions of the system of press-administration that is involved in protecting our country from hostile propaganda should be improved considerably. A short-term and a long-term plan of what measures should be taken to achieve this goal in accordance with our current financial possibilities should be submitted to the competent state bodies by the president of the Information Office, after consulting with the leaders of the Hungarian Post.

The Secretariat deems it justified that relevant sections of the resolution made by the Politburo on the protection of our country from hostile radio propaganda on October 8, 1963 be revised. To prepare for the necessary decisions, the Secretariat commissions the Department of Propaganda, the Department of Public Administration and the Department of Industry, Agriculture and Transportation of the Central Committee to make a report for the Politburo on this issue. Together with the Department of Industry, Agriculture and Transportation of the Central Committee the Department of Foreign Affairs should discuss the efficiency of and the need for jamming western radio programs broadcast in the Czech and Slovakian language.

Besides the “strictly confidential” mimeographed daily news-bulletin, the special section of the Hungarian News Agency internally published other regular, confidential information-bulletins about the programs of the foreign radio stations: “Appendix to the daily news-bulletin”, “RFE-Western radio stations weekly-bulletin”, “Weekly bulletin about the Hungarian language programs of the Western radio stations”, “Addendum to the Weekly bulletin about the Hungarian language programs of the Western radio stations”, “Military bulletin – Hungarian language programs of Western radio stations”, “Special editions”, and “Expert editions”.

Departments of the Central Committee, ministries and the Information Office of the Council of Ministers had the right to order special monitoring services. The Information Office regularly ordered transcripts of Hungarian news-survey programs of the Western radios, while the Ministry of the Interior acquired the full text of all programs which were based on the letters or messages sent by Hungarian listeners. (In this way the Ministry tried to follow the changes of the mood of the population as they were represented in correspondence with the western stations, in order to complement the heavily biased

internal population attitude polls and the reports of party functionaries and professional and so-called “informal” secret agents.) The Ministry of the Interior, the Ministry of Defense, the Ministry of Foreign Affairs, and the Defense Committee of the Council of Ministers, were all entitled to give special assignments to the monitoring section and to order specialized thematic bulletins.<sup>82</sup>

The list of those members of the nomenclature who were to receive the confidential bulletins was kept in a safe in the headquarters of the Hungarian News Agency (hereafter MTI). After the political transition the list was allegedly lost, but according to former employees of the News Agency, while at the beginning only a few dozen functionaries were on the list, later on the mimeographed daily news-bulletin was internally published in between 150 and 300 copies, while the weekly editions reached a much wider audience.<sup>83</sup> These are not insignificant numbers: it is safe to state that the wider leadership of the Hungarian party received regular, almost objective information about all the politically significant programs of RFE; the information was not intentionally distorted, was not commented upon, and the most important issues were covered extensively, with full-text versions of the transcripts.

9. On 24 March, 1969 the Politburo of the Hungarian party decided to set up a “Foreign Propaganda Sub-Department” inside the Agitation and Propaganda Department of the Central Committee.<sup>84</sup> The Sub-Department was instructed to monitor and regularly evaluate the “enemy propaganda directed against our People’s Democracy” and to set up an “evaluating committee” with representatives of the Ministries of Foreign Affairs, Defense and the Interior, as well as delegates from the Institute of Cultural Relations (an important intelligence cover organization), the Hungarian News Agency and the Hungarian Radio. The committee had to prepare quarterly reports about the recent tendencies of “enemy propaganda”. The first report covered the third quarter of 1969. The reports were sent to the members of the Politburo, the Secretariat, to the Department Heads of the Central Committee and to a few other high-ranking officials, whose work was specifically related to either international or domestic propaganda, and counter-propaganda. According to a memorandum sent by the then head of the Agitation and Propaganda Department to János Kádár, First Secretary of the party, the work of the evaluation committee was not exceptional in the socialist countries, and the party leaderships of the GDR, Poland, Czechoslovakia, and the Soviet Union had suggested to the Hungarian Central Committee that they share experiences and exchange the evaluation reports. (In the spirit of mutual

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<sup>82</sup> SZOMOR, MÁRTA: *Radio monitoring and its publications at the MTI (Radio Monitoring Publications)*. Budapest, mimeo. July, 2004. pp. 5–6.

<sup>83</sup> The members of the nomenclature were the so-called “cadres”. This military term is usually applied in communist parlance to young workers or peasants brought to work outside their trade in the communist-party bureaucracy or state apparatus, and therefore strongly dependent on the party for their livelihood. This made cadres averse to reforms and strongly supportive of the existing party leadership. For the party, cadres became all-purpose officials ready to accept any post to which they were assigned. They would often serve successively in the state apparatus, in production and in the party apparatus. They provided one of the broadest and most important bases for the communist party.

<sup>84</sup> See NAH M–KS–288. f. 5/486. ő. e.

distrust, the Secretariat decided in the end to share the information only with the specialized agencies of the Soviet Union.)<sup>85</sup>

Following the decision of the Politburo, from the third quarter of 1969 onwards, the evaluation committee started producing and distributing its reports, thus supplementing the copious information already available about enemy radio programs. The evaluation reports quote extensively from the publications of the western press, from the programs of the “enemy radio stations”, referring verbatim to the propaganda materials of western organizations. They employ only the minimal necessary markers to distance the stand of the evaluators from the views of the western media: they use quotation marks when referring to the “evaluation” and the “analysis” of the western “experts” and “specialists”; when quoting from the western media, the evaluators preface quotations with expressions such as: “falsifying the actual situation, western analysts state...”, or “misinterpreting recent developments, they claim...”, or “allegedly focusing on...”, or “creating the illusion...”. The Communist counter-propagandists refer to “the center of imperialist propaganda machinery”, to “those who are interested in the loosening of control over the society”; to those, who use “objectivity” (in between quotation marks), who are careful to convey the “appearance of objectivity”, who talk or write “objectively”.

Still, compared to the transcripts of the programs, there were very important differences. The transcripts were verbatim full texts of broadcasts; the technical personnel had nothing to do with the content, they did not become involved in any possible way. The evaluation reports, however, were no longer impersonal: the members of the committee were known; the head or the deputy of the Agitation and Propaganda Department signed the report.<sup>86</sup> Judged on the basis of both the style and even the content of the reports, these texts were more personal than the program transcripts. The tone of the reports was not very far from the voice of an attentive, cautious, somewhat uneasy observer. It is not an unfounded claim that, in a certain way, the evaluators, and to a certain extent even the readers of the reports, interiorized, in somewhat perverted way, the perspective and the actual content of the narrative.

The evaluators no longer claimed that the other side aimed at overthrowing the Communist regime; they usually used the expression “their aim was to loosen up the control of the regime over society”. Reading the report it is obvious that by the end of the 1960s the Communist experts had become convinced that the Western propagandists were not in the business of inciting a rebellion. On the contrary, those were the times of uncomfortable, involuntary – if not peaceful, at least inevitable – coexistence between the two sides of the Cold War.

The end of the 1960s significantly differed from the previous decade, especially from the voice of pre-1956 times, when the most popular RFE program was the so-called “Black Book”, which exposed and named especially cruel Communist functionaries and petty

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<sup>85</sup> Memo to Comrade János Kádár from Sándor Jakab, head of the Agitation and Propaganda Department for the meeting of the Politburo of the HSWP. 16 December, 1969. See NAH M-KS-288. f. 5/508. ó. e.

<sup>86</sup> After 1973 the hard-liner Károly Grósz, Deputy Head of the Department, later on the last Secretary General of the Hungarian Party, put his signature on the submitted documents. (The “hard-liners” in the HSWP leadership showed no inclination to make political changes or concessions.)

officials at specific institutions, factories, firms and localities, thus creating the impression that the Radios were actually there, in the vicinity, inside the workplace, ready to uncover those who were responsible for the daily suffering of the local community.<sup>87</sup> The “Black Book” program was based on the supposed quick collapse of the regime, after which those who had been named and singled out as responsible for the cruel repression would be dully punished. Before 1956 the time horizon was limited: the period was still considered to be transitory. Former aristocrats turned cab drivers were still addressed by the concierge of the nationalized apartment building as if they had managed to keep their former title and social status.<sup>88</sup>

The 1956 revolution, or its defeat – when the discrepancy between the “liberation theory” or the liberation rhetoric of the American administration and cruel reality became evident – in a strange and paradoxical way contributed to the world-wide stability of the divided world. The launch of the Sputnik signaled the end of the period of transition and the arrival of involuntary *dtente*. Both sides gave up their hopes of imminent victory, and tried to readjust to hopeless long-term coexistence.<sup>89</sup>

The reports of the evaluation committee are characteristic traces of this period. It would be highly instructive to conduct a serious, laborious philological analysis and compare the language, the vocabulary, and the career of certain formulae in the course of the East-West dialogue on the air. Communism or its representation was a joint construct: the result of a not-so-obvious but permanent dialogue between the strategists on the two sides. RFE monitored, recorded, and transcribed the broadcasts of the official East and Central European radio stations. The summary transcripts<sup>90</sup> with short English summaries, together with so called “situation reports” and background papers were sent as telegrams to Washington, where in the morning when the officials arrived at their offices in the State Department and in other specialized agencies, they found the daily transcripts on their desks. Responses were sent to the Political Analyst Department and to the programs of the Radios with instructions about how to respond to the Communist propaganda.<sup>91</sup> And as we already know, in Budapest and in Gödöllő, in all the East European capitals, monitors and technical staff were busy listening, jamming, recording and transcribing verbatim the enemy radio broadcasts and sending daily bulletins to the select group of addressees at the Agitation and Propaganda Department of the Central Committee, at the Ministry of the Interior and at other covert or even not-so-covert agencies, which had to right to instruct the national radios about how to counter the “enemy propaganda”. The evaluation team regularly analyzed the

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<sup>87</sup> Besides the “Black Book”, according to the interviews, the other highly popular program was the regular broadcast of gypsy music – unauthentic, urbanized fake folk music – the favorite of the declass middle class. See: *A re-examination of the program-reference of Hungarian listeners of Radio Free Europe*. Audience Reserach, RFE, July 1959.

<sup>88</sup> URBAN, GEORGE R.: *Radio Free Europe and the pursuit of democracy: my war within the Cold War*. New Haven; London: Yale University Press, 1997. *passim*.

<sup>89</sup> MICHIE, ALLAN A.: *Voices through the Iron Curtain: the Radio Free Europe story*. Dodd, Mead & Co., New York, 1963. *passim*.

<sup>90</sup> Which are strikingly similar to the Hungarian mimeographed daily news-bulletins, and which are stored – as mentioned above – in the Blinken OSA in Budapest.

<sup>91</sup> HART, HENRY O.: *Emergent collective opinion and upheaval in East Europe and the role of radio communication: a further extension of basic models*. Speech Communication, March 1980. Blinken OSA Fonds HU Blinken OSA 301.

tone and content of the RFE programs and submitted suggestions to the Secretariat and the Politburo, about how to instruct the media, especially the national radio service in the foreseeable future. What the unsuspecting listener heard in the solitude of his room, while listening either to the national radio or secretly to the RFE programs was just one single voice, one side of this ongoing dialogue above his head between the programmers, the political strategists, the public opinion experts on the two sides.

The possibility of perpetual alterations encouraged the perpetual hope of change. Even after the reforms had run aground – in the first half of 1968, immediately after the introduction of the first reform measures – it was still possible to keep hoping that alterations would – one fine day – mean change. The alterations institutionalized ambiguity, uncertainty, and the institutionalized impossibility of foreknowledge. Nothing was what it purported to be, everything had become a sign of something else from which quite different conclusions could be easily drawn. The initiated claimed to discern battles between modernizers and conservatives, independents and adherents of the Soviet neo-Stalinists, between the forces of good and evil, progressives and regressives, whatever these categorized might have meant.

In the meantime reform had become completely disembodied; its condition reduced to a ghostly state in which its own anti-thesis had become an element of its existence. The leadership was in need of support from the West, the help coming from (interpreters and evaluators of) the Western propaganda. They needed to show themselves up as martyrs of progression, who try the impossible in the face of the constant pressure coming from the inflexible East. They pretended that without the limits set by Moscow, Hungary, and socialism would move quicker and further in the direction of the envisioned end of history. By making good use of the consciously misperceived Western reactions they not only presented themselves as martyrs of the (whichever) faith, but started to see themselves in this light, under this new description as well.<sup>92</sup>

At the beginning of the changes in 1988, Soviet leader Mikhail Gorbachev ended jamming, allowing Radio Free Europe/Radio Liberty signals to reach a broader audience and allowing RFE/RL services to enter into a closer relationship with the people and journalists to whom they were broadcasting. RFE/RL's contribution to the end of communism in this region was acknowledged by virtually everyone<sup>93</sup>. Polish leader Lech Walesa said its role was comparable to the one the sun plays to the earth. Former Estonian President Lennart Meri nominated Radio Free Europe for the Nobel Peace Prize and then-Russian President Boris Yeltsin personally intervened to help create an RFE bureau in Moscow after the failed August 1991 coup. Former Czech President Vaclav Havel spoke for many when he said that “we need your professionalism and your ability to see events from a broad perspective”.

<sup>92</sup> The sources which published the documents of the political transition are also significant for their examination of the international background of the Hungarian transition. See: *The 1989 Minutes of the Hungarian Socialist Worker's Party* (A Magyar Szocialista Munkáspárt Központi Bizottságának 1989. évi jegyzőkönyvei.) Vols. 1-2., Anna Kosztricz, János Lakos, Karola Vágyi Némethné, László Soós, György T. Varga, (eds.) NAH, Budapest, 1993.

<sup>93</sup> BRZEZINSKI, ZBIGNIEW: *The Grand Failure: The Birth and Decay of Communism in the Twentieth Century*. Charles Scribner's Sons New York. 1989.

Because of Radio Free Europe's role in fighting communism, many thought that the radios had fulfilled their mission and could be disbanded. But officials across the region stressed the continuing need for precisely the kind of broadcasts RFE has brought to this region. Radio Free Europe did cut back in some areas even as it expanded in others. It closed its Hungarian service in 1993, and the Polish Service in 1997, while its Czech Service was substantially reduced and joined with Czech Public Radio to establish a new public affairs radio program. The Broadcasting Board of Governors in Washington ended funding for broadcasting to the Czech Republic September 30, 2002.<sup>94</sup>

In January 1994, RFE/RL began broadcasts to the countries of the former Yugoslavia. In October 1998, the Persian Language (Farsi) Service began broadcasting to Iran, and Radio Free Iraq began broadcasting in Arabic to Iraq. In March 1999, RFE/RL started broadcasting to Kosovo in Albanian and in 2001 the Latvian service launched a special bridge-building program in Russian for the Russian minority in Latvia. In September 2001, RFE/RL started broadcasting to Macedonia in both Macedonian and Albanian languages. Broadcasting in Dari and Pashto to Afghanistan began January 30, 2002. RFE/RL's newest language service, the North Caucasus, began broadcasting in Avar, Chechen, and Circassian on April 3, 2002. Currently (in 2005), RFE/RL's 20 services broadcast programs in the following 28 languages: Albanian, Arabic, Armenian, Avar, Azerbaijani, Bashkir, Belarusian, Bosnian, Chechen, Circassian, Crimean Tatar, Dari, Georgian, Kazakh, Kurdish, Kyrgyz, Macedonian, Moldovan, Pashto, Persian, Russian, Serbian, Tajik, Tatar, Turkmen, Ukrainian, and Uzbek. With all these changes, the future of RFE/RL seems assured. Its services will continue to bring news and information to people who need them in the 21st century.

Radio Free Europe/Radio Liberty has the same five goals, constantly. First, to provide objective news, analysis, and discussion of domestic and regional issues crucial to successful democratic and free-market transformations. Second, to help to strengthen civil societies by projecting democratic values. Third, to strive to combat ethnic and religious intolerance by promoting mutual understanding among all groups. Fourth, to establish a model for local media, assist in training to enhance media professionalism and independence and, when possible, develops partnerships with local media outlets. Fifth, to seek to foster closer ties between the countries of this region and the world's established democracies.<sup>95</sup>

Western broadcasts had a remarkable impact in the USSR and Eastern Europe in the circumstances of the Cold War. They reached mass audiences, as documented by traveler surveys at the time and confirmed now by evidence from the formerly closed Communist archives. They reached key elites, both within the Communist regimes and among regime opponents. The keys to the mass and elite audiences were the credibility and relevance of the broadcasts. Government mechanisms were geared to providing public funding and oversight while ensuring management autonomy and journalistic independence.

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<sup>94</sup> See Removing of RFE. RFE/RL Review, Week of June 12-18, 2003. New address: Vinohradská 1, 110 00 Prague 1. Czech Republic. Tel.: 011.420.2.2112.1111, Fax 011.420.2.2112.3002. [e-mail: webteam@rferl.org].

<sup>95</sup> A. ROSS JOHNSON – R. EUGENE PARTA: *Cold War International Broadcasting: Lessons Learned*. Presentation to a seminar on "Communicating with the Islamic World" Annenberg Foundation Trust, Rancho Mirage, California, February 5, 2005. mimeo. p. 6.

RÉVÉSZ BÉLA  
A POLITIKAI MEGGYŐZÉS A HIDEGHÁBORÚ ELSŐ  
KORSZAKÁBAN  
(Összefoglaló)

A nyugati világnak a Szovjetunió „szatellit országai” irányába kifejtett média-offenzívája a második világháborút követő nemzetközi politikai viszonyok gyors megváltozásának a következménye. Miután egyre kiélezettebbé váltak a nagyhatalmi viszonyok, az USA kormánya a szovjet terjeszkedés feltartóztatása érdekében – több más kezdeményezés mellett – 1948-ban egy olyan magánszervezetek létrehozásait kezdeményezte, amelyek a szovjet befolyás alá került Kelet-Európai lakosság számára a polgári demokrácia értékeit képesek továbbítani. Nem egyedülálló és nem is előzmények nélküli kezdeményezésről volt szó. Az ideológiai hadviselés jegyében – tehát nem egyszerűen csak az információáramlás végett – a második világháború alatt nem egy rádióadó sugárzott Európa német hadsereg által megszállt vagy az otthoni diktatúra alatt szenvedő országai felé. Ezek a leginkább Londonból sugárzott műsorok több szempontból az ötvenes évek elejétől működő Radio Free Europe / Szabad Európa Rádió előfutárainak tekinthetők. Az ellenséges területre sugározott többnyelvű adások munkatársi körük igen gyakran ugyanúgy politikai emigránsokból állt, mint később a Szabad Európa Rádióé. A SZER korai munkatársai közül nem egy a világháború alatt szerezte rádiós tapasztalatait.

A nyugatról keletre irányuló adásokat nem lehet egyedi vagy magányos kezdeményezésnek tekinteni, ugyanis az USA 1947-1950 között több nagyszabású antikommunista projektet is elindított. A Kelet-Európa irányába való rádiózás ezeknek a kezdeményezéseknek a sorában, pl. a Marshall-segélyprogram vagy a Cocom-lista mellett kapott teret és szerepet. De az antikommunista kezdeményezések sora könnyen folytatható: CIA, American Committee for Liberation, Committee for Free Europe, Crusade for Freedom, Citizens Foreign Relations Committee, Mutual Security Act stb., vagyis fokozatosan kiépült a politikai, lélektani és gazdasági hadviselés eszközeinek egész arzenálja. Ugyanúgy, ahogy 1945-1950 között az USA gazdasági segélyprogramjai egyre átfogóbbakká és céltudatosabbakká váltak, ugyanúgy az ad hoc ideológiai reakciókat is egyre tudatosabb és átgondolt nyugati stratégiák váltották fel, amire az utal, hogy ezek a projektek egymással is hálószerűen összekapcsolódtak. Mindezekre a Kelet-Európai célországok is a nemzeti együttműködés szorosabbá tételével reagáltak, katonai, titkosszolgálati, műszaki kooperációjukat a Szovjetunió igényeinek teljes egészében alárendelve. A rádiótechnikai, propaganda- és adminisztratív eszközökkel történő elhárítás ellenére a nyugatról érkező információk jelentős szerepet tölthettek be a Kelet-Európai országok politikai kultúrájának a rendszerváltást előkészítő átalakításában.



**ZOLTÁN VÍG – BENGI SARGIN\***

## **The Issue of Interest Rate Under the CISG and Related Judicial Practice**

### *I. Introduction*

The Covid pandemic had wide-ranging effects, among others it had serious economic impacts. Fearing a global economic crisis, key economies like the United States of America and the European Union started to inject fresh capital into their economies. This is usually done by issuing bonds and printing money. However, in the long term this can easily lead to high inflation, and this has actually happened. In the Euro zone inflation hit record high: in 2020 December it was -0.3%, and only a year later it was already 5%.<sup>1</sup> The same happened in the USA: the annual inflation rate in the US accelerated to 8.5% in March of 2022, which was the worst since 1981.<sup>2</sup> When there is high inflation, the issue of interest gains on importance in international trade. For the creditor (this might be either the seller or the buyer – if the goods are defective, there is avoidance of contract and refunding is due) the interest is important, because it might compensate the loss it suffered if there is high inflation and it cannot use its money, and it will also motive the debtor to pay as soon as possible. The right to interest is regulated in Article 78 of the CISG, which states that: „If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under article 74.”. However, due to several reasons we are going to discuss, the rate of interest is not regulated in the CISG.

We start the discussion with the right to interest under the CISG, and following this the paper examines the issue of interest rate. Based on the literature, the Advisory Council’s opinion and the current case law, we try to find out if a uniform practice has evolved in recent years.

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<sup>1</sup> Eurostat <<https://ec.europa.eu/eurostat/documents/2995521/14083883/2-07012022-AP-EN.pdf/49039c42-31ea-3513-8307-eece31d6b25a>> (last accessed: 26. 09. 2022.).

<sup>2</sup> Trading economics <<https://tradingeconomics.com/united-states/inflation-cpi>> (last accessed: 26. 09. 2022.).

## II. Interest under the CISG

There are several commentaries and scholarly articles dealing with the issue of (pre-judgment) interest under the CISG,<sup>3</sup> and the CISG Advisory Council has also issued an opinion (No. 14) on the issue.<sup>4</sup> As already noted, the issue of interest is governed by the Convention,<sup>5</sup> that is to say, Article 78 of the CISG ensures interest any time a payment under a contract is untimely.<sup>6</sup> Theoretically, there are two reasons a creditor might be entitled to interest: first, because he or she cannot use his or her money<sup>7</sup> (*i.e.*, it is assumed that the creditor would invest it and earn interest on it if he or she had it)<sup>8</sup>, and second, to prevent the debtor from unjust enrichment (Article 84). Therefore Article 78 together with Article 74 of the Convention seek to provide full compensation to the creditor.<sup>9</sup> According to Enderlein and Maskow the main idea of Article 78 is to ensure general entitlement to interest.<sup>10</sup> In a recent case, the Commercial Court of Canton Aargau/Switzerland (*Handelsgericht des Kantons Aargau*) awarded interest based on Article 84 of the CISG.<sup>11</sup> The claimant was a Czech company trading with cars. The first defendant was a Swiss stock cooperation which dealt with trade in new and used vehicles as well as vehicle accessories of all kinds. The second defendant was also a Swiss stock cooperation in the trade of automobiles, in addition operating garages and car washing facilities. The subject matter of the dispute was a sale of a Lamborghini vehicle. The court came to the conclusion that

<sup>3</sup> As post-judgment interest is usually regulated by the forum's general procedural system. HONNOLD, JOHN: *Uniform Law for International Sales under the 1980 United Nations Convention*. Kluwer Law International. The Hague, (3rd edition) 1999. 465. p. <[https://iicl.law.pace.edu/sites/default/files/bibliography/honnold\\_0.pdf](https://iicl.law.pace.edu/sites/default/files/bibliography/honnold_0.pdf)> (last accessed: 26. 09. 2022.).

<sup>4</sup> CISG Advisory Council Opinion No. 14 <<http://www.cisg.law.pace.edu/cisg/CISG-AC-op14.html>> (last accessed: 26. 09. 2022.).

<sup>5</sup> CISG Advisory Council Opinion No. 14, 1.

<sup>6</sup> CORTIER, ANDRE: *A New Approach to Solving the Interest Rate Problem of Art 78 CISG*. *International Trade and Business Law Annual 2000/5*. 33. p.

<sup>7</sup> SCHLECHTRIEM, PETER: *Uniform Sales Law – The UN-Convention on Contracts for the International Sale of Goods*. Manz. Vienna, 1986. 100. p. <[https://iicl.law.pace.edu/sites/default/files/cisg\\_files/schlechtriem.html#a76](https://iicl.law.pace.edu/sites/default/files/cisg_files/schlechtriem.html#a76)> (last accessed: 26. 09. 2022.).

<sup>8</sup> The debtor remains liable for interest payments even if his default is due to an impediment beyond his control. SCHLECHTRIEM 1986, 100. p.

<sup>9</sup> CISG Advisory Council Opinion No. 14, 3.3.-3.7.

<sup>10</sup> ENDERLEIN, FRITZ, MASKOW, DIETRICH: *International Sales Law – United Nations Convention on Contracts for the International Sale of Goods Commentary*. Oceana Publications. 1992. 311. p. <[https://iicl.law.pace.edu/sites/default/files/bibliography/fritz\\_enderlein\\_dietrich\\_maskow.pdf](https://iicl.law.pace.edu/sites/default/files/bibliography/fritz_enderlein_dietrich_maskow.pdf)> (last accessed: 26. 09. 2022.); “Some national systems take the view that interest is a component of damages; others do not. In most countries interest, however conceived, is at least compensable; in others, it is not. ... It is at least clear that the Convention authorizes an award of interest in those fora where such an award would otherwise be valid under national law; the validity of a contractual claim to interest, however, remains a national concern. In those countries where interest is permitted, the injured party will often be left with a choice between Articles 74 and 78. In exceptional circumstances, where a party cannot claim damages by virtue of an Article 79 exemption, a claim under Article 78 will be preferred.” (LOOKOFSKY, JOSEPH: *The 1980 United Nations Convention on Contracts for the International Sale of Goods*. Kluwer Law International. The Hague, 1993. 297. p. <[https://iicl.law.pace.edu/sites/default/files/cisg\\_files/lookofsky.html](https://iicl.law.pace.edu/sites/default/files/cisg_files/lookofsky.html)> (last accessed: 26. 09. 2022).

<sup>11</sup> *Lamborghini Countach 112 Case*, HOR.2021.7, <[https://cisg-online.org/files/cases/13757/fullTextFile/5843\\_69413377.pdf](https://cisg-online.org/files/cases/13757/fullTextFile/5843_69413377.pdf)> (last accessed: 26. 09. 2022).

the CISG should be applicable to the case in general. However, the issue of nullity and voidness is excluded from the scope of the CISG. Therefore, the court had to determine the applicable substantive law for these issues. Based on the Hague Convention on the Law Applicable to Contracts for International Sale of Goods Article 3(1) which states "... the law of the country in which the seller has his habitual residence at the time he receives the order" the court applied Swiss law to this issue. The claimant asked for the recovery of the purchase price and related interest. Regarding the interest rate, the court ruled that the claim to interest on the recovery of the purchase price in the event of voidness of the contract is not based on Article 78 CISG, but Article 84(1) of CISG. Thus, the court obliged the seller to pay 5% interest.

The concept of arrear is a central element of Article 74 Paragraph 3 of the CISG Advisory Council Opinion No. 14 defines when a party is in arrears with payment. One such case is when payment of the purchase price should have been made by the buyer, but it has not been. If the parties have not agreed on the exact date, the date of payment can be determined on the basis of Article 58 of the Convention. Another case is when liability for damages arises and when reimbursement should have been made (*e.g.* defective performance by the seller). As regards interest, the Opinion also notes that there is no need for a specific notice to pay interest, which is important, as in many national legal systems this is required.<sup>12</sup> It should be also mentioned, that in the majority of legal systems interest is granted only if the disputed sum is liquidated, while in some others it can be granted even when the amount is still disputed.<sup>13</sup>

Courts in practice a lot of times disregard CISG Advisory Council Opinions. A good example for this is a 2016 Spanish case, in which the court gave an interesting interpretation of the starting date of the interest calculation, which is not entirely in line with the position of Opinion No. 14. This case was tried by the Girona Provincial Court of Appeal, between a Spanish buyer and a Greek seller of live shellfish.<sup>14</sup> There was a dispute between the parties about defective performance, but the buyer was unable to prove this as it only carried out the inspection of the goods a week after the sale, by which time the mussels had died, and it was not possible to establish the condition of the mussels afterwards. As a result, the buyer lost the case both at first instance and at appeal. Although the court of first instance imposed interest on the basis of Article 78, it did not follow the position of Opinion No. 14, and instead set the date of the application as the starting date for the calculation of the interest (February 22, 2013). However, the court of appeal, taking into account the principle of full compensation under Articles 74 and 84(1), decided that the date of the invoice would be the starting date for the calculation of the interest (August 30, 2010). This is presumably the same as the date of receipt of the goods and is therefore consistent with the position taken in Opinion No 14 (application of Article 58). At the same time, interestingly, the court of appeal incorporated the principle of good faith in Article 7(1) of the Convention, and on that basis, changed the starting date for the

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<sup>12</sup> CISG Advisory Council Opinion No. 14, 3.19.

<sup>13</sup> HONNOLD 1999, 468. p.

<sup>14</sup> *Depuradora Servimar, S.L. v. G. Alexandridis & CO.O.E.SC case*, Clout case 1580. <[http://www.uncitral.org/clout/clout/data/esp/clout\\_case\\_1580\\_210116.html](http://www.uncitral.org/clout/clout/data/esp/clout_case_1580_210116.html)> (last accessed: 26. 09. 2022).

calculation of interest to the date of the first demand for payment (July 11, 2012). The court held that it would be incompatible with the principle of good faith if the buyer had to pay interest for the two-year period between the issuance of the invoice and the payment notice.

The Canadian Supreme Court of Justice of Ontario in 2018 took another position regarding the starting date of the calculation of the interest.<sup>15</sup> Solea, the claimant, was a distributor of shrimps based in Antwerp, Belgium. The defendant, Bassett & Walker International (BWI) was a Canadian company that dealt with international trade in food. The parties agreed in the contract 8% interest rate and accumulated payment was due. Although the shrimp was delivered on June 13, 2014, BWI informed Solea on August 11, 2014, that it would not pay for or accept the shrimp. The defendant did not pay the price of shrimps, and did not import it to Mexico, because the claimant did not ensure the required Health Certificate. Therefore, Solea filed a case and demanded the amount of \$228,604 and pre-judgment and post-judgment interest from July 17, 2014 at a rate of 8% per annum. For us the interest rate part of the court ruling is interesting: “With respect to the claim for interest, Solea provided the invoice for the shrimp to BWI by email. The invoice stated on its face that the general terms of sale were on the reverse side, and made reference to the CIF Incoterm. BWI accepted the invoice and subsequently confirmed that payment of the invoice was being sent. The invoice terms on the reverse are based on the EURIBOR rate, stating that interest shall accrue at the rate of the Euribor rate plus 2%, with a minimum interest rate of 8% per annum. There was no evidence or submissions made by BWI on the issue of the applicable interest. Solea submits that the interest rate was set out, and implicitly agreed to by BWI, which promised it would be paid. The interest is due pursuant to Article 78 of the CISG. Solea submitted that the 8% per annum rate is based on the EURIBOR rate often adopted in CISG cases as a commercially reasonable rate, and should therefore apply to the \$228,604 pursuant to the invoice. In the absence of contradictory evidence or submissions made by BWI on this issue, I find that interest of 8% per annum is due on the purchase price of the shrimp from the date of the delivery of the shrimp to BWI on June 13, 2014.”<sup>16</sup>

### *III. Interest rate under the CISG*

Commentaries as well as the Opinion point out, in relation to interest, that the main problem in terms of harmonization is the rate of interest.<sup>17</sup> ULIS, the predecessor of the CISG provided for a rate equal to the official discount rate in the country where the seller had

<sup>15</sup> *Solea International BVBA v. Bassett & Walker International Inc.*, CV-15-527848/2018 ONSC 4261 <[https://cisg-online.org/files/cases/10108/fullTextFile/4194\\_40989613.pdf](https://cisg-online.org/files/cases/10108/fullTextFile/4194_40989613.pdf)> (last accessed: 17. 08. 2022).

<sup>16</sup> *Id.*

<sup>17</sup> SCHLECHTRIEM 1986, 100. p; ZIEGEL, JACOB, SAMSON, CLAUDE: Report to the Uniform Law Conference of Canada on Convention on Contracts for the International Sale of Goods. UNCITRAL. 1981. Article 78 comment. <[https://iicl.law.pace.edu/sites/default/files/bibliography/english2\\_0.pdf](https://iicl.law.pace.edu/sites/default/files/bibliography/english2_0.pdf)> (last accessed: 26. 09. 2022).

his place of business plus 1%.<sup>18</sup> Whereas, the CISG does not deal with the issue of the interest rate at all. That is to say, Article 78 (or any other) does not ascertain a particular interest rate or a method to specify such a rate. During the first few years of the application of the CISG a large number of court decisions dealt with this problem.<sup>19</sup> The reason for not determining the rate of interest or the way of its calculation was in the fact that there were (are) countries with different economic, political and religious perceptions towards interest.<sup>20</sup> The majority of countries with Islamic Law rejected the application of interest.<sup>21</sup>

Among those countries which accepted the application of interest, there were disagreements on whether to apply market rates or legal rates, and whether that of the country of the buyer or the seller.<sup>22</sup> For example, in socialist countries the interest rate was artificially low. When these countries asked for loans from Western countries, they had to pay higher interest rates, therefore, they were interested to get the same higher rates from their debtors.<sup>23</sup>

Theoretically, there are two reasons for not mentioning this issue by the Convention. One is that the issue of interest rate is not mentioned, because the intention of the drafters was to exclude it from the sphere of application of the Convention. In this case, national laws determined by applicable private international law will help to find the solution. The other possibility is that it is just a gap in the law. In this case, Article 7(2) of the CISG can potentially help to fill in the gap left in the Convention, which provides that: „Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private

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<sup>18</sup> ULIS Article 83. UNIDORIT <<https://www.unidroit.org/instruments/international-sales/ulis-1964>> (last accessed: 26. 09. 2022).

<sup>19</sup> NICHOLAS, BARRY: *Article 78 Commentary*. In: Bianca-Bonell (ed.): *Commentary on the International Sales Law*. Giuffrè. Milan, 1987. 570. p. <<https://iicl.law.pace.edu/cisg/scholarly-writings/comments-article-78-bianca-bonell-commentaryNicholas>> (last accessed: 26. 09. 2022.).

<sup>20</sup> CORTIER 2000, 33. p; NICHOLAS 1987. 569. p.

<sup>21</sup> CORTIER 2000, 33. Only few Arab countries (Egypt, Iraq, Mauritania, Syria and Lebanon) have signed and adopted the CISG. It is interesting to mention that in Egypt, interest is regulated under art. 226, 227 and 231 of the Egyptian Civil Code in contradiction to Qoran and its prohibition of riba. It provides 5% for commercial matters and 4% for civil matters. (EL-SAGHIR, HOSSAM: *The CISG in Islamic Countries: The Case of Egypt*. In: DiMatteo, Larry (ed.): *International Sales Law- A Global Challenge*. Cambridge University Press. Cambridge, 2014. 510. p.). We would like to mention here a case based on the CISG, in which a Saudi defendant invoked the Islamic prohibition of interest (the doctrine of riba) in an arbitration case. The opinion of the tribunal was that riba does not preclude an award for the reasonable compensation of the claimant's loss which was caused by the defendant's breach of contract. Regarding the determination of the interest rate, the tribunal did not take into consideration the commercial rate, but only the inflation rate over the period at issue. (Final Award no. 7063 (1993) reprinted in 22 Y.B. Com. Arb. 87 (1997), IADR Ref. No. 112 in AKADDAF, FATIMA: *Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) to Arab Islamic Countries: Is the CISG Compatible with Islamic Law Principles?* *Pace International Law Review* 2001/13. 47-48. p.)

<sup>22</sup> CORTIER 2000, 33. p.

<sup>23</sup> SCHLECHTRIEM 1986, 100. p.

international law.” This means that first of all, tribunals should resort to the general principles of the Convention to fill in the gap, and only in the absence of such can resort to the rules of private international law.<sup>24</sup>

Before examining the current case law, we should mention that Honnold offers wider range of possibilities, and suggests that there are four possibilities to fill in the gap left by article 78: (1) interest at the rate determined by national substantive law under the conflict of laws (second part of article 7(2)), (2) interest at the rate determined by the national law of the creditor, (3) interest at the rate determined by international custom, (4) the cost of the credit to the aggrieved party.<sup>25</sup>

Regarding the first case, that is to say, when the interest rate should be determined by national substantive law under the conflict of laws, several scholars have supported this solution, among others one of the most prominent experts of the CISG, Professor Schlechtriem.<sup>26</sup> During our research we have found several recent cases which support this view. For example, in a dispute before the Dutch District Court of Noord-Holland in 2022 between a Turkish manufacturer of home furnishings (claimant), and Katintrad Nederland B.V., international wholesaler for business customers in home furnishings based in the Netherlands (defendant), the court applied national law determined by private international law rules.<sup>27</sup> The parties had a business relationship since 2016, whereby the claimant on order supplied goods to the defendant. There were two invoices unpaid by the defendant despite summonses. Since the defendant was domiciled in the Netherlands, the court held that it had jurisdiction according to article 4 of Brussels I Regulation. The court found that both parties were from countries which were parties to the CISG, and they did not exclude the application of the Convention. Furthermore, the court ruled that the issue of interest should be decided based on the Dutch law. This was justified by article 7(2) of the Convention. According to this provision, as already mentioned above, issues not expressly settled by the Convention should be resolved by the law applicable under the rules of private international law. This was determined based on Rome I Regulation (article 3(1)), and it was the Dutch law. Based on this, the court awarded 8%, which was at the time the Dutch commercial interest rate.

In a Swiss case from 2013, the Commercial Court of Canton Zurich (*Handelsgericht des Kantons Zürich*) decided very similarly.<sup>28</sup> The claimant was a Swiss stock cooperation and dealt with trade in raw materials, in particular metals. The defendant was a limited liability company registered in Slovakia. The parties signed two contracts. In their agreement, the parties expressly designated the applicable law as Swiss law and the international jurisdiction as the courts of Zurich. The first contract issued the delivery of 2500 mt of first-class, newly produced hot-rolled steel sheets. The defendant undertook

<sup>24</sup> United Nations Convention on Contracts for the International Sale of Goods UNITED NATIONS New York, 2010 <[https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09951\\_e\\_ebook.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09951_e_ebook.pdf)> (last accessed: 26. 09. 2022.); see also CORTIER 2000, 34. p.

<sup>25</sup> HONNOLD 1999, 470. p.

<sup>26</sup> SCHLECHTRIEM 1986, 100. p.

<sup>27</sup> [...] *Tic. Ltd. Sti. v. Karintrad Nederland B.V.*, ECLI:NL:RBNHO:2022:1173; <[https://cisg-online.org/files/cases/13712/fullTextFile/5798\\_18881036.pdf](https://cisg-online.org/files/cases/13712/fullTextFile/5798_18881036.pdf)> (last accessed: 10.05.2022).

<sup>28</sup> *Ukrainian Hot-Rolled Steel Coils Case*, HG120275-O, <[https://cisg-online.org/files/cases/13573/fullTextFile/5659\\_40638076.pdf](https://cisg-online.org/files/cases/13573/fullTextFile/5659_40638076.pdf)> (last accessed: 26. 09. 2022.).

to pay purchase price in three installments. Even though the claimant fulfilled its obligations under the contract, the defendant failed to pay the dispute-matter amount of payment. The second contract issued the delivery of 3500 mt of first-class, newly produced hot-rolled steel sheets. Same method of the payment was agreed. But the defendant again failed to fulfill its obligation to pay. The court ruled that the parties made an express and unambiguous choice of Swiss law and both parties are signatories to CISG. According to the Court, the defendant had breached its obligations under the Purchase Agreements which is why it's to be obliged to pay the amount of \$1,082,202 for the first contract and \$436,581 (for the second contract) to the claimant. The Court also explained that "... According to the prevailing opinion, the amount of interest is determined by the national law applicable under the conflict of laws.". Since the parties agreed upon the Swiss law, 5% of interest would apply to case.

In another very similar case in front of the same court (District Court of Noord-Holland), a Greek company Geitonas (claimant), sold fish products to a Dutch company (defendant) which did not pay for the deliveries. Since the defendant domiciled in the Netherlands, based on Article 4 of the Brussels IA Regulation the court established its jurisdiction.<sup>29</sup> After that, the court looked for applicable law. As both parties were domiciled in contracting states, the CISG was applicable. The court pointed out the ambiguity of determination of interest rate. Thus, the Court applied Article 7(2) of the CISG and looked for conflict of laws rules in order to solve the concrete dispute. This was Article 4(1) of the Rome I Regulation. According to this, the contract for the sale of movable property shall be governed by the law of the country in which the seller has his habitual residence. The court ruled that since Geitonas is domiciled in Greece, Greek law shall be applied to the dispute, and based on this decided to apply the commercial interest rate of 8%.

There are also scholars, among others Ziegel and Samson, according to whom it is not clear that the rules of private international law should be used to determine the applicable rules in the case the parties did not agree on the applicable interest rate.<sup>30</sup> In the recent case law we can find support for this as well. In 2021 in a case decided by the U.S. District Court for the Southern District of Texas,<sup>31</sup> the claimant Ziking, was a global manufacturer of steel pipes based in China. The defendant, Meever and Meever was a company based in the Netherlands dealing with distribution and rental of steel materials. Its subsidiary, Meever USA, was a distributor in the USA. Russell Marine (also defendant) was a civil marine construction company based in Channelview, buying supplies for its construction projects through distributors such as Meever USA. Meever USA concluded two purchase contracts for structural steel pillars with Ziking, with the intention to resell them to Russell Marine in connection with two construction projects on which Russell Marine served as the general contractor. Regarding the payment, the parties agreed on irrevocable letters of credit by Rabobank (Meever and Meever's bank located in the Netherlands). While the steel pillars were en route to the Port of Houston, Rabobank informed Meever representatives that the shipping documents received from Ziking did not conform to the L/C terms

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<sup>29</sup> *V. Geitonas & Co. Ltd. v. Palinghandel [...] B.V.*, ECLI:NL:RBNHO:2022:86, <[https://cisg-online.org/files/cases/13725/fullTextFile/5811\\_78376264.pdf](https://cisg-online.org/files/cases/13725/fullTextFile/5811_78376264.pdf)> (last accessed: 14.05.2022).

<sup>30</sup> ZIEGEL, SAMSON 1981, Article 78 2.

<sup>31</sup> *Hefei Ziking Steel Pipe Co., Ltd. v. Meever & Meever et al.*, 4:20-CV-00425, <[https://cisg-online.org/files/cases/13599/fullTextFile/5685\\_47942688.pdf](https://cisg-online.org/files/cases/13599/fullTextFile/5685_47942688.pdf)> (last accessed: 14.05.2022).

in various respects. Meever informed Rabobank that Meever would not accept the documents. Upon arrival of the goods at the Port of Houston, Ziking sought payment from Meever, but Meever declined, as did Russell Marine. Therefore, Ziking had to forward the shipment to a port in Mexico, and later to China, and thus incurred extra costs. Ziking's lawyer sent notice to Meever USA demanding a total amount of two contracts plus storage costs, interest, and attorney's fees. Meever USA refused payment and Ziking brought an action in front of the Court. The Court found that the CISG would apply to the concrete dispute. Interestingly, the Court ruled, without any reasoning, that article 78 of the CISG entitled the claimant to demand pre-judgment federal interest rate.

In a case from 2022, the U.S. District Court for the Eastern District of Texas ruled in the same way.<sup>32</sup> Synergy, the claimant, was a manufacturer, distributor and exporter of computer tablets and other electronic devices based in Shenzhen, China. Mingtel, the defendant, was an importer and distributor of electronics based in Texas, USA. The parties had done business for around three years, Synergy would manufacture and sell to Mingtel computer tablets in accordance with specifications provided by Mingtel. During this time, Synergy received multiple purchase orders from Mingtel for computer tablets with specifications and golden samples. MT0560 purchase order included 10,000 tablets with various colors and 16 GB of storage with unit price of \$73, in total \$730,300. Mintgel paid a 10% deposit for this order. The other purchase order no. MT0559 included 10,000 G1058A tablets with various colors and 32 GB of storage with unit price of \$76.32, in total \$763,200. Mintgel paid a 5% deposit for this order due to its cash flow issues. Mintgel fully paid for purchase order no. MT0560. But the delivered goods did not meet the conditions agreed in the contract. In other words, the goods were defective, and the client complained about it. On March 20, 2019, Synergy filed an action, asserting a breach of contract claim against Mingtel for failing to take delivery of the tablets and pay the balance owed under purchase order MT0559, and \$575,400 plus prejudgment interest. The Court ruled that the CISG would apply to the case, and the court found that Mintgel was liable to Synergy for breach of contract under purchase order MT0559. Last but not least, the Court held that parties are entitled to prejudgment interest and federal law governs the allowance and the rate of interest.<sup>33</sup> It is interesting to mention that the judge, Amos M. Lazzant, ruled that the court has the discretion to decide the rate of interest.<sup>34</sup> As for this case, the Court's opinion was that the prejudgment interest rate should be determined based on the federal law (it was 5%). The judge also pointed out that when federal law was silent on this issue, state law is an appropriate source of guidance.<sup>35</sup>

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<sup>32</sup> *Shenzhen Synergy Digital Co., Ltd. v. Mingtel, Inc.*, 4:19-cv-00216, <[https://cisg-online.org/files/cases/13759/fullTextFile/5845\\_81061612.pdf](https://cisg-online.org/files/cases/13759/fullTextFile/5845_81061612.pdf)> (last accessed: 17.08.2022).

<sup>33</sup> The Court cited above mentioned Hefei decision about this issue. On the other hand, it has been pointed out that the Court has discretion in choosing prejudgment rate of interest.

<sup>34</sup> *Shenzhen Synergy Digital Co., Ltd. v. Mingtel, Inc.*, 4:19-cv-00216, *Memorandum* <[https://cisg-online.org/files/cases/13862/fullTextFile/5948\\_68019475.pdf](https://cisg-online.org/files/cases/13862/fullTextFile/5948_68019475.pdf)> (last accessed: 08.09.2022).

<sup>35</sup> *Id.*



In another case the U.S. District Court for the Eastern District of Virginia ruled the same way without detailed reasoning.<sup>36</sup> In the concrete dispute, the claimant Azienda Agricola Fattoria Le Pupille was a privately held winery based in Italy. The defendant *inter alia* Nickolas Imports LLC, operated wine importing and wholesaling based in Virginia. On September 16, 2010, the defendant ordered 5448 bottles of various wines from the claimant. On September 29, 2010, the claimant shipped this wine to the defendant, and issued the first invoice. The defendant took over the goods. The second purchase was made on February 8, 2011, including 192 bottles of wine. On March 2, 2011, the claimant shipped the order and issued the second invoice. The defendant did not pay despite receiving all the ordered goods. The Court ruled that the CISG would apply to the concrete case and that the claimant is entitled to receive interest pursuant to CISG Article 78, thus, it awarded 4.75% interest.

In a Canadian case, the Superior court of Quebec in the dispute between Hewlett-Packard France (claimant) and Matrox Graphics Inc. (defendant) related to the sale of defective computer graphic cards had to decide on the interest rate.<sup>37</sup> The claimant asked for damages, interest and indemnity. It also demanded that the accrued interest itself bear interest at the same rate plus the said additional indemnity. The Court first determined which law had to be applied to the case. Since both parties were from a CISG signatory country, the court applied the Convention. The Court considered that the issue of interest rate payable on an award for damages, including any provision related thereto such as additional indemnity, was governed by the forum's substantive law. The Court also added that applying domestic law to determine the interest rate is in line with the principle that recourse to the CISG prevails over recourse to the forum's domestic substantive law, although the latter shall apply where the subject matter is not governed specifically or alternatively through the general principles set forth in the CISG. After that, the Court ruled that the additional indemnity should be granted without compound interest. The interest rate was also determined according to the Canadian law.

The second solution mentioned by Honnold above, *i.e.* interest at the rate determined by the national law of the creditor, was accepted by the CISG Advisory Council in its Opinion No. 14, which states in addition in point 8 that the parties are free to agree on the rate of interest, provided this is not against the provisions of the applicable substantive law (public policy). Here we should mention that Enderlein and Maskow are of the opinion that national prohibitive rules can not apply in this case because of the CISG.<sup>38</sup> Getting back to the Opinion, if the parties do not agree on the rate of interest, it will be that which the court of the creditor's place of establishment would apply to a similar sale.<sup>39</sup>

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<sup>36</sup> *Le Pupille v. Nickolas Imports, LLC*, 1:12-cv-668-TRJ, <[https://cisg-online.org/files/cases/8593/fullTextFile/2679\\_77947437.pdf](https://cisg-online.org/files/cases/8593/fullTextFile/2679_77947437.pdf)> (last accessed: 22.09.2022).

<sup>37</sup> *Hewlett-Packard France v. Matrox Graphics Inc.*, 2020 QCCS 78/500-05-070786-023, <[https://cisg-online.org/files/cases/12790/fullTextFile/4876\\_24042430.pdf](https://cisg-online.org/files/cases/12790/fullTextFile/4876_24042430.pdf)> (last accessed: 22.05.2022).

<sup>38</sup> ENDERLEIN, MASKOW 1992, 312. p.

<sup>39</sup> „Article 78 entitles the creditor to interest, even if the applicable domestic law makes no provision for this. The rate to be applied is, however, a matter, in the first place, for the domestic law. If that law provides no relevant formula for calculating interest, it would seem that the court should look to the cost of credit at the creditor's place of business” (NICHOLAS 1987, 570. p.).

The reason for this is that it is assumed that the creditor would invest the money in the country of its own establishment.

In one Japanese case, the District Court of Tokyo took Honnold's solution to the concrete case in 2019.<sup>40</sup> The claimant was a Spanish corporation engaged in the manufacturing, distribution, marketing, and sale of shopping carts, aluminum ladders and metal furniture products for household use. The defendant was a Japanese corporation engaged in the processing and sale of interior furniture and decorations, production, import and sale of household goods. The parties signed three sales contracts in 2013. Payment date was set for August 7, 2013 and August 24, 2013, due to two-stage delivery. However, the defendant did not pay the purchase price (€13.876). The Court ruled that interest rate would be determined by the national law of the creditor by reference to Article 7(2) of the CISG and Article 8(1) of the Japanese Private International Law Act, which referred to the Spanish law. As there was no agreement between the parties regarding the interest rate for the unpaid amount, the court ordered the payment of interest based on the Spanish statutory interest rate (4% per annum) from the date of payment of sales contracts.

The ruling of the District Court of Amsterdam (*Rechtbank Amsterdam*) also took into consideration this "second solution".<sup>41</sup> However, the way the Court reached this result was relatively complicated, and it did not refer to the CISG Advisory Council Opinion No. 14. In the concrete dispute, the claimant Akarteks (a Turkish company) dealt with the sale and supply of clothing to chain stores, while the defendant was a Dutch group of companies engaged in relaunch of clothes to chain stores. On August 7, 2020 several companies in the fashion industry went bankrupt. Within the group, the bankrupt companies took care of the designs and sales of various brands and formulas in the Netherlands and Germany including the matter in dispute. By email dated September 17, 2020, Akarteks sent the first invoice dated September 15, 2020 in the amount of €79,860. The invoice states October 15, 2020 as the payment date. By e-mail dated October 12, 2020, Akarteks sent a second invoice of the same date on €147,585. Akarteks also sent a proforma invoice dated October 12, 2020 in the amount of €448,149. Defendants sent an e-mail to Akarteks that they would not pay the invoices due to major changes on board. So, Akarteks filed an action demanded the bankruptcy of the defendants. Then and there due to Corona sanctions, on December 14, 2020, all non-essential stores were shut down till April 28, 2021 by order of the Dutch government. Since the concrete dispute had foreign element, the Court first had to determine the applicable law. The Court found that the CISG would apply to the case, and that this issue was not regulated by the CISG. Due to the reference of article 7(2) of the CISG, Rome I Regulation would apply, and the contract should be governed by the seller's habitual residence law (Turkish law). In other words, any issue not governed by the CISG was governed by the Turkish law pursuant to the aforementioned article of Rome I. Both the amount and the starting date of interest payment should have been determined under the Turkish law. However, because the claimant did not insist on the application of Turkish law, the court applied Dutch statutory

<sup>40</sup> *Rolser S.A. v. Global Living Inc.*, <[https://cisg-online.org/files/cases/13557/fullTextFile/5643\\_65498286.pdf](https://cisg-online.org/files/cases/13557/fullTextFile/5643_65498286.pdf)> (last accessed: 22.09.2022).

<sup>41</sup> *Akarteks v. [...] B.V. et al.*, C/13/702652/HAZA 21-505, <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2022:2920>> (last accessed: 21.09.2022).

commercial interest, what might be a controversial decision. It is a common knowledge that the interest rate in Turkey is higher (15,75%) than in the Netherlands, due to considerable inflation. Finally, the court awarded interest to the claimant at the rate of 8%.

In an Uzbek case, the Court of Appeal of Bukhara had to decide on the rate of interest in the dispute between Klaster Emir Fruit Industry (the Uzbek claimant) and LLC Wood-Prom (the Russian defendant) related to the supply of agricultural products.<sup>42</sup> The parties signed a contract dated June 19, 2020, and amendment dated June 25, 2020. The subject matter of the contract was supplying agricultural products, and the total value of the contract was \$16.000. The claimant delivered the goods to the defendant and issued an invoice on July 6, 2020. However, the defendant did not pay the full amount. The claimant sent an e-mail to the defendant on October 5, 2020 requesting the payment of the outstanding amount of \$9.000, however, there was no response. Their contract contained a clause which stated that the buyer should pay to the seller a penalty at the rate of 0.1% of the untimely paid amount for each day of delay, but not more than 50% of the unpaid amount. The court applied these penalty provisions of the parties' contract to the calculation of the interest rate without further explanation. In this case the court never referred to Opinion No. 14.

#### *IV. Conclusions*

We have established that the CISG does not regulate the issue of interest rate, and theoretically there might be two reasons for this: the drafters of the Convention did not want to regulate this issue, or it is just a gap in the law. In the former case the conflict of law rules can help to find the applicable national law determining the interest rate. In the latter case, the gap should be filled with the help of the general principles on which the Convention is based, or if there are no such principles, with laws determined by the applicable conflict of law rules. So, at the end of the day the solution should be found with the help of conflict of laws.

The legal literature offers more solutions for filling the gap: interest at the rate determined by national substantive law under the conflict of laws, interest at the rate determined by the national law of the creditor, interest at the rate determined by international custom, and the cost of the credit to the aggrieved party. The CISG Advisory Council in its Opinion No. 14 suggests the solution according to which the parties are free to agree on the rate of interest, provided this is not against the provisions of the applicable substantive law. However, if they miss it, the interest rate should be determined by the national law of the creditor.

Unfortunately, the cases examined show that there is still no uniform interpretation of the provisions of the Convention, and that the opinions of the Advisory Council are not always taken into account by national courts, despite the fact that these opinions would

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<sup>42</sup> *Klaster Emir Fruit Industry v. LLC WoodProm*, 4-20-2007/16, <[https://cisg-online.org/files/cases/13595/fullTextFile/5681\\_60641036.pdf](https://cisg-online.org/files/cases/13595/fullTextFile/5681_60641036.pdf)> (last accessed: 21.09.2022).

be important for a uniform interpretation of the Convention. Due to different interpretations of interest provisions, we support the opinion that it might be more practical for the creditor to claim the lost use of capital as damages in the amount of his own costs of credit according to Article 74 rather than to expose himself to uncertainties as to the applicable law and its interest provision”.<sup>43</sup>

## VÍG ZOLTÁN – SARGIN BENGI

### A KAMAT MÉRTÉKÉNEK KÉRDÉSE A BÉCSI VÉTELI EGYEZMÉNYBEN ÉS A KAPCSOLÓDÓ JOGGYAKORLAT

#### (Összefoglaló)

Az Egyesült Nemzeteknek az áruk nemzetközi adásvételi szerződéseiről szóló Bécsi Egyezménye úgy rendelkezik, hogy ha valamelyik szerződő fél elmulasztja a vételár megfizetését vagy bármely más összeg megfizetésével hátralékba esik, akkor a másik fél kamatra jogosult ezekre az összegekre. Ugyanakkor, az Egyezmény nem rendelkezik a kamat mértékéről, ami fontos aspektus. A kamat mértékének meghatározását illetően az utóbbi évtizedekben több megoldást is alkalmaztak a bíróságok, illetve a jogirodalomban is több elmélet alakult ki. A Bécsi Vételi Egyezmény Tanácsadó Testülete megalkotott egy véleményt a kamat kapcsán (14. számú vélemény), mely kihangsúlyozza a kamat kapcsán, hogy a legnagyobb problémát a jogegységesítés tekintetében a kamat mértéke jelenti. Ezzel összefüggésben a vélemény 8. pontja megállapítja, hogy a felek szabadon megegyezhetnek a kamat mértékében. A következő pont pedig kimondja, hogy amennyiben a felek ebben nem egyeztek meg, a kamat mértéke az lesz, amit a hitelező telephelye szerinti bíróság alkalmazna egy hasonló adásvételnél. Ennek az az indoka, hogy a hitelező feltételezhetően a saját telephelye szerinti országban fektetné be a pénzét. Az elmúlt évek esetjoga, a jogirodalom, valamint a Tanácsadó Testület véleménye alapján a tanulmány azt vizsgálja, hogy kialakult-e a kamat mértékének megállapítása tekintetében egy egységes joggyakorlat az utóbbi néhány évben, valamint, hogy a bíróságok figyelembe veszik-e a Tanácsadó Testület véleményét.

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<sup>43</sup> SCHLECHTRIEM 1986, 100. p.