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TARTALOMJEGYZÉK

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A magyar földbirtok-politikai célkitűzések gyakorlati érvényesülése

I. Bevezetés

A rendszerváltozást követően a magyar mezőgazdaság gyökeresen átalakult, amelynek alapját a földtulajdoni viszonyok átrendeződése jelentette. A magyar földtulajdoni viszonyokat kárpótlás és részarány-tulajdon kiadás jogcímek alapján rendezte a jogalkotó: a korábban állami, illetve termelőszövetkezeti tulajdonban, illetve használatban álló földterületek ismét magánszemélyek tulajdonába, valamint magánhasználatba kerültek. A földtulajdoni viszonyok rendezésének egyik nem kívánt következményeként a magyar birtokstruktúra jelentős mértékben felaprózódott, amely napjainkig megoldatlan gazdasági és jogi problémák forrása. A számadatokat vizsgálva megállapítható, hogy *„…kárpótlás céljára 2,3 millió hektár földterületet jelöltek ki. A földkárpótlásban hozzávetőlegesen 700 000 fő vett részt, s a kárpótlással megszerzett föld átlagos területe 0,46 hektár volt. A részarány földalap nagysága 1993-ban országosan mintegy 3,4 millió hektár volt. A földkiadási eljárások során mintegy 2 millió fő részarány-tulajdonos földjének nevesítésére került sor, a földkiadással megszerzett föld átlagos területe 1,7 hektár volt."*[1] Elsődlegesen a részarány-tulajdonok kiadáshoz kötődően alakult ki az osztatlan közös földtulajdon jogintézménye, amely egy napjainkig megoldatlan anomália a magyar agrárium számára. A földkiadással történő tulajdonszerzés esetén *„… kiemelendő, hogy a részarány-tulajdonosoknak a törvény nem biztosított alanyi jogot arra, hogy a korábbi, a szövetkezet használatába került földjét kapja vissza."*[2] Amely földrészletek vonatkozásában senki nem jelentett be földkiadási igényt, úgy azon területek több földkiadásra jogosult személy (vagy azok örököseinek) közös tulajdonába kerültek. A földtulajdoni viszonyok átrendeződése a magyar mezőgazdaság produktivitását negatívan érintette. A KSH összefoglalója[3] szerint a magyar mezőgazdaság bruttó termelése 1989 után meredeken csökkenni kezdett, növénytermesztésben 2004-re érte el ismét a rendszerváltáskori kibocsátást, állattenyésztésben pedig azóta sem. *Bobvos Pál* a következőként határozta meg a

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1 BOBVOS PÁL- HEGYES PÉTER: *A mező- és erdőgazdasági földek agrárjogi vonatkozásai*. Iusperitus Kiadó. Szeged, 2019. 26. p

2 BOBVOS- HEGYES 2019, 25. p.

3 KSH: *Magyarország a változások tükrében 1989-2009*, Budapest, 2010, 39–40.pp.

földtulajdoni viszonyok átrendezésének gazdasági aspektusait: *„A földtulajdon átrendeződésének két következményét kell kiemelni. Az egyik, hogy a földtulajdonosok számának megnövekedésével a földbirtokok túlzottan elaprózódtak, ez igen nehézzé teszi a földterület egy jelentős részén a korszerű gazdálkodást és az európai piacokért folyó versenyben való helytállást. A másik pedig az, hogy a föld jelentős része a mezőgazdasággal nem élethivatásszerűen foglalkozók tulajdonába került, akik földjeiket jelenleg bérbe adják, később a földek eladásával pedig tőkét vonnak ki a mezőgazdaságból és ezáltal növelik annak termelési költségeit.”*[4]

Álláspontom szerint a felaprózódott birtokstruktúra legfőbb letéteményese az osztatlan közös földtulajdon jogintézménye, amely megközelítőleg 2,5 millió hektárnyi termőföldet (1 millió önálló helyrajzi szám alatti ingatlant) érint.[5] Az Agrárminisztérium számadatai szerint jelenleg a részarány-tulajdon kiadása során keletkezett osztatlan közös tulajdonban lévő földrészletek száma majdnem 300 ezer, amely közel 1,5 millió fő tulajdonostársat érint.[6] Az osztatlan közös földtulajdon létrejöttének másik, kétségkívül legjelentősebb forrása a törvényes öröklés. Az Agrárminisztérium számadataira támaszkodva: jelenleg közel 700 ezer földrészlet van Magyarországon, kb. 2,5 millió fő tulajdonostársat érintve, amely törvényes öröklés eredményeként nyerte el a mostani, közös tulajdoni jellegét. Tekintettel arra, hogy jelenleg nincsenek speciális agráröröklési szabályok,[7] így végintézkedés hiányában a törvényes öröklés rendje szerint kerül sor a földtulajdon átszállására a korábbi földtulajdonos halála esetén. A jogalkotó az osztatlan közös tulajdonban álló földek anomáliájának rendezése ügyében átfogó lépéseket tett a földeken fennálló osztatlan közös tulajdon felszámolásáról és a földnek minősülő ingatlanok jogosultjai adatainak ingatlan-nyilvántartási rendezéséről szóló 2020. évi LXXI. törvény (a továbbiakban: Foktftv.), valamint a földeken fennálló osztatlan közös tulajdon felszámolásának részletes szabályairól szóló 647/2020. (XII. 23.) kormányrendelet megalkotásával.

A felaprózódott birtokstruktúra problémakörét jogi, adminisztratív, valamint gazdasági diszkrepanciák egyaránt jellemzik. A legjelentősebb jogi anomáliaként az ingatlannyilvántartás rendezetlensége jelentkezik, amellyel a közhitelesség alapelve sérül, a gazdasági aspektus pedig *Bobvos Pál* gondolataival foglalható össze, miszerint *„… a tagosítatlan birtokokon való gazdálkodás hátrányos, a hátránya a legtömörebben akként foglalható össze, hogy az nagyon sok időbe és pénzbe kerül.”*[8]

A felaprózódott birtokstruktúrából fakadó számtalan problémát már a jogalkotó is korán felismerte, ezért régóta fennálló földbirtok-politikai célkitűzés, hogy életképes birtokok jöjjenek létre és a folyamatos elaprózódás, valamint annak hátrányos következményei ne terheljék az agrárium szereplőit. Megállapítható, hogy a rendszerváltozás óta megalkotott földjogi tárgyú jogszabályok, így már a termőföldről szóló 1994. évi LV.

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[4] BOBVOS PÁL: *A birtokrendezés szükségessége a gazdaságos és ésszerű mezőgazdasági termelés tükrében*. In: Acta Jur. et Pol. Szeged. Szeged, 1998. 8. p.

[5] Forrás: http://nak.hu/agazati-hirek/videkfejlesztes/161-gazdasagfejlesztes/100102-versenykepessegi-javulast-hozhat-az-osztatlan-kozos-foldek-rendezese (Letöltés ideje: 2021.11.17.).

[6] ANDRÉKA Tamás: *A földeken fennálló osztatlan közös tulajdon felszámolásáról* c. *előadás*. „Hatalmas birtokrendezés jön a magyar földeken” című konferencián. Portfolio Agrár Klub. 2021. február 18.

[7] HORNYÁK ZSÓFIA: *A mezőgazdasági földek öröklése*. PhD értekezés. Miskolc, 2018. 203–220. p.

[8] BOBVOS PÁL: *A birtokrendezés szükségessége a gazdaságos és ésszerű mezőgazdasági termelés tükrében*. In: Acta Jur. et Pol. Szeged. Szeged, 1998. 18. p.

törvény is célként jelölte meg, hogy *„a kialakuló új üzemi szervezetek működését hatékonyan elősegítse, a versenyképes mezőgazdasági termelés folytatására alkalmas földbirtokok jöjjenek létre, és a birtokelaprózódások hátrányos következményei a mezőgazdaság tulajdoni szerkezetét ne terheljék, a gazdálkodó zavartalan mezőgazdasági termelést folytathasson”.* Ugyanezen célkitűzésekkel találkozhatunk a 2013. évi CXXII. törvényben (a továbbiakban: Földforgalmi törvény) is, miszerint *„a mezőgazdaságban a közepes méretű agrárüzemek elterjedjenek, valamint a kis gazdaságok stabil működése és további fejlődésük biztosított legyen, valamint élet- és versenyképes mezőgazdasági termelés folytatására alkalmas méretű földbirtokok jöjjenek létre, továbbá a birtokelaprózódások hátrányos következményei a mezőgazdaság tulajdoni szerkezetét ne terheljék”,* továbbá a 2020-ban elfogadott Foktftv. preambuluma is ugyanezen célokat fogalmazza meg a következőként: *„a magyar földművesek javára gazdaságosan művelhető, adminisztratív terhek nélkül használatba vagy tulajdonba vehető birtoktestek alakuljanak ki, optimális méretű és átlátható használati és tulajdoni viszonyokkal rendelkező nemzeti birtokstruktúra jöhessen létre.*” Megállapítható tehát, hogy a rendszerváltozás óta eltelt három évtizedben a magyar földbirtok-politika egyik legfontosabb célkitűzése a felaprózódott birtokstruktúra anomáliájának rendezése maradt. Jelen tanulmány soron következő fejezeteiben kísérletet teszek annak bemutatására, hogy a hatósági, valamint a bírói jogalkalmazásban miként jutnak, illetőleg juthatnak érvényre az egyes földbirtok-politikai célkitűzések, különös tekintettel a birtokelaprózódás megszüntetésére, valamint annak hátrányos következményei elhárítására.

II. A magyar földbirtok-politikai célkitűzések értelmezésének módszere

Az Európai Unióhoz történő csatlakozás okán a magyar földforgalmi szabályok átfogó módosítása vált szükségessé. A kiindulási alapot az Európai Unió működéséről szóló szerződés rögzíti, miszerint „*A Szerződések nem sérthetik a tagállamokban fennálló tulajdoni rendet.”*[9], azonban a tőke szabad áramlásának követelményére[10] tekintettel a földforgalmi szabályokat alapjaiban átdolgozta a jogalkotó, megteremtve ezzel az uniós polgárok magyarországi termőföldszerzésének lehetőségét. A Földforgalmi törvény, valamint a 2013. évi CCXII. törvény (a továbbiakban: Fétv.) megalkotásával számos olyan részletszabály került elfogadásra, amelyek közvetetten szolgálják a magyar agrárpolitikai, valamint földbirtok-politikai célok megvalósítását. Ezen agrárpolitikai és földbirtok-politikai célkitűzések elsődlegesen a Földforgalmi törvény preambulumában jelennek meg, ezért a gyakorlati érvényesülésük értékelése objektív teleologikus értelmezéssel történik. Jakab András szerint *„Az objektív teleologikus értelmezés a normát objektív (…) célja fényében értelmezi. Az objektív célt vagy kifejezetten a szövegből (például címből, preambulumból), vagy közvetve a szöveg alapján (mint egy feltett szerzőnek a szöveg alapján feltételezett szándékát) határozhatjuk meg.*”[11] Fontos rögzíteni, hogy az egyes

[9] Európai Unió Működéséről Szóló Szerződés 345. cikk
[10] Európai Unió Működéséről szóló Szerződés 26. cikk (2) bekezdés.
[11] JAKAB ANDRÁS: *A bírói jogértelmezés az Alaptörvény tükrében*. Jogesetek Magyarázata 2011/4 86 p.

agrárpolitikai és földbirtok-politikai célkitűzések a föld tulajdonjogának megszerzésekor a törvényen alapuló elővásárlási jogok rendszerén, valamint a helyi földbizottság állásfoglalására vonatkozó rendelkezéseken keresztül nyernek elsődlegesen közvetlen normatív tartalmat. Álláspontom szerint az elővásárlási jogok rendszere és a helyi földbizottság állásfoglalása tekinthetők azon tényezőknek, amelyek első lépésként és érdemben meghatározzák egy földterület tulajdonjog-átruházásnak későbbi kereteit, ebből fakad, hogy a legtöbb földforgalmi tárgyú jogvita is ezen jogintézményekhez köthető. (Ezen a ponton fontos kiemelni, hogy az elővásárlási jogok rendszere az Európai Unióhoz történő csatlakozás előtt is ismeretes volt a magyar földforgalmi szabályozásban, 1994 és 2013 között számos alkalommal került módosításra.[12]) Rögzítendő továbbá, hogy számos további jogintézménnyel találkozhatunk, amelyek az egyes agrárpolitikai és földbirtok-politikai célkitűzések közvetlen megvalósítását szolgálják (pl.: maximálisan megszerezhető föld nagysága, földműves minőség, stb.), azonban ezek jellemzően járulékos kérdésekként jelentkeznek. Az adott földterület jogi sorsát a már hivatkozott törvényen alapuló elővásárlási jogok struktúrája, valamint a helyi földbizottság állásfoglalása határozzák meg, mert közvetett eszközökként szolgálnak arra, hogy a birtokviszonyok alakulását érdemben befolyásolja a jogalkotó, hiszen *„… a Földforgalmi törvényben az elővásárlási jog intézménye a törvénybe foglalt birtokpolitikai preferenciák érvényére jutását szolgálja.”*[13] Előzetes feltevésem szerint a tételes jogszabályi rendelkezéseken túl a földbirtok-politikai alapelvek az egyes bírósági döntésekben is értékelést nyerhetnek. Amennyiben egy konkrét ügy érdemét a Földforgalmi törvény vagy a Foktftv. preambulumában foglalt jogalkotói célkitűzésekből teleologikusan levezetve dönt el a bíróság, úgy álláspontom szerint a földbirtok-politikai alapelvek közvetlen érvényesüléséről beszélhetünk. Jelen tanulmány keretében ennek bizonyítására teszek kísérletet egyes bírósági döntések elemzésén keresztül.

1. Az elővásárlási jogok taxatív rendszere

A jogalkotó a Földforgalmi törvény preambulumában a már idézettek szerint célként jelöli meg, hogy *„élet- és versenyképes mezőgazdasági termelés folytatására alkalmas méretű földbirtokok jöjjenek létre”*, amelyet elsődlegesen az elővásárlási jogok taxatív rendszere hivatott elősegíteni. Az elővásárlási jogok rendszerének részletes elemzése nélkül is megállapítható, hogy a hierarchikus struktúra lényege a birtokkoncentráció elősegítése az élet- és versenyképes méretű földbirtokok kialakítása érdekében, továbbá olyan személyek földtulajdonhoz segítése, akik önfoglalkoztatás keretében és életvitelszerűen a mezőgazdasággal foglalkoznak. A jogalkotó a birtokviszonyok alakulását azzal kívánja befolyásolni, hogy az államot megillető elővásárlási jogot követően elsődlegesen az adott *földet ténylegesen használó földműves* jogosult a föld tulajdonjogát megszerezni. Álláspontom szerint helytálló azon jogalkotói koncepció, miszerint a földet ténylegesen művelő személy szerezhessen elsődlegesen tulajdonjogot az államot követően a szóban forgó ingatlan vonatkozásában, amelynek történeti előzményei is fellelhetők. A magyar agrárium több száz éve fennálló kívánalma, hogy a föld tulajdonjoga azé legyen, aki azt a

[12] 1994. évi LV. törvény 10. §.
[13] 2/2021. KJE határozat.

mindennapokban megműveli, azaz a földet művelési ágának megfelelően, a jó gazda gondosságával használja. Ezen kívánalom másik megközelítésből a földhasznosítási kötelezettséget jelenti. Ha a problémakört alaposabban vizsgáljuk, akkor megállapítható, hogy ezen célkitűzés sem a korábbiakban nem valósult meg, sem napjainkban nem jutott érvényre. *Kovách Imre* szerint *„… a föld tulajdonjogának és használatának szerkezete, valamint a tulajdon és a használati jog jelentős mértékben különbözött az agrártörténet minden korszakában, és ez így van jelenleg is."*[14] Ugyanezt *Kovách Imre* egy másik tanulmányban is alátámasztja: *„… föld tulajdonosa és a föld tényleges megművelője egyetlen korszakban sem volt feltétlenül ugyanaz a jogi vagy magánszemély."*[15] Álláspontom szerint a földet használó földműves előkelő elővásárlási ranghelye a magyar birtokpolitikai célkitűzésekkel is összhangban áll. Fontos rögzíteni, hogy a földet használó földművesi minőség de jure kategória, azonban de facto nem jelenti feltétlenül az adott földterületnek a tényleges, saját kockázatviselés keretében történő művelését. Földet használó földművesnek azon személy tekinthető, akinek földhasználati jogát a földhasználati nyilvántartásba valamilyen jogcímen bejegyezték. A földhasználati jog önálló dologi jogi jogosultság,[16] amelyet kérelem alapján[17] a földhasználati nyilvántartás[18] rögzít közhiteles jelleggel. Ha azonban a földhasználó egy állandó megbízási vagy vállalkozási szerződés, esetlegesen „bújtatott haszonbérleti szerződés" keretében más gazdálkodóra bízza a föld művelését, amelynek ellenértékeként a betakarított termés szolgál, akkor a földhasználati nyilvántartás szerinti földhasználó, valamint a földet a mindennapokban ténylegesen használó személy elválik egymástól.

A jogalkotó a földet – de jure – használó földművest követően az adott földterülettel legszorosabb fizikai kapcsolatban álló földművest kívánja a föld eladása esetén előnyös elővásárlási pozícióba, azaz előrébb álló elővásárlási ranghelyre helyezni. Ezen fizikai kapcsolat az adott *földműves már tulajdonában vagy használatában álló föld, illetve a földműves életvitelszerű lakóhelyének vagy mezőgazdasági üzemközpontjának elhelyezkedéséből*[19] ered. Ezalatt értendő, ha a föld tulajdonjogát megszerezni kívánó személy *helyben lakó szomszéd földművesnek* vagy *helyben lakó földművesnek* minősül vagy *olyan földműves, akinek a lakóhelye vagy a mezőgazdasági üzemközpontja legalább 3 éve azon a településen van, amelynek közigazgatási határa az adás-vétel tárgyát képező föld fekvése szerinti település közigazgatási határától közúton vagy közforgalom elől el nem zárt magánúton legfeljebb 20 km távolságra van*.[20] Az osztatlan közös tulajdont képező földek esetében is megjelenik a birtokkoncentráció elősegítésére és az osztatlan közös földtulajdon felszámolására vonatkozó jogalkotói törekvés, hiszen – az államot megillető

[14] KOVÁCH IMRE: *Földhasználat és földtulajdon-szerkezet.* In: Kolosi Tamás- Tóth István György (szerk.): Társadalmi Riport. TÁRKI. Budapest, 2018. 248. p.
[15] GYŐRI ÁGNES – KOVÁCH IMRE: *A települési egyenlőtlenségek új dimenziója: a mezőgazdasági földhasználat-szerkezet.* Tér és Társadalom 2022/ 36-1 60. p.
[16] 2218/2010. polgári elvi határozat.
[17] 2094/2009. számú közigazgatási elvi határozat.
[18] 356/2007. (XII.23.) kormányrendelet.
[19] 2013. évi CXXII. törvény 5. § 9.-10. pont.
[20] 2013. évi CXXII. törvény 18. §.

elővásárlási jog kivételével – az említett jogosulti kört megillető elővásárlási ranghelyeket megelőzi *az adásvételi szerződés megkötésekor legalább 3 éve tulajdoni hányaddal rendelkező földműves tulajdonostárs elővásárlási joga.*[21] Fontos megjegyezni, hogy ezen jogszabályhely vonatkozásában a korábbiakban jogalkalmazási problémák merültek fel,[22] azonban ez 2020-ban a jogalkotói célokkal összhangban módosításra került.[23] Ennek vonatkozásában a Földforgalmi törvény indokolása is rögzíti, hogy *„A módosítással a jogalkotó támogatni kívánja az osztatlan közös tulajdonban álló földek esetében a tulajdonostárs általi szerzést és ezáltal közvetetten a közös tulajdon megszüntetését."* Szintén az osztatlan közös földtulajdon felszámolását, valamint a birtokkoncentráció elősegítését szolgálja azon rendelkezés is, miszerint *nem áll fenn elővásárlási jog az adott földben legalább három éve tulajdonrésszel rendelkező vevő által kötött, a közös tulajdon megszüntetését eredményező adás-vétel esetében.*[24] Az osztatlan közös földtulajdon felszámolásához kapcsolódó jogalkotói törekvések kapcsán[25] számos további kérdéskörről lehetne értekezni, azonban jelen tanulmány terjedelmi korlátjaira tekintettel erre nincs lehetőség. Ezen gondolatokat összegezve megállapítható, hogy a törvényen alapuló elővásárlási jogok rendszerén keresztül a birtokelaprózódás megszüntetésére, valamint a birtokkoncentráció elősegítésére vonatkozó jogalkotói cél manifesztálódik.

2. A helyi földbizottság szerepe a földbirtok-politikai célkitűzések érvényesítésében

Az egyes agrárpolitikai és földbirtok-politikai célkitűzések nem csupán az elővásárlási jogok ranghelyének kialakítása körében nyertek különös figyelmet, hanem a föld tulajdonjogának átruházására vonatkozó hatósági jóváhagyás során is érdemi jelentőséggel bírnak, tekintettel a helyi földbizottság állásfoglalására, valamint az abból eredeztethető (közvetett) vétójogra. A hatósági jóváhagyás előfeltétele a helyi földbizottságnak (jelen tanulmány lezárásakor a köztestületként működő Magyar Agrár-, Élelmiszergazdasági és Vidékfejlesztési Kamarának a szerződéssel érintett föld fekvése szerinti területi szervének) a támogatásról szóló állásfoglalása. Ezen állásfoglalás kiadása keretében a helyi földbizottság megvizsgálja, hogy az adásvételi szerződés mennyiben felel meg az általános agrárpolitikai és földbirtok-politikai érdekeknek, úgymint a birtokviszonyok átláthatósága, a spekulatív földszerzések megelőzése, az üzemszerű művelés alatt álló élet- és versenyképes, egységes birtoktagot képező fölbirtokok kialakítása és megőrzése, stb.[26] Fontos kiemelni, hogy ezen általános agrárpolitikai és földbirtok-politikai érdekek megítélése során számos tényezőt vesz figyelembe az eljáró bizottság, azonban egy konkrét ügyben nehéz feladat ténylegesen megítélni, hogy az adott személy földtulajdonszerzése mennyiben fogja szolgálni a jogalkotói célokat. További probléma, hogy a helyi földbizottság tagjainak jelentős mozgástere van az értékelés során, így szükségképpen szubjektív tényezők is befolyásolhatják a végleges állásfoglalás kiadását. Ennek okán a helyi

[21] 2013. évi CXXII. törvény 18. § (3) bekezdés.
[22] BH 2018. 112., BH 2018. 185., BH 2019. 51.
[23] 2020. évi XL. törvény 82. §.
[24] 2013. évi CXXII. törvény 20. § b) pont.
[25] 2020. évi LXXI. törvény.
[26] 2013. évi 23/A. § (1) bekezdés.

földbizottságokat számos szakmai kritika érte az elmúlt időszakban, amely egyrészt azok működéséhez, másrészt az általuk kiadott állásfoglalásokhoz kapcsolódott. Ezen kritikák egy része megalapozottnak bizonyult. Az alapvető probléma, hogy annak előzetes megállapítása, hogy egy-egy személy jövőbeni földtulajdonszerzése mennyiben áll összhangban a törvényben rögzített általános agrárpolitikai és földbirtok-politikai érdekekkel, minden esetben széles körű mérlegelés tárgya. A Földforgalmi törvény hatálybalépését követően nemsokkal a helyi földbizottság állásfoglalása, valamint az ahhoz kapcsolódó jogorvoslathoz való jog nyomán alkotmányossági aggályok merültek fel, amelyet az Alkotmánybíróság 17/2015. (VI. 5.) számú határozata zárt le, az indítvánnyal érintett jogszabályhelyek egy részének alaptörvény-ellenességét kimondva. A helyi földbizottságok működésének fontos mérföldkövét képezte azon jogszabály-módosítás,[27] amely a helyi földbizottságokat ügyféli és kereshetőségi joggal ruházta fel. Egy szintén a közelmúltban kelt, a 3224/2019. (X.11.) számú AB határozat pedig a helyi földbizottságok demokratikus legitimációját vizsgálta. Ezen alkotmánybírósági döntés kapcsán külön kiemelést érdemel, miszerint az utólagos normakontrollra vonatkozó indítvány alapján a helyi földbizottságok nem rendelkeznek demokratikus legitimációval, valamint az indítványozó problémaként jelölte meg azt is, hogy *„… törvénnyel létrehozott köztestületek (kamarák) alkotmányosan csak a tagság vonatkozásában hozhatnak kötelező, normatív döntéseket, rajtuk kívülálló jogalanyokra nem."* Az indítványban továbbá kifejtésre került, hogy a helyi földbizottság (közvetett) vétóval élhet mező- és erdőgazdasági hasznosítású földek adásvételénél, valamint a személyes adatokkal összefüggésben rámutatott arra, hogy azok nem szolgálják „ *– a közelebbről meg nem határozott – általános agrárpolitikai és földbirtok-politikai érdekeket".* Az Alkotmánybíróság az indítványt elutasította. A döntés indokolásában kifejtette, hogy a demokratikus legitimáció kérdése csak közhatalmat gyakorló intézmények tekintetében értelmezhető, azonban a helyi földbizottságok nem gyakorolnak közhatalmat, továbbá nem hatósági jogkörben, hanem magánjogi érdekeltként járnak el. Azon kérdésben, miszerint a helyi földbizottságok olyan személyek ügyében hoznak döntést, akik nem tagjai a kamarának, kifejtette az eljáró grémium, hogy az egyszerű praktikus ok a kamarai tagok megyénkénti nagy száma (esetenként akár 40-50 ezer kamarai tag), amely a gyakorlatban kivitelezhetetlenné tenné az általános szabályok szerinti döntéshozatalt. A (közvetett) vétó kérdésében akként határozott, hogy mivel a bíróság vagy helybenhagyja a felülvizsgált döntést vagy hatályon kívül helyezi azt, ezért felülvizsgálat terjedelme nem korlátozott, csupán a jogkövetkezmény. Álláspontom szerint a (közvetett) vétó kérdésében az indítványban foglaltak komoly gyakorlati anomáliára mutatnak rá. Amennyiben a helyi földbizottság állásfoglalásában nem támogatja az adott személy vonatkozásában a föld tulajdonjogának megszerzését, úgy a hatósági jóváhagyás sem történhet meg, az esetleges bírói út igénybevétele esetén pedig csupán új eljárásra utasítás történhet, azonban az új eljárás esetén sem köti semmi a helyi földbizottságot a támogató állásfoglalás kiadására. Mindezzel a helyi földbizottságnak kulcsszerepe van egy adott személy földtulajdonszerzését illetően, a tulajdonszerzés kérdését a vonatkozó állásfoglalás érdemében képes eldönteni. Fontos rögzíteni, hogy a hatósági jóváhagyás szakaszában a mezőgazdasági igazgatási szervnek is értékelnie kell az általános agrárpolitikai és földbirtok-politikai elvek érvényesülését, azonban kötelező megtagadási esetkör

[27] 175/2016. (VII. 1.) kormányrendelet.

akkor merül fel, ha a helyi földbizottság állásfoglalásában nem támogatja az adott személy földtulajdonszerzését.

Álláspontom szerint a helyi földbizottságok létrehozása kapcsán helyes volt azon jogalkotói koncepció, miszerint egy olyan helyi grémium, amely ismeri a helyi földtulajdoni és földhasználati viszonyokat (jellemzően az adott településen gazdálkodók közössége) véleményt alkothasson egy-egy személy földtulajdonszerzését illetően. Vélhetőleg a spekulatív célú földszerzések megakadályozásának az egyik leghatékonyabb eszközeként szolgálhatnak a helyi földbizottságok. Mindazonáltal a jelenlegi szabályozásból fakadó szubjektív alapon történő döntéshozatal lehetősége, valamint a jogorvoslat kapcsán felmerült korlátozottság okán a helyi földbizottsággal szemben okkal fogalmazódnak meg kritikai vélemények.

III. A földbirtok-politikai célkitűzések értékelése egyes bírósági döntések tükrében

Jelen tanulmány korábbi fejezeteiben kifejtésre került, hogy az egyes agrárpolitikai és földbirtok-politikai célkitűzések megvalósítását a törvényen alapuló elővásárlási jogok rendszere, valamint a helyi földbizottság állásfoglalása közvetetten hivatottak elősegíteni, továbbá a jogalkotói célok a hatósági jóváhagyás szakaszában is értékelést nyernek, amelyekhez kapcsolódóan számos bírósági döntés született. A soron következőkben a közelmúltban született egyes bírósági szemelvények elemzésén keresztül történik a földbirtok-politikai célkitűzések, elsődlegesen a birtokelaprózódás hátrányos következményei elleni cél érvényesülésének vizsgálata.

Amint már kifejtésre került, az elővásárlási jogok taxatív hierarchikus rendszere a birtokkoncentráció elősegítésének az elsődleges eszköze, azonban gyakorlásának szigorú szabályai vannak, amely a jogalkalmazásban számos kérdést vet fel. A gyakorlatban rendszeresen előforduló problémaként jelentkezett a föld tulajdonjogának átruházásáról szóló szerződések körében az elővásárlási jog, illetőleg az ahhoz tapadó ranghely téves megjelölése. A téves megjelölés jellemzően a föld tulajdonjogát megszerezni kívánó személy vagy jogi képviselője figyelmetlenségére, hibájára, esetlegesen a jogszabály szövegének téves értelmezésére, de összességében emberi mulasztásra vezethető vissza. Elméleti síkon vizsgálva a kérdést, akár rosszhiszemű, csalárd magatartás eredménye is lehet. A téves elővásárlási jog megjelöléséből fakadó legfőbb probléma, hogy más elővásárlásra jogosultakat visszatarthat attól, hogy éljenek jogosultságukkal és elfogadó nyilatkozatot tegyenek. A Kúria vonatkozó jogegységi határozatában[28] az alábbi megállapítást tette:

„A mező- és erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvény 2020. július 1. napját megelőzően hatályos 23. § (1) bekezdés c) pont cc) alpontja alapján a mezőgazdasági igazgatási szerv – akkor is ha a szerződés kifüggesztésének időtartama alatt elfogadó nyilatkozat nem érkezik, azaz más elővásárlásra jogosult nincs – megtagadja az adásvételi szerződés jóváhagyását, ha a vevő elővásárlási jogosultságára vonatkozó nyilat-

[28] 2/2021. KJE határozat.

kozatából nem állapítható meg az elővásárlási jogosultság jogalapja, vagy az, hogy az elővásárlási jog mely törvényen alapul, illetve az elővásárlási jog nem a megjelölt törvényen, vagy a földforgalmi törvényben meghatározott sorrend szerinti ranghelyen alapul."

Az eljáró grémium ezzel rögzítette, hogy az egységes ítélkezési gyakorlat biztosítása érdekében a téves elővásárlási jogosultság megjelölésének szankciója az adásvételi szerződés hatósági jóváhagyásának megtagadása. Álláspontom szerint külön szükséges kiemelni, hogy a Kúria döntése értelmében a szankció akkor is alkalmazandó, ha hirdetményi közzététel ideje alatt más elővásárlásra jogosulttól nem érkezik elfogadó nyilatkozat, tehát nincs ellenérdekű fél. A soron következő egyes bírósági ítéletekben az elővásárlási jogok gyakorlása kapcsán jelentkező jogalkalmazási kérdéseket kívánom megvizsgálni a földbirtok-politikai célkitűzésekkel összefüggésben. A kiválasztott bírósági döntések további közös jellemzője, hogy osztatlan közös tulajdonban álló földekre vonatkozó tulajdonszerzéshez kötődik a jogvita. A jelen tanulmány keretében vizsgált ítéletek sajátossága, hogy a bírósági igényérvényesítés közigazgatási per keretében történik, jellemzően azon elővásárlásra jogosult támadja meg a mezőgazdasági igazgatási szerv határozatát, aki elesett a föld tulajdonjogának megszerzésétől. A föld tulajdonjogát megszerző fél ezen eljárásokban alperesi beavatkozóként szerepel. Az eljáró bíróság ezen ügyekben két féle döntést hozhat: vagy hatályában fenntartja a mezőgazdasági igazgatási szerv határozatát vagy hatályon kívül helyezi azt és új eljárás lefolytatásáról rendelkezik, azonban a hatóság vonatkozó határozatát nem változtathatja meg.[29]

1. Az elővásárlási jogi hierarchia és a földbirtok-politikai célok érvényesítése közötti kollízió

A Szegedi Törvényszék 2022-ben hozta meg a vizsgált földforgalmi tárgyú ítéletét.[30] Álláspontom szerint jelen bírósági ítélet a Kúria hivatkozott jogegységi határozatával ellentétes, azonban érdemét tekintve – a vizsgált földbirtok-politikai célkitűzések érvényesülésére tekintettel – igazságos döntés. A tényállás szerint az eladó és az eredeti vevő 2021. május 14. napján kötöttek adásvételi szerződést a per tárgyát képező szántó, kivett út és legelő művelési ágú, osztatlan közös tulajdont képező külterületi ingatlan 16989/100905 tulajdoni hányadára. Az adásvételi szerződésben rögzítésre került, hogy már a vevő tulajdonát képezi a szerződés tárgyát képező ingatlannak a 22318/100905-öd része, tehát a vevő az osztatlan közös tulajdonban álló föld vonatkozásában már a szerződés megkötésének időpontjában tulajdonostárs volt. A vevő első tulajdoni hányadát még 2012-ben szerezte meg, ennek ellenére a vevő elővásárlási joga tévesen került megjelölésre: a szerződésben a vevő akként nyilatkozott, hogy olyan földműves, aki helyben lakónak[31] mi-

[29] 2013. évi CCXII. törvény 30. § (5) bekezdés.
[30] Szegedi Törvényszék 6.K.701.569/2021/12. sz. (forrás: www.birosag.hu)
[31] 2013. évi CXXII. törvény 18. § (1) bekezdés d) pont.

nősül, holott az adásvételi szerződés megkötésekor már legalább 3 éve tulajdoni hányaddal rendelkező földműves tulajdonostárs[32] volt. A vevő nyilatkozata alapján egy kedvezőtlenebb, az elővásárlási rangsorban hátrébb álló ranghely került megjelölésre, mint amelyre valójában jogosult lett volna. A hirdetményi úton történő közzététel ideje alatt egy személy nyújtott be elfogadó nyilatkozatot, aki elővásárlási jogát arra alapította, miszerint olyan földműves, aki helyben lakónak minősül, valamint családi mezőgazdasági társaság tagja vagy őstermelők családi gazdaságának tagja és fiatal földműves,[33] azaz nyilatkozata alapján a helyben lakó földművesek közötti alrangsorból adódóan elővásárlási joga megelőzte az eredeti vevő által megjelölt elővásárlási ranghelyt. A helyi földbizottságként eljáró szerv mindkét fél vonatkozásában támogatta a föld tulajdonjogának átruházásról szóló szerződés jóváhagyását, állásfoglalásában kiemelte, hogy mindkét fél esetén a szerzés megfelel a Földforgalmi törvényben foglalt általános agrárpolitikai és földbirtok-politikai érdekeknek.

Ezt követően a hatósági jóváhagyás során eljáró mezőgazdasági igazgatási szerv az eredeti vevővel hagyta jóvá az adásvételi szerződést. Határozatában megállapította, hogy az elfogadó nyilatkozatot benyújtó fél elővásárlási joga ugyan megelőzi az eredeti vevő elővásárlási jogát, azonban a Földforgalmi törvény preambulumában kiemelt földbirtokpolitikai cél az egységes birtoktagok kialakulásának elősegítése, ezért az eredeti vevővel történő jóváhagyás mellett döntött. Határozatában kiemelte, hogy az eredeti vevő tulajdonszerzése (mint az osztatlan közös tulajdonban álló ingatlan tulajdonostársának szerzése) elősegíti az osztatlan közös földtulajdon felszámolását. A határozat rámutat arra is, hogy az eredeti vevő elővásárlási jogát nem a tulajdonostársi minőségre alapította, azonban az ő tulajdonszerzése megfelel a közös tulajdon megszüntetésére irányuló jogalkotói törekvésnek, mert a szóban forgó ingatlanban az ő tulajdonszerzésével a tulajdonostársak száma csökken.

Később az elfogadó nyilatkozatot benyújtó fél bíróság előtt támadta meg a mezőgazdasági igazgatási szerv határozatát, azonban a bíróság a keresetet elutasította. Az ítéletben rögzítésre került, miszerint *„jelen perben arról kellett a bíróságnak állást foglalnia, hogy az adásvételi szerződés jóváhagyása alapítható-e földbirtok-politikai cél megvalósulására vagy meghiúsulására oly módon, hogy az alperes (a kormányhivatal) a törvényben rögzített elővásárlási sorrendtől eltér?”* A bíróság megállapította az elővásárlási sorrend helyesen került megállapításra a mezőgazdasági igazgatási szerv határozatában, annak első helyén az elfogadó nyilatkozatot benyújtó fél szerepelt, valamint rögzítette azt is, hogy a helyi földbizottság döntésével nem volt ellentétes a hatósági jóváhagyás, mert a helyi földbizottság mindkét fél vonatkozásában támogatta a szerződés hatósági jóváhagyását. Megállapításra került továbbá, hogy nem csupán a helyi földbizottságnak, hanem a mezőgazdasági igazgatási szervnek is kötelessége megvizsgálni az általános agrárpolitikai és földbirtok-politikai érdekek érvényesülését. A bíróság indokolásában elsődleges célként az egységes birtoktagok kialakulását és az osztatlan közös földtulajdon felszámolását jelölte meg, érintőlegesen a Foktftv.-re is hivatkozott, valamint kifejtette azt is, hogy az eredeti vevő tulajdonszerzése megvalósítja a birtokelaprózódások hátrányos következ-

[32] 2013. évi CXXII. törvény 18. § (3) bekezdés.
[33] 2013. évi CXXII. törvény 18. § (1) bekezdés d) pont és (4) bekezdés a)-b) pontok.

ményeinek elhárításához fűződő földbirtok-politikai célt. Külön kiemelést érdemel a bíróság azon megállapítása, miszerint a mezőgazdasági igazgatási szerv határozata azon okból sem jogszabálysértő, mivel a Földforgalmi törvény vonatkozó rendelkezése[34] felhatalmazza a mezőgazdasági igazgatási szervet arra, hogy az adásvételi szerződés jóváhagyása során elemezze az általános agrárpolitikai és földbirtok-politikai érdekeket, valamint a döntését arra alapozza.

Álláspontom szerint a Szegedi Törvényszék ítélete a Kúria hivatkozott jogegységi határozatával ellentétes, azonban a jelen tanulmány keretében vizsgált földbirtok-politikai célkitűzések tükrében igazságos döntésnek tekinthető. Az ügy során egyértelműen megállapítást nyert, hogy az eredeti vevő tévesen jelölte meg az elővásárlási jogát helyben lakó földművesként, azonban jogosult lett volna földműves tulajdonostársként egy előrébb álló ranghely megjelölésére is. Jóllehet, a helyben lakói minőség is megalapozott volt, azonban az ügy érdemét a tulajdonostársi jogállása döntötte el. A Kúria határozata ezzel szemben in concreto rögzíti, hogyha az elővásárlási jog nem a megjelölt törvényen, vagy a Földforgalmi törvényben meghatározott sorrend szerinti ranghelyen alapul, akkor a mezőgazdasági igazgatási szerv megtagadja a szerződés jóváhagyását. Külön kiemelést érdemel, hogy a Kúria döntése akkor is a megtagadásról rendelkezik, ha a szerződés kifüggesztésének időtartama alatt elfogadó nyilatkozat nem érkezik, azaz más elővásárlásra jogosult nincs, jelen esetben pedig érkezett elfogadó nyilatkozat, azonos ranghely és előnyösebb alranghely megjelölésével. Elméleti kérdésként merül fel, hogy a jogegységi határozatban megjelölt kötelező hatósági megtagadást abban az esetben is gyakorolni kell, ha az elővásárlásra jogosult egy rangsorban hátrébb álló ranghelyt jelöl meg, mint ami őt megilleti vagy csak abban az esetben, ha a megjelölt ranghely előnyösebb, mint amellyel az elővásárlásra jogosult rendelkezik? Értelmezésem szerint, ha egy elővásárlásra jogosultat több ranghely is jogszerűen megillet, azonban egy rangsorban hátrébb állót jelöl meg, akkor az nem vezethet a szerződés jóváhagyásának a megtagadáshoz, ellenben az elővásárlásra jogosult viseli annak következményeit, hogy egy másik elővásárlásra jogosult előnyösebb pozícióval kíván elfogadó nyilatkozatot tenni. Mindazonáltal, ha a jelen ügyhöz hasonlóan, az adott fél tulajdonszerzése nem az általa megjelölt elővásárlási ranghelyből ered vagy eredne, akkor a kötelező hatósági megtagadás lenne a helyes jogkövetkezmény. Álláspontom szerint a megjelölt elővásárlási ranghely, valamint várható tulajdonszerzés közötti kapcsolat vizsgálata a releváns. A jelen ügyhöz kapcsolódó gondolataimat összegezve azon álláspontra helyezkedtem, hogy az általános agrárpolitikai és földbirtok-politikai célok megvalósítása szempontjából mind a mezőgazdasági igazgatási szerv, mind az eljáró bíróság helyes döntést hozott, hiszen az eredeti vevő tulajdonszerzésével egy újabb lépés történt az osztatlan közös földtulajdon felszámolására. Jelen ügy nóvumaként értékelendő, hogy az általános agrárpolitikai és földbirtok-politikai célok felülírták az elővásárlási jogok taxatív hierarchiáját, valamint annak gyakorlásának szigorú szabályait.

[34] 2013. évi CXXII. törvény 28. §.

2. A hirtelen szerzett tulajdonostársi minőség és a helyi földbizottság (közvetett) vétójának esete

Az általános agrárpolitikai és földbirtok-politikai célkitűzések közvetett értékelése alapján hozta meg ítéletét a Pécsi Törvényszék egy 2021-ben lezárt földforgalmi ügyben.[35] Az ítélet alapjául szolgáló tényállás szerint osztatlan közös tulajdonban fennálló tulajdoni illetőség átruházásról kötött adásvételi szerződést az eladó és az eredeti vevő, aki elővásárlási jogát tulajdonostársi minőségére alapította, mivel 1999 óta tulajdoni hányaddal rendelkezett az ingatlanban. A hirdetményi úton történő közzététel ideje alatt egy másik tulajdonostárs élt elfogadó nyilatkozattal. A mezőgazdasági igazgatási szerv az adásvételi szerződést az eredeti vevővel hagyta jóvá, az elfogadó nyilatkozatot benyújtó féllel szemben megtagadta a jóváhagyást, aki a határozattal szemben keresettel élt. A bíróság a mezőgazdasági igazgatási szerv határozatát hatályon kívül helyezte és a mezőgazdasági igazgatási szervet új eljárás lefolytatására kötelezte. A megismételt eljárásban újfent az eredeti vevő tulajdonszerzését hagyta jóvá a hatóság.

Az ügy lényegi motívuma, hogy mind az eredeti vevő, mind az elfogadó nyilatkozatot benyújtó fél ugyanazon tulajdonostársi ranghelyre[36] alapították elővásárlási jogukat. Az elfogadó nyilatkozatot benyújtó fél megjelölte ezen túlmenően, hogy családi mezőgazdasági társaság tagja vagy őstermelők családi gazdaságának tagja.[37] A helyi földbizottság az állásfoglalása szerint az eredeti vevővel támogatta a szerződés jóváhagyását, az elfogadó nyilatkozatot benyújtó féllel szemben nem. A helyi földbizottság állásfoglalásában kifejtette, hogy a szerződés szerinti eredeti vevő tulajdonszerzése nem spekulatív célú földszerzés, valamint a helyi gazdálkodó közösségi érdekekkel összhangban áll és vélhetően a tulajdonszerzést követően önfoglalkoztatás keretében maga fogja művelni a földterületet. A helyi földbizottság az elfogadó nyilatkozatot benyújtó félre vonatkozó állásfoglalásában nem támogatta a szerződés jóváhagyását, hivatkozva arra, hogy ezen félnek mind a tartózkodási, mind a lakóhelye az ingatlantól távol található, a földműveléshez szükséges eszköz- és gépparkkal nem rendelkezik, nem önfoglalkoztatás keretében szeretné művelni a területet, ezért feltehetően befektetési, spekulatív céllal szeretne földet vásárolni. A mezőgazdasági igazgatási szervet a helyi földbizottság állásfoglalása kötötte, ennek megfelelően az eredeti vevővel hagyta jóvá az adásvételi szerződést. Álláspontom szerint a jelen ügy érdemét a már hivatkozott 3224/2019. (X.11.) AB határozat szerinti (közvetett) vétójog gyakorlásával döntötte el a helyi földbizottság. Külön kiemelést érdemel, miszerint a mezőgazdasági igazgatási szerv határozatában rámutatott arra az elfogadó nyilatkozatot benyújtó fél vonatkozásában, hogy az elővásárlási jog gyakorlásáról szóló jognyilatkozat 2019. július 26. napján került benyújtásra, tulajdonostársi minőségére alapozva, azonban a tulajdonostársi mivoltát 2019. július 23. napján szerezte meg a fél egy, a közeli hozzátartozójától kapott 42,3 négyzetméternyi területtel. A jognyilatkozat benyújtását követően a kapott tulajdoni illetőséget elajándékozta, a földhasználóként sosem volt bejegyezve a szóban forgó ingatlan vonatkozásában.

Az elfogadó nyilatkozatot benyújtó fél ismételten keresetet nyújtott be a mezőgazdasági igazgatási szerv határozata ellen, kérelmezve annak hatályon kívül helyezését és az

[35] Pécsi Törvényszék 5.K.700.127/2021/14. sz. (forrás: www.birosag.hu)
[36] 2013. évi CXXII. törvény 18. § (3) bekezdés
[37] 2013. évi CXXII. törvény 18. § (4) bekezdés a) pont.

új eljárás lefolytatását. Az eljáró bíróság döntése értelmében a kereset részben alapos volt, azonban az alperesi határozatot nem helyezte hatályon kívül. Az ítélet indokolásából kiemelendő azon jogkérdés, miszerint azonos elővásárlási jogi ranghelyen álló tulajdonostársak esetén értékelést nyerhet-e a felperes által hivatkozott családi mezőgazdasági társaságbeli tagi vagy őstermelők családi gazdasághoz kapcsolódó tagi minőség. A bíróság megállapította, hogy a mezőgazdasági igazgatási szerv érvelésével ellentétesen figyelembe kellett volna venni a felperes ezen minőségét és az ezáltal kialakítandó helyes rangsor szerint a felperes (elfogadó nyilatkozatot benyújtó fél) megelőzi az alperesi érdekeltet (eredeti vevő), mindazonáltal a téves rangsor nem befolyásolta érdemben az ügy menetét, mert a mezőgazdasági igazgatási szerv beszerezte a helyi földbizottság állásfoglalásait, amelyek csak az eredeti vevővel támogatták a szerződés jóváhagyását.

Az általános agrárpolitikai és földbirtok-politikai célok érvényesülése vonatkozásában a helyi földbizottság állásfoglalásait, valamint a mezőgazdasági igazgatási szerv által feltárt körülményeket szükséges megvizsgálni. Az ítéletben összefoglaltak alapján azon megállapításra helyezkedem, hogy a helyi földbizottság kellő részletességgel vizsgálta meg (pl.: már tulajdonban és használatban álló földek elhelyezkedése, tartózkodási cím és állandó lakcím, stb.) az általános agrárpolitikai és földbirtok-politikai érdekek érvényesülését mindkét fél vonatkozásában. Az ügy érdemét a helyi földbizottság állásfoglalása döntötte el, mert amennyiben a jognyilatkozatot benyújtó féllel szemben is támogatta volna a földszerzést, úgy a rangsor alapján a hatóságnak ezen féllel kellett volna jóváhagynia a szerződés hatályba lépését. Álláspontom szerint külön kiemelést érdemel a helyi földbizottság állásfoglalásából, miszerint az eljáró szerv megvizsgálta, hogy a felek várhatóan önfoglalkoztatás keretében kívánják-e művelni a megszerezni kívánt földet. Ezen a ponton szeretnék visszautalni „Az elővásárlási jogok taxatív rendszere" alcímben kifejtett de jure és de facto földhasználók közötti gyakorlati különbségre. Jelen ügyben az elfogadó nyilatkozatot benyújtó fél sosem volt földhasználó az adott ingatlan vonatkozásában, így helytállónak bizonyul a helyi földbizottság megállapítása.

3. Prioritások: Az osztatlan közös földtulajdon megszüntetése vagy az adásvételi szerződés hatósági jóváhagyása?

A Szegedi Törvényszék 2022-ben hozta meg a vonatkozó ítéleteit, amelyek egyrészt ingatlan-nyilvántartási, másrészt földforgalmi vonatkozásúak voltak.[38] Az ingatlan-nyilvántartási ügyhöz kapcsolódó ítélet meghozatala előfeltétele volt az azonos tényálláshoz kapcsolódó földforgalmi ügy eldöntésének. A tényállás szerint egy osztatlan közös tulajdonban álló föld meghatározott tulajdoni illetőségének átruházására kötöttek adásvételi szerződést a felek 2021. augusztus 13. napján, azonban a szerződéskötést évekkel megelőzően, még 2012. június 1. napja előtt az eladó közös tulajdon megszüntetési iránti kérelmet nyújtott be. 2002-től kezdve volt lehetőség ezen kérelmek benyújtására,[39] jóllehet

[38] Szegedi Törvényszék -101.K.700.200/2022/8. sz. és 101.K.700.257/2022/9. sz. (forrás: www.birosag.hu)
[39] 1993. évi II. törvény.

az eljárási részletszabályok folyamatosan változtak.[40]Az osztatlan közös tulajdon megszüntetése iránti kérelmek lényege akként definiálható, hogy lehetőséget teremtettek az adott tulajdonostárs tulajdonosi kényszerközösségből történő kiválására. Amennyiben valamely tulajdonostárs kérelmezte a megszüntetést, az a gyakorlatban az ingatlan természetbeni megosztását eredményezte. A kérelmező voltaképpen kivitte a nagy közösből a tulajdoni hányadainak megfelelő földrészletet, kizárólagos tulajdonként. Az osztatlan közös tulajdon megszüntetését nem kérelmező tulajdonostársak maradtak a tulajdonközösségben, a lecsökkent méretű ingatlan tulajdonosaiként. Jelen ügy érdekessége, hogy ezen megszüntetés időpontja – 2021. december 13. – az adásvételi szerződés megkötését követően, de a hatósági jóváhagyásról szóló döntés időpontját – 2022. január 6. – megelőzően történt meg. Az ingatlan-nyilvántartásban feljegyzésre került a föld tulajdonjogának átruházására irányuló szerződés benyújtásának ténye, de az eljáró bíróság álláspontja szerint ez súlytalannak bizonyult. A megszüntetés szerinti kérelemnek megfelelően az adásvétel tárgyát képező tulajdoni hányadok egy új helyrajzi szám alatti önálló ingatlan formájában kerültek kialakításra. Az ingatlan-nyilvántartási ügyben a vevő előadta, hogy az ingatlan megosztásával jogszerűtlenül megfosztották őt tulajdonjoga bejegyezhetőségétől, valamint az új ingatlan létrejöttével elesett korábbi elővásárlási ranghelyétől is, de a bíróság nem osztotta álláspontját. A közzététel ideje alatt elfogadó jognyilatkozat nem érkezett, a helyi földbizottság állásfoglalásában támogatta a vevő tulajdonszerzését, azonban a hatósági jóváhagyás megtagadásra került, tekintettel arra, hogy az adásvételi szerződés tárgya egy megszűnt ingatlan volt, azaz lehetetlen célra irányult a jogügylet. A földforgalmi ügyben meghozott ítélet szerint a vevő keresete alaptalan volt. A felperes indokolásában analógiával hivatkozott arra, hogy a Foktftv. vonatkozó rendelkezései[41] szerint a megszüntetés iránti kérelmet vissza kellett volna utasítani, ha adásvételi szerződés hatósági jóváhagyása folyamatban van. Az eljáró bíróság arra tekintettel, hogy jelen ügyben a földrendező és a földkiadó bizottságokról szóló 1993. évi II. törvény (a továbbiakban: Ffb.tv.) szerinti eljárás volt folyamatban, nem pedig a Foktftv. szerinti eljárás, nem fogadta el a felperesi érvelést. A bíróság az ítélet indokolásában kiemelte, hogy a vonatkozó ügyekben a megtámadott határozatok jogszabálysértő mivoltát kellett vizsgálnia, amelyek tekintetében a vevő keresetei alaptalanok voltak.

Jelen ügyeket a földbirtok-politikai alapelvek érvényesülése szempontjából vizsgálva az alábbi kérdés tehető fel. A birtokelaprózódás hátrányos következményei elleni küzdelmet az Ffb.tv. szerinti megszüntetési eljárás mielőbbi lefolytatása vagy az adásvételi szerződés hatósági jóváhagyása, valamint az azt követő megszüntetési eljárás szolgálta volna jobban? Jelen kérdés csak elméleti síkon vizsgálható, hiszen az eljáró bíróság a keresetben foglaltakhoz kötötten hozhatta meg a döntését. Álláspontom szerint a földbirtok-politikai célok szempontjából az osztatlan közös földtulajdon felszámolása élvezett prioritást jelen kérdésben, mindazonáltal felperesi hivatkozás a Foktftv. vonatkozó szakaszaira alapos megfontolást igényel. Az osztatlan közös tulajdonban álló területekre jellemző, hogy a tulajdoni illetőségüket eladni kívánó személyek nem foglalkoznak élethivatásszerűen a mezőgazdasággal, a már leírtak szerint részarány-tulajdon kiadás vagy törvényes öröklés eredményeként lettek földtulajdonosok. Ezen tulajdoni illetőségek jellemzően

[40] 63/2005. (IV.8.) kormányrendelet, 405/2012. (XII.28.) kormányrendelet, 374/2014. (XII.31.) kormányrendelet.
[41] 2020. évi LXXI. törvény 4. §.

alacsonyabb forgalmi értéket képviselnek. Mindebből következik, hogy ezek értékesítésével a kisebb területen gazdálkodók is földhöz juthatnak, illetve a közepes méretű gazdaságok is erősödhetnek, elősegítve az élet- és versenyképes mezőgazdasági termelés folytatására alkalmas méretű földbirtokok létrejöttét. Véleményem szerint az eljáró bíróság az osztatlan közös földtulajdon felszámolásához kapcsolódó cél szempontjából helytálló döntést hozott, mindazonáltal valamennyi földbirtok-politikai célkitűzést mérlegelve célszerűbbnek mutatkozik hasonló ügyekben a szerződés hatósági jóváhagyását követő megosztás, amennyiben annak formai feltételei is fennállnak.

IV. Záró gondolatok

Jelen tanulmány lezárásaként azon álláspontra helyezkedem, hogy a jogalkotó által meghatározott általános agrárpolitikai és földbirtok-politikai célkitűzések a rendszerváltozás óta csekély mértékben változtak, különös tekintettel a birtokelaprózódás és az osztatlan közös földtulajdon problémakörének orvoslására, amelyek az egyes bírósági ítéletekben is megjelennek. A tételes jogszabályi rendelkezéseken túl az egyes földbirtok-politikai célkitűzések mind közvetetten, mind közvetlenül értékelést nyernek a hatósági és a bírósági jogalkalmazásban is. Az elővásárlási jogok taxatív rendszere és a helyi földbizottságok, valamint állásfoglalásaik kapcsán számos elméleti és gyakorlati kérdés merült fel a közelmúltban, amelyekre egyrészt a bírói jogalkalmazás adott választ, vagy a jogalkotó maga orvosolta a problémát egy-egy jogszabály-módosítással. Személyes feltevésem szerint a nyitott kérdések sora még nem ért véget, azok további válaszokra várnak. Számos kérdés kapcsolódik az osztatlan közös földtulajdon felszámolását érintő jogszabályok alkalmazásához is, amelyek vélhetően a közeljövőben a bíróság jogalkalmazásban is lekövethetők lesznek. A jelen tanulmányban megvizsgált bírósági szemelvények alapján a teljes ítélkezési gyakorlatra vonatkozó általános megállapításokat nem lehet tenni, azonban jelen tanulmány terjedelmi korlátjaira tekintettel erre nem is kínálkozott lehetőség. Mindazonáltal a vizsgált bírósági döntések nyomán megállapítható, hogy az egyes földforgalmi ügyeknek vannak bizonyos sajátosságai, valamint az ítélkezési gyakorlat sem tekinthető minden esetben egységesnek. Meglátásom szerint az általános agrárpolitikai és földbirtok-politikai célkitűzések a vizsgált ügyek eldöntésének érdemi alapját képezték. Mivel a földforgalmi tárgyú ügyekben az eljáró bíróság a mezőgazdasági igazgatási szerv határozatát nem változtathatja meg, ezért az ítélet meghozatalkor a bíróság mozgástere szűknek tekinthető. Amennyiben az eljáró bíróság nem csupán a kereset elutasítása és az új eljárásra kötelezés között dönthetne, úgy a vizsgált jogalkotói célkitűzések szélesebb körben érvényesülhetnének, elősegítve ezzel a jogalkotói célok megvalósulását. Mindazonáltal ennek alátámasztására szélesebb körű jogalkalmazási vizsgálat indokolt. Álláspontom szerint az általános agrárpolitikai és földbirtok-politikai alapelvek szélesebb körű hatósági és jogalkalmazói értékelése nem csak a jogalkotói célkitűzések megvalósításának eszköze, hanem az agrárium valamennyi szereplőjének, elsősorban a tényleges földhasználók közös érdeke.

GERGŐ ÁRVAI

THE PRACTICAL IMPLEMENTATION OF HUNGARIAN LAND POLICY OBJECTIVES

(Summary)

After the change of regime, the Hungarian land holding structure was significantly fragmented, which negatively affected agricultural productivity. The Hungarian rules of land transaction have been extensively amended after joining the European Union, but one of the most important agricultural and land policy objectives remains the resolution of issues arising from the fragmented land structure (e.g. the disorganised nature of the real estate registration). Nowadays, the unresolved land structure creates numerous legal, administrative and economic problems, which is why several pieces of land legislation have identified the settlement of existing landownership as a goal to be achieved. These problems affect both landowners and land users, as well as legal practitioners in a broad sense. By creating the rules of land transaction in force, the legislator has created indirect instruments (e.g. system of the right of pre-emption, local land commission's resolution) to achieve the legislative objectives, but the judicial interpretation of these legal institutions cannot be considered uniform. Constitutional concerns have been raised on several occasions regarding the exercise of right of pre-emption and the operation and resolution of the local land commission. The objectives of land policy are not only addressed through indirect instruments, but they also appear directly in judicial practice, as they can form the basis of specific court decisions. The present study aims to illustrate the practical implementation of certain land policy objectives, in particular the objective of settling the fragmented land structure. The author's preliminary hypothesis is that, in the judicial practice, there is no uniformity in the interpretation of land policy objectives, and therefore the practical implementation of these objectives is presented through the analysis of individual court decisions.

LUU TUAN ANH*

Labour Shortage in Hungary: Legal Framework, Opportunities & Challenges for Vietnamese Migrant Workers

I. Introduction

Labour shortage is a common problem in Central Europe and it is often implied as a shortage of skilled and highly educated labour force.[1] More and more workers from Central and Eastern European countries are migrating to work in Western European countries such as Austria, Germany, the United Kingdom or Ireland.[2] Influenced by that migration trend, the Hungarian economy is also characterized by a labour shortage.[3] The demand for labour in basic occupations is relatively high, however, Hungarian workers tend to move abroad to do such jobs.[4]

This is a problem that appeared before the Covid pandemic, data for the period 2007-2017 shows that labour shortages in Hungarian enterprises exceed the EU average in all three sectors: industry, construction and services.[5] Labour has been a pressing need for many years, with only 24% of enterprises in Hungary considering labour as a constraint on production in 2014, this number has increased to 59% in 2019.[6] After the Covid pandemic, with the recovery of the economy, Hungary faced an unprecedented shortage of labour

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1 NIKOLETTA JABLONCZAY: *Recent Challenges in Hungary: Economic Inequalities and Labour Shortage from the Perspective of Labour Unionists*. University of Vienna Working Papers, 2020. DOI: 10.25365/phaidra.225

2 EVA GORGENYI-HEGYES – MARIA FEKETE-FARKAS: *Internal CSR as a strategic management tool in reduction of labour shortages*. Polish Journal of Management Studies, 2019. pp. 167–181.

3 MÁRTON CZIRFUSZ: *COVID-19 crisis management and the changing situation of workers in Hungarian manufacturing*. 2021. Available at http://www.regscience.hu:8080/jspui/bitstream/11155/2585/1/czirfusz-employment-2021.pdf (accessed: 6 September 2022).

4 KLÁRA FÓTI – TIBOR TAKÁCS: *Key features of intra-EU labour mobility and its impact from a sending country perspective: Addressing the consequences in Hungary*. Society and Economy, 2020. pp. 208–228.

5 JÁNOS KÖLLŐ – ZSANNA NYÍRŐ – ISTVÁN JÁNOS TÓTH: *Trends in Basic Shortage Indicators*. 2018. Available at http://real.mtak.hu/108618/1/13.pdf (accessed: 6 September 2022).

6 ASTROV, VASILY, et al.: *How do economies in EU-CEE cope with labour shortages?*. wiiw Research Report, 2021. Available at https://www.econstor.eu/handle/10419/240652 (accessed: 7 September 2022).

force. In the first quarter of 2022, 87000 jobs were left unfulfilled and the private sector is reported to require an additional 60000 workers.[7]

Recruiting workers from other countries in the EU or from third countries is considered one of the most frequent solutions to deal with labour shortages in Central and Eastern European countries.[8] Industry representatives believe that the labour shortage can be solved if Hungary can attract about 200-300 thousand foreign workers.[9] Foreign workers can contribute to replacing at least a portion of Hungarian workers who have left the country.[10] However, attracting migrant workers, especially highly skilled workers, is a global competition and it requires policy reform at both levels of the EU and Member states.[11]

The article is divided into 3 main parts: the first part deals with Hungary's legal framework on migrant workers, the second part deals with the legal framework in the relationship between Vietnam-EU and Vietnam-Hungary and the third part analyzes the challenges and opportunities for Vietnamese migrant workers to contribute to solve the labour shortage in Hungary.

II. Hungary's legal framework

Recently, Hungary has experienced a different immigration trend than before. In the 1990s and 2000s, immigrants to Hungary were mainly from Romania, Slovakia, Ukraine and Serbia, but recently, the percentage of immigrants who are non-European third-country nationals have increased and Asia in particular doubled between 2010 and 2019.[12] The Hungarian government expressed its intention to add more permissions to foreign workers in any sector that is experiencing labour shortages.[13] However, managing employment-related migration is an economic, social and political challenge for EU Member States, including Hungary.[14]

1. Migration strategy

The principles of Hungary's migration policy are enshrined in the Migration Strategy adopted by the government in 2013.[15] This can be considered as an overall policy

[7] Available at https://hungarytoday.hu/hungary-workforce-shortage-jobs/ (accessed: 7 September 2022).
[8] ASTROV 2021, p. 14.
[9] JOZSEF POOR, et al. *Initial findings for labour markets in the Czech Republic, Hungary, Poland and Slovakia*. Central European Journal of Labour Law and Personnel Management, 2020. pp. 47–60.
[10] FÓTI – TAKÁCS 2020, pp. 208–228.
[11] FACCHINI, GIOVANNI – LODIGIANI, ELISABETTA: *Attracting skilled immigrants: An overview of recent policy developments in advanced countries*. National Institute Economic Review, 2014. pp. R3-R21.
[12] MÁRTON BISZTRAI, et al. *Perpetual Temporariness*. 2020. Available at https://library.fes.de/pdf-files/bueros/budapest/17065.pdf (accessed: 7 September 2022).
[13] FÓTI – TAKÁCS 2020, pp. 208–228.
[14] IMOLA CSEH PAPP – SVITLANA BILAN – KRISZTINA DAJNOKI: *Globalization of the labour market–Circular migration in Hungary*. Journal of International Studies, 2018. pp. 182–200.
[15] The Migration Strategy and the seven-year strategic document related to Asylum and Migration Fund established by the European Union for the years 2014-20. Available at http://belugyialapok.hu/alapok/sites/default/files/Migration %20Strategy%20Hungary.pdf (accessed: 7 September 2022).

document on migration and integration policy in order to build a consistent integration strategy and harmonize relevant laws. The Migration Strategy outlines Hungary's roadmap of action and tools to achieve its goals in the areas of reception, residency, integration, protection and return policy. The strategy document mainly emphasizes the rights and obligations of migrants in Hungary. It focuses on providing support, legal aid and representation services at all stages of the asylum process, with a particular focus on vulnerable people.

The Migration Strategy states that it is necessary to take advantage of the economic development opportunities of migration more effectively by welcoming third-country migrants to contribute to economic development. While it is important to ensure the protection of the Hungarian workforce, nevertheless, given the needs of the Hungarian economy and labour market, especially the stronger migration of Hungarian workers in some sectors, it is imperative to receive more migrant workers.[16]

2. Entry and Residence

The EU has developed a legal framework for immigration policy through many directives on various issues such as family reunification, long-term residency, seasonal workers, etc. Member States make the rules according to their legal and administrative traditions, using the options available in the Directive.[17]

The provisions for third-country citizenship in Hungary are mainly enshrined in Act II of 2007 on the Admission and Residence of Third-Country Nationals. This act regulates the basic terms of entry, residence, permits related to long-term or short-term residence or permanent residence, and the justifications for the restriction or denial of related rights.

The Hungarian legal system classifies citizens of other countries coming to Hungary into two groups: citizens of the European Economic Area and citizens of third countries. While nationals from the first group of countries including the European Union, Norway, Iceland, Liechtenstein and Switzerland only need to apply to be able to work in Hungary without a work permit since January 2009, citizens of third countries can only work in Hungary with a permit and have limited mobility and residence rights compared to citizens of the first group.[18]

Regarding residence, Generally, applications for a residence permit can be filed outside of Hungary. The application also includes an application for an entry visa, third country nationals can enter Hungary with a visa after the application is issued and after that, they can go to the immigration authority to get the residence permit.

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[16] Ibid.

[17] EU legislation on Legal Migration – ILO. Available at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/presentation/wcms_744426.pdf (accessed: 8 September 2022).

[18] CSEH PAPP – BILAN – DAJNOKI 2018, pp. 182–200.

3. Integration and anti-discrimination

Successful integration is essential for all, which is the key to effective and comprehensive migration management approaches.[19] Integration into the labour market and integration into society are two inseparable elements of the integration process for migrant workers, and one of the biggest barriers to integration is the negative thinking and attitudes expressed through discrimination.[20] However, Hungary does not have an independent integration law or integration program for newcomers.[21]

The provisions for anti-discrimination are documented in Act CXXV. on equal treatment and promotion of equal opportunities. The Act identifies a number of areas where discrimination is likely to occur, such as employment, housing, social security and health care, it anticipates situations where discrimination may occur, and declares states that the state has an obligation to promote equality and combat discrimination.[22] However, this is a law that has been enacted a long time ago (December 22, 2003) and underwent only 2 minor revisions in 2006 and 2017.

In addition, the Equal Treatment Authority of Hungary, established in 2005, is an independent and autonomous administrative body, one of the most effective in the fight against discrimination, was abolished by the Hungarian Parliament in January 2021.[23]

Although the arrival of migrant workers is necessary, as indicated in the Migration Strategy, however, Hungarian policies are in direct conflict with EU directives and core values of the European Union. Fidesz, Hungary's ruling party led by Viktor Orban, openly stands against migration. The European Parliament declared that the Hungarian government violated core EU principles including dignity, freedom, democracy, equality, the rule of law and respect for human rights.[24]

III. EU-Vietnam's legal framework

1. PCA

The Vietnam - EU Partnership and Cooperation Agreement (PCA) signed on June 27, 2012 is an important milestone marking the transformation of the Vietnam - EU relationship to a new level. The Vietnam - EU PCA Agreement creates a new legal framework and expands

[19] IOM and Migrant Integration. Available at https://www.iom.int/files/live/sites/iom/files/What-We-Do/docs/IOM-DMM-Factsheet-LHD-Migrant-Integration.pdf (accessed: 10 September 2022).

[20] PÉTER MIKLÓS KŐMÍVES – KRISZTINA DAJNOKI: *Labour market integration issues related to migrants arriving to Hungary*. Annals of the University of Oradea Economic Science, 2016. pp. 363–373.

[21] Available at https://ec.europa.eu/migrant-integration/country-governance/governance-migrant-integration-hungary_en (accessed: 8 September 2022).

[22] Act CXXV. of 22 December 2003 on equal treatment and promotion of equal opportunities. Available at https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=68657&p_country=HUN&p_count=937 (accessed: 8 September 2022).

[23] European Commission, Directorate-General for Justice and Consumers, Hermina Balogh, L., *Country report, gender equality: how are EU rules transposed into national law?: Hungary 2021*, Publications Office, 2021, https://data.europa.eu/doi/10.2838/248112 (accessed: 9 September 2022).

[24] ROBINSON, FRANCESCA P. *What does it mean to belong? An analysis of migrant integration policies in Germany, Spain, and Hungary*. 2020. PhD Thesis.

the cooperation relationship between Vietnam and the EU. The PCA Agreement not only regulates bilateral relations between Vietnam and the EU in areas such as development cooperation, economy-trade, education-training, science-technology, agriculture, health, etc. tourism… but also includes cooperation at regional and international forums, cooperation to deal with global challenges such as climate change, environment, natural disasters, energy security, counter-proliferation gas of mass destruction, terrorism and organized crime. The PCA Agreement also creates an important premise for the two sides to enter the negotiation of a Free Trade Agreement (FTA) and creates favorable conditions for Vietnam to continue to expand and deepen its partnership with all EU member states.

Compared with the cooperation agreement signed in May 1996 between the European Community and Vietnam, the PCA has significantly expanded the scope of cooperation between Vietnam and the EU, some new fields have been added such as energy, good governance and migration, as well as two areas that Vietnam is interested in are human rights and labour.[25]

Regarding cooperation in Labour, Employment and Social Affairs, Article 50 of the PCA makes an important contribution to creating a legal framework for cooperation and labour exchange between Vietnam and EU countries, as follows:

- The Parties agree to strengthen cooperation in the field of labour, employment and social issues.
- The Parties reaffirm the importance of decent work and its promotion as an important factor for sustainable development and poverty alleviation.
- The Parties reaffirm their commitment to respect, promote and implement internationally recognized labour standards, as set forth in the International Labor Organization (ILO) Conventions.
- The Parties shall ensure that nationals of the other Party lawfully employed in the territory of the host country shall not be subjected to discrimination in relation to nationality in matters such as working conditions, remuneration, dismissal, etc., compared to the conditions for nationals of other third countries.
- Forms of cooperation may include programs, specific projects.[26]

2. EVFTA

The EU-Vietnam Free Trade Agreement (EVFTA) is a free trade agreement between Vietnam and the 27 EU member states. On June 26, 2018, the EVFTA was split into two agreements, one is the Trade Agreement (EVFTA), and the other is the Investment Protection Agreement (EVIPA). The two Agreements were signed on June 30, 2019, agreed

[25] EU-Vietnam Partnership and Cooperation Agreement – At a Glance. Available at https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA(2015)572810 (accessed: 9 September 2022).

[26] The Viet Nam – EU Partnership and Cooperation Agreement.

by the European Commission and the European Council, and ratified by the Vietnamese parliament in the same 2020. EVFTA has officially taken effect from August 1, 2020.

The EVFTA does not have regulations directly related to migrant workers, but it does have commitments to respect, promote and effectively implement basic principles and rights at work, indirectly contributing to improving labour quality and strengthening labour cooperation relations between Vietnam and EU countries.[27]

3. Vietnam-Hungary relation

The two countries have had a long tradition of cooperation since the establishment of diplomatic relations on February 3, 1950. Hungary gave Vietnam support in the cause of national liberation and national reunification, and in the current period of renewal and international integration, the two countries have always given each other close cooperation.[28]

Hungary is Vietnam's first comprehensive partner in Central and Eastern Europe and actively supports Vietnam at multilateral forums as well as in relations with the European Union, Hungary is the first country to ratify the EVFTA as well as the EVIPA. Vietnam is considered to have the most prominent relationship in economic relations between Hungary and ASEAN as it is strengthened by the "traditional" relationship, based on the former "socialist partnership".[29]

Vietnam and Hungary have signed a number of bilateral agreements in many areas, but none of them directly related to the issue of migrant workers. Recently, the relationship between Vietnam and Hungary has been developing actively since the two sides upgraded their relationship to a Comprehensive Partnership in 2018.[30]

4. Vietnam's legal framework

Even before the COVID-19 pandemic, the Vietnamese Government annually has policies to increase labour migration right from the provincial and district levels in order to limit unemployment and reduce poverty. In 20 provinces, residents of designated 'poor districts' can apply for subsidies to enable them to migrate abroad to work.[31] The Vietnamese government puts labour quality on the top, and the orientation in the coming

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[27] Summary of Vietnam-EU Free Trade Agreement (EVFTA). Available at: https://wtocenter.vn/chuyen-de/12781-summary-of-vietnam-eu-free-trade-agreement-evfta (accessed: 11 September 2022).

[28] Available at https://dangcongsan.vn/thoi-su/lam-sau-sac-hon-nua-hop-tac-song-phuong-viet-nam-hungary-616236.html (accessed: 11 September 2022).

[29] LÁSZLÓ KOZÁR – GYÖRGY IVÁN NESZMÉLYI: *Economic relations between Hungary and the ASEAN region: Highlighting a special business opportunity in Vietnam*. Polgári Szemle. Gazdasági és társadalmi folyóirat. 2018. pp. 255–269.

[30] Available at https://quochoi.vn/uybandoingoai/tintuc/Pages/tin-hoat-dong.aspx?ItemID=436 (accessed: 12 September 2022).

[31] ILO TRIANGLE in ASEAN Quarterly Briefing Note: Viet Nam (January – June 2022).

time is that besides traditional markets, Vietnam gives priority to send workers to work in safe, high-income markets, ensuring good welfare for workers.[32]

The Law on Contract-Based Vietnamese Overseas Workers 69/2020/QH14 in 2020 was approved by the XIV National Assembly, 10th Session on November 13, 2020 (Law No. 69/2020/QH14). The new law consists of 8 chapters and 74 articles and will officially take effect from January 1, 2022. This is the overarching framework governing international labour migration in Viet Nam and it was built upon previous Vietnamese legislation to improve protection for Vietnamese migrant workers. Some notable new points are issues related to brokerage commissions, discrimination and forced labour, pre-departure orientation training...[33]

Five sub-law documents to support The Law on Contract-Based Vietnamese Overseas Workers were also signed in December 2021 and entered into force in January 2022. These documents stipulate the Overseas Employment Support Fund; sanction administrative violations on labour, social insurance; detailed regulations on the implementation of the Law; database system on Vietnamese labour; detailing a number of articles of the Law.

IV. Opportunities and challenges for Hungary and Vietnamese migrant workers in addressing labour shortage

Vietnam is a developing country in South-East Asia and Labour export is a very important part of Vietnam's socio-economic development strategy. From 2006 up to now, there have been more than 1 million Vietnamese workers working abroad.[34] Recently, about 150,000 workers go abroad to work each year and this workforce send back home about 2.5 billion USD per year.[35] Through the Vietnam - EU Partnership and Cooperation Agreement (PCA) and European Union - Vietnam Free Trade Agreement (EVFTA), Europe is becoming an ideal destination, a promised land for Vietnamese workers.[36] However, compared to the traditional destinations of Vietnamese migrant workers such as Taiwan, Korea, Japan, etc., Europe is considered a new market with many advantages but also many challenges in integration for migrant workers.

1. Opportunities for Hungary and Vietnamese migrant workers

Besides the common policy framework between Vietnam - EU as well as Vietnam - Hungary, Vietnamese migrant workers also have direct favorable conditions to work in

[32] Available at https://baochinhphu.vn/xuat-khau-lao-dong-khoi-sac-102220623155536468.htm (accessed: 8 September 2022).

[33] Available at https://www.ilo.org/hanoi/Informationresources/Publicinformation/Pressreleases/WCMS_764704/ lang--en/index.htm (accessed: 12 September 2022).

[34] Available at http://www.molisa.gov.vn/Pages/tintuc/chitiet.aspx? tintucID=219367 (accessed: 12 September 2022).

[35] Available at https://dangcongsan.vn/xa-hoi/lao-dong-xuat-khau-cua-viet-nam-dang-o-dau-so-voi-cac-nuoc-538257.html (accessed: 12 September 2022).

[36] Available at https://nld.com.vn/cong-doan/sang-chau-au-thi-truong-nao-tot-nhat-trong-nam-moi-2021021523582439.htm (accessed: 12 September 2022).

Hungary. Especially, in the context of labour shortage in Hungary, there will be many job opportunities for Vietnamese workers in the coming time.

Vietnamese migrant workers are considered hard-working, smart, and disciplined, especially female workers,[37] these are qualities that employers appreciate wherever they are. By June 2022, Vietnam Ministry of Labour - Invalids and Social Affairs has licensed 16 Vietnamese enterprises to organize sending workers to work in Hungary, with more than 2,174 employees in agriculture and processing industries. food, electronics, construction, industrial manufacturing, welder, chef. At the same time, Hungary has agreed to quickly grant foreign work visas to 9 countries, of which Vietnam is the leading country on the list.[38]

Four occupations in which Hungary is in great demand for labour (Automobile industry; nursing; hotel and restaurant services; construction) are currently being trained by Vietnamese Technical and Vocational Education and Training institutions under the transfer program from Germany, students will be awarded 2 degrees of from Vietnam and Germany. In 2022, the two governments are promoting to sign a cooperation agreement (MOU) on labour export. [39]

2. Challenges for Hungary and Vietnamese migrant workers

Wages

The causes of labour migration are complex, depending on the individual reasons, however, many people believe that Hungary's low wages played an important role in the migration out of Hungary of the labour force.[40] Hungary's wages have lagged behind regional wages over the past 15 years, as well as those of the rest of the CEE countries.[41]

The average real and nominal wages in the CEE region are much lower than those in Western Europe and all Visegrad countries (Czech Republic, Hungary, Poland and Slovakia) are in the second half of the average net salary list. Hungary's average net salary was lower than 650 Euros in 2018, just higher than Romania and Bulgaria.[42]

This low level of wages can lead to two consequences that make it difficult for Hungary to recruit workers to address the labour shortage, not only workers from Vietnam but also workers from many other countries. Firstly, low wages can make it difficult for Hungary to compete with other markets, especially when it comes to attracting highly skilled workers, Vietnamese workers working in Hungary usually have an average salary

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[37] TRÀN, ANGIE NGỌC – CRINIS, VICKI: *Migrant labor and state power: Vietnamese workers in Malaysia and Vietnam*. Journal of Vietnamese Studies, 2018. pp. 27–73.

[38] Available at https://nld.com.vn/cong-doan/hungary-uu-tien-cap-nhanh-visa-cho-lao-dong-viet-nam-20220608184745682.htm (accessed: 12 September 2022).

[39] Available at http://www.molisa.gov.vn/Pages/tintuc/chitiet.aspx?tintucID=231271 (accessed: 12 September 2022).

[40] Avalable at https://www.eurofound.europa.eu/fr/publications/article/2017/hungary-short-term-solutions-to-the-issue-of-labour-shortages (accessed: 14 September 2022).

[41] POOR et al. 2020, pp. 47–60.

[42] GORGENYI-HEGYES – FEKETE-FARKAS 2019, pp. 167–181.

of 800$ to $1000,[43] this salary is not competitive compared to traditional Vietnamese markets such as Korea and Japan, taking into account both geographical factors and cultural and lifestyle similarities. Secondly, low wages may make it difficult for Hungary to retain migrant workers for a long time to ensure a stable and sustainable workforce. Many Vietnamese migrant workers may see Hungary as just a temporary stopover, working for short periods of time and looking to move to Western countries with higher wages. In the past, the flow of labour to Hungary was mainly from Serbia and Ukraine, mainly due to better working conditions, however, in some cases, they only see Hungary as a temporary solution to find jobs in countries located to the west of Hungary such as Germany and Austria.[44]

Integration and discrimination

Anti-migration discourse in the local and international media has adversely affected Hungary's reputation. It weakens Hungary's position in terms of competition in the labour market.[45] And indeed, it is not a made-up story, Hungary not only does not have an integration law for migrants but also has an immigration law that is controversial and strongly criticized by the EU.[46]

The anti-migration stance is not limited to the government, but Hungarian citizens also hold similar views due to government influence, however, Hungarians discriminate against migrants from non-EU countries but give priority to migrants from other European countries, especially neighboring countries like Serbia.[47]

The above factors may raise concerns of Vietnamese workers about the living environment, health care conditions as well as the ability to integrate into society even before coming to Hungary, or that can cause problems in the process of living and working in Hungary. The lack of social integration and even isolation reinforces the feeling among non-EU workers that Hungary is just a stopover from which they can reach the wealthier countries of Europe.[48]

V. Conclusion

In summary, the bilateral agreements between Vietnam - EU, Vietnam - Hungary as well as the legal system and policies of Vietnam have created a favorable legal framework for Vietnamese migrant workers to work in Vietnam. Hungary also has a basic legal framework

[43] Available at https://laodongeu.vn/nhung-loi-the-cuc-hap-dan-khien-nguoi-viet-muon-di-xuat-khau-lao-dong-hungary/ (accessed: 15 September 2022).

[44] CSEH PAPP –BILAN – DAJNOKI 2018, pp. 182–200.

[45] MÁRTON BISZTRAI: et al. *Perpetual Temporariness*. 2020. Available at https://library.fes.de/pdf-files/bueros/budapest/17065.pdf (accessed: 7 September 2022).

[46] Available at https://www.bbc.com/news/world-europe-59748173 (accessed: 15 September 2022).

[47] European Commission, Directorate-General for Justice and Consumers, Hermina Balogh, L., *Country report, gender equality: how are EU rules transposed into national law?: Hungary 2021*, Publications Office, 2021, https://data.europa.eu/doi/10.2838/248112 (accessed: 9 September 2022).

[48] MARTON BISZTRAI, et al. *Perpetual Temporariness*. 2020. Available at https://library.fes.de/pdf-files/bueros/budapest/17065.pdf (accessed: 7 September 2022).

governing the process of migrant workers entering, living and working in Hungary. However, this legal framework is incomplete, not really interested in enhancing and protecting the rights and interests of migrant workers. Therefore, in the context that Hungary is always considered a xenophobic and anti-immigrant country, Hungary should make adjustments in policies and laws to suit the characteristics of the new labour flow and be able to attract and retain workers from many other countries, specifically as follows:

- Hungary needs a more suitable wage policy. A competitive salary will help Hungary attract workers not only from Vietnam but also from many other countries, at the same time it also contributes to keeping the domestic workforce from migrating to Western European countries where wages are higher.
- Hungary needs a law and more policies on integration for migrant workers. Integration into the labour market and integration into society are two inseparable factors. Only when workers are guaranteed in terms of housing, health care, education, participation in social life, etc., can they easily integrate into the labour market. Conversely, workers can refuse the opportunity to come to Hungary to work because of certain concerns or flee during work if they are isolated, difficulty accessing services because of language barrier, or they are not protected from discrimination.
- Hungary and Vietnam need to quickly sign the MoU in the field of migrant workers to create more favorable conditions for Vietnamese migrant workers to work in Hungary.

Evidence from some countries in East Asia and Southeast Asia with aging populations and labour shortages such as Japan, Singapore,[49] and South Korea[50] all show that migrant workers not only help solve the problem of labour shortages but also contribute significantly to economic growth and social development. Along with encouraging the recruitment of migrant workers, the above countries have appropriate policies to attract and retain workers, especially skilled workers. In the context that the relationship between Vietnam and Hungary is increasingly close and the two countries are strengthening cooperation in the field of labour, Vietnam's surplus young labour force may be the key to Hungary's labour shortage problem.

[49] WALMSLEY, TERRIE – AGUIAR, ANGEL – AHMED, SYUD AMER: *Labour migration and economic growth in East and South-East Asia*. The World Economy, 2017. pp. 116–139.

[50] KIM, GYUCHAN: *Migration transition in South Korea: Features and factors*. OMNES: The journal of multicultural society, 2017. pp. 1–32.

ANH TUAN LUU

MUNKAERŐHIÁNY MAGYARORSZÁGON: JOGSZABÁLYI KERETEK, LEHETŐSÉGEK ÉS KIHÍVÁSOK A VIETNÁMI MIGRÁNS MUNKAVÁLLALÓK SZÁMÁRA

(Összefoglalás)

A COVID-19 pandémiát követő időszak gazdaság fellendülést eredményezett, ami a magyar munkaerőpiacon munkaerő hiányt idézett elő. Erre a lényeges problémára az egyik lehetséges megoldást az EU-n kívüli harmadik országból – mint például Vietnám – származó migráns munkavállalók jelenthetik. Ennek jogi alapját teremtette meg az EU és Vietnám között – évekkel korábban – létrejött kölcsönös kereskedelmi megállapodás, valamint a Vietnam és Magyarország között fennálló kölcsönös együttműködési megállapodás. A cikk áttekintést nyújt az EU, Vietnám és Magyarország közötti relációban a migráns munkavállalók jogi helyzetét érintő megállapodások kereteiről és fontosabb tartalmi elemeiről. Ugyancsak elemzi a Magyarországon kialakult munkaerőhiányból eredő lehetőségeket és megoldandó problémákat a potenciális vietnámi migráns munkavállalók számára.

MENGXUAN CHEN*

Two Types of Coordination of LTC Benefits in the European Union

Introduction

The Open Method of Coordination (hereinafter: OMC) fundamentally differs from the traditional forms of EU law—regulations, directives, and decisions.[1] It does not result in EU legislation, but is a method of soft governance that aims to spread best practice and achieve convergence toward EU goals in those policy areas which fall under the partial or full competence of Member States.

The OMC, a tool that was formalized at the beginning of the 21st century, has attracted the interest of researchers and practitioners in the new EU governance context.[2] In 2005, the three coordination processes of social inclusion, adequate and sustainable pensions, and high-quality and sustainable health care and long-term care were combined into a single social OMC. This is a relatively new intergovernmental means of governance in the European Union, based on the voluntary cooperation of its member states. The open method rests on soft law mechanisms such as guidelines and indicators, benchmarking and sharing of best practices.[3]

Social security coordination is shaped by international more precisely, supranational agreements and treaties. The coordination mechanism is necessarily aimed at protecting the social security rights of cross-border (migrant) persons who leave their original social security guarantees when they leave the territory of their country of origin.

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1 PAUL CRAIG: *EU Administration Law, Open Method of Coordination*. Accessed on 27.09.2022: https:/doi.org/10.1093/acprof:oso/9780199568628.002.0006 Pages vii-viii

2 ANI MATEI, ADRIAN STELIAN DUMITRU and CORINA GEORGIANA ANTONOVICI: *The EU Health Technology Assessment and the Open Method of Coordination: A Relation with Potential in the Context of Network Governance*. Sustainability 2021, 13, 3582. Accessed on 27.09.2022: https://www.mdpi.com/2071-1050/13/6/3582

3 *Working together, working better - A new framework for the open coordination of social protection and inclusion policies in the European Union* / COM/2005/0706 final / Accessed on 27.09.2022: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52005DC0706

There are three hypotheses of this article, the first is that the discourses produced in the framework of OMC in the areas of employment and social inclusion are broad enough to cater to the different welfare models, but that the changes to be made by the Member States to be in line with the European discourses differ considerably, depending on their welfare state family and their initial situation. The second is that the form of OMC is variable, depending on the policy area. The third is that the two types of EU-level coordination have no relation with each other. They both are genuine tectonics of social protection. The conclusions confirm every of these hypotheses.

The aim of this paper is to introduce both types of coordination, with special regard to Long-term Care (LTC) systems.

1. The Concept of the OMC

The OMC was originally created in the 1990s as part of the employment policy and Luxembourg process and was defined as an instrument of the Lisbon Strategy (2000). At the time, EU economic integration was progressing rapidly, but EU countries were reluctant to give more powers to European institutions.[4]

At the Lisbon European summit in 2000, the Union set itself an ambitious goal for the next decade[5]: 'to become the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion'. With a view to realising this socio-economic agenda, 'a [new] open method of coordination' (OMC) was introduced 'as the means of spreading best practice and achieving greater convergence towards the main EU goals'.[6]

The Lisbon strategy built upon previous coordination processes in the economic (Broad Economic Policy Guidelines, 1992) and employment (European Employment Strategy, 1997) fields so that the OMC was new only to the extent that it provided a new legitimising discourse around which past and novel practices could crystallise.[7]

1.1 The Mechanisms of OMC

The OMC allows the European Union (EU) to develop policies in areas where it has no competence to legislate. In 2000 the EU decided to use the OMC to advance policies in the area of social inclusion. Since 2000 the EU has developed a range of instruments to make the Inclusion OMC work effectively. The national action plans (NAPs) –

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[4] *Open Method of Coordination*. Accessed on 27.09.2022:https://www.europarl.europa.eu/EPRS/EPRS-AaG-542142-Open-Method-of-Coordination-FINAL.pdf

[5] *Lisbon European Council 23 And 24 March 2000 Presidency Conclusions.* Accessed on 27.09.2022 : https://www.europarl.europa.eu/summits/lis1_en.htm

[6] RADAELLI, CLAUDIO M. *The Open Method of Coordination: A new governance architecture for the European Union?*. Swedish Institute for European Policy Studies, 2003. p.14

[7] GAUTIER BUSSCHAERT: *Participatory Democracy, Civil Society and Social Europe A Legal and Political Perspective.* Intersentia, 2018, p.129 - 152. Accessed on 27.09.2022: https://doi.org/10.1017/9781780687438

renamed national strategy reports in 2006 – are the inclusion of OMC's central and most visible instrument.[8]

However, The OMC is not allowed to use the procedure for policy areas that fall within the bounds of the European treaties. Nor are proposals allowed to nullify achievements of the European Union or try to change goals laid down in European treaties. As binding EU rules cannot be used to achieve convergence between member states in this context, the OMC relies on other mechanisms. These mechanisms establish guidelines, quantitative and qualitative indicators and benchmarks, and national and regional targets, backed by periodic evaluations and peer reviews. The evaluation aims to help the Member States learn from each other and thus improve their domestic policies. However, 'peer pressure' and 'naming and shaming' are terms often used to describe this learning and improvement process. These may hint at processes of greater weight than the apparently 'soft' nature of the governance implies.[9]

Since 2000, the OMC has become 'the central tool of EU social policymaking in the new millennium', for the social inclusion process. It was established in 2000 with a view 'to make a decisive impact on the eradication of poverty', and would later be complemented by a pensions process (2001) and a health care and long-term care process (2004). As of 2006, the three processes were streamlined into a single social OMC with the following elements: 1. Common objectives were endorsed by the European Council in March 2006, with both overarching and specific objectives for each strand of the social OMC; 2. Common indicators were also agreed by the Social Protection Committee (SPC) with a view to measure Member States' progress towards the common objectives; 3. Every three years, Member States would translate common objectives into National Strategies for Social Protection and Social Inclusion, with a common section presenting their overall strategic approach and three thematic plans covering social inclusion, pensions, and healthcare and long-term care; 4. The strategies would then be sent to the Commission to monitor progress in a Joint Social Protection and Social Inclusion Report to be drafted annually for Council/Commission adoption before each Spring European Council; 5. The different elements of the social OMC were supported by Progress, a programme that financed the implementation of the objectives of the European Union in the fields of employment and social affairs for the period 2007–2013.[10]

Since 2006. the three above mentioned policy areas have been jointly addressed through this process, now known as the streamlined "Open Method of Coordination on social protection and social inclusion". The general objective of this process is to promote social cohesion and equal opportunities for all through adequate, accessible, financially sustainable, adaptable, and efficient social protection systems and social inclusion policies. Interact closely with the Lisbon objectives of achieving greater economic growth and more and better jobs and with the EU's sustainable development strategy, improve

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[8] FREEK SPINNEWIJN: *How to Use the Open Method of Coordination to Deliver Policy Progress at European Level: The Example of Homelessness.* European Journal of Homelessness _ Volume 3, December 2009 p.301

[9] *Open Method of Coordination*. Accessed on 27.09.2022:https://www.europarl.europa.eu/EPRS/EPRS-AaG-542142-Open-Method-of-Coordination-FINAL.pdf

[10] GAUTIER BUSSCHAERT: *Participatory Democracy, Civil Society and Social Europe A Legal and Political Perspective.* Intersentia, 2018, p.129 - 152. Accessed on 27.09.2022: https://doi.org/10.1017/9781780687438

governance and transparency, and involve stakeholders in the design, implementation, and monitoring of policies.[11]

These objectives apply to the different fields of operation: 1. *The fight against poverty and social exclusion.* Ensuring active inclusion for all by promoting labor market participation and combating poverty and exclusion of the most marginalised groups, opposing all forms of discrimination that lead to exclusion, and Integrate the fight against poverty and social exclusion into all relevant public policies, including economic and budgetary policies and structural fund programmes. 2. *Adequate and sustainable pensions*. Ensuring adequate retirement income and pensions for all, ensuring the financial sustainability of public and private pension schemes, in particular by supporting longer working lives and active aging, guaranteeing an appropriate and fair balance between contributions and benefits, and maintaining the security of both funded and private schemes, while ensuring that pension schemes are transparent and that people have the information they need to prepare for retirement. 3. *Accessible, high quality, and sustainable health and long-term care.* To ensure that all people have access to adequate health care and long-term health care and that the need for health care does not lead to poverty and economic dependency; to promote quality of care and rational use of resources.[12]

1. 2 The Procedures of OMC

The Open Method of Coordination involves: Agreeing on EU-level Common Objectives (revised in 2006 to reflect streamlining). Developing common indicators to measure progress towards these objectives and ensure comparability. Developing National Reports on Strategies for Social Protection and Social Inclusion translates these objectives into national policies. The National Action Plans on Social Inclusion (NAP/incl) remain self-standing Plans and make up one of the sections within these reports. Establishing a Community Action Programme, promoting policy cooperation, exchange of good practice, and European level mobilisation. This program was replaced in 2007 by the PROGRESS Programme which aims to financially support the implementation of EU objectives in employment, social affairs and equal opportunities as set out in the Social Agenda. Promoting mutual learning and exchange through Peer Reviews, Studies and conferences. Publishing European reports (Joint Reports by the Council and the Commission) documenting the outcomes of the process and highlighting good practices and the key challenges ahead.[13]

The OMC has provided a new framework for cooperation between the EU countries, whose national policies can thus be directed towards certain common objectives. Under this intergovernmental method, the EU countries are evaluated by one another (peer

[11] *A new framework for the open coordination of social protection and inclusion policies.* Accessed on 27.09.2022: https://eur-lex.europa.eu/legal-content/ET/TXT/?uri=LEGISSUM%3Ac10140.

[12] AOIFE KENNEDY: *The Fight Against Poverty, Social Exclusion And Discrimination.*Accessed on 27.09.2022: https://www.europarl.europa.eu/ftu/pdf/en/FTU_2.3.9.pdf.

[13] GAUTIER BUSSCHAERT: *Participatory Democracy, Civil Society and Social Europe A Legal and Political Perspective.* Intersentia, 2018, p.129 - 152. Accessed on 27.09.2022: https://doi.org/10.1017/9781780687438

pressure), with the Commission's role being limited to surveillance. The European Parliament and the Court of Justice play virtually no part in the OMC process.[14]

The OMC takes place in areas that fall within the competence of EU countries, such as employment, social protection, education, youth and vocational training. It is principally based on: 1. jointly identifying and defining objectives to be achieved (adopted by the Council); 2. jointly established measuring instruments (statistics, indicators, guidelines); 3. benchmarking, i.e. comparison of EU countries' performance and the exchange of best practices (monitored by the Commission).[15]

This procedure is one of the special legislative procedures used in the European Union. The OMC is applied to policy areas where member states are in full control but where they also wish to coordinate their policies on a particular subject. Decisions that are based on the open coordination method are non-binding; member states are not held accountable for whether or not they implement decisions. The procedure is not part of the European treaties.[16]

There are some details of OMC's procedure: Step 1: *initiative*. A member state, a group of member states, or the European Commission submits a proposal to the Council of Ministers.

Step 2: *agreeing on commitments.* The European Parliament is an advisory body. The Member States, with the support of the European Commission and existing European policies, negotiate the objectives, the steps necessary to achieve them, and the methods for assessing progress in their implementation. The Council of Ministers confirms the agreements made between the member states. *Step 3: implementation and control of the agreements.* With the OMC, the implementation is part of the procedure. Member states develop national action plans that are based upon the agreements. Member states to exchange information about the best ways to achieve the set objectives. With help from the member states the Commission monitors the progress in complementing the agreements. The general idea is that member states are motivated to achieve objectives and avoid lagging behind compared to the progress made by other member states. There is also a Voting procedure of the OMC; Since the open method of coordination is not part of the European treaties and no set agreement on the procedure has been formally agreed upon, no specific voting method has been determined. In practice, the member states try to reach a consensus.[17]

1. 3. The Criticism of OMC

After initial enthusiasm in the late 1990s, analysts of the OMC have become increasingly critical, with doubts emerging about its effectiveness due to its political irrelevance at

[14] Accessed on 27.09.2022: https://www.eapn.eu/news-and-publications/other-resources/eu-jargon-explained/

[15] *Open method of coordination*. Accessed on 27.09.2022: https://eur-lex.europa.eu/EN/legal-content/glossary/open-method-of-coordination.html

[16] *Decision-making procedures in the European Union.* Accessed on 27.09.2022: https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vg9tssega1vj

[17] *Open Method of coordination (OMC)*. Accessed on 27.09.2022: https://www.eumonitor.eu/9353000/1/j9vvik/7m1c3gyxp/vh7eg8ym3xy5

national level and a lack of control mechanisms. For example, experts[18] claim that OMC has become an important part of the policy making process in social inclusion issues in only a quarter of the countries examined. In 2004, the European Council set up a High-Level Group, chaired by Wim Kok to carry out an independent mid-term review of the outcomes of the Lisbon Strategy. The results showed that the Lisbon Strategy was not sufficiently focused. [19]

The OMC is also criticised at the EU level, where it can be perceived as a threat to the Community method. Another common criticism of OMC is aimed at its problematic relationship with those policy areas which are the competence of Member States and where EU involvement via OMC is sometimes perceived as a covert intrusion. Some experts also claim that the way OMC is currently implemented hardly constitutes an excellent political compromise between hard law and total non-cooperation by member states. Hard law can be more intrusive than soft law under the legal constraints posed by the EU treaties.[20]

The European Parliament in particular has been concerned about the democratic legitimacy of the OMC. As the EU institution that EU citizens directly elect, it has become more involved in the OMC to make it more democratic. Its 2003 resolution on the application of the Open Method of Coordination called for the OMC to be introduced into even more areas. However, it warned against the OMC becoming a non-transparent and subversive parallel procedure in the EU.[21]

The 2007 resolution on soft law calls OMC 'legally dubious' because of insufficient parliamentary and judicial involvement. It warns against using it in lieu of Community legislation where the Treaties do not allow this. In the 2010 resolution on economic governance, the European Parliament even called for an end to reliance on OMC in economic policy. The European Economic and Social Committee (EESC) has also been critical of the OMC. According to its 2011 Opinion on 'The Open Method of Coordination and the Social Clause in the Context of Europe 2020', OMC is ineffective and invisible at national level. In spite of that, the EESC has been interested in expanding the method into other policy areas (e.g. health, demographic challenges, youth policy), as well as strengthening it in existing areas, in order to make sure that these policy areas do not lose their importance, with regard, for example, to social inclusion and protection.[22]

However, the Parliament has not opposed the OMC where its use does not undermine the EU competences and thus the community method. Many experts have affirmed the important role of the OMC in terms of social inclusion policy, with some arguing that the introduction of a new concept (social inclusion) into national debates has changed policy

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[18] *Building a stronger EU Social Inclusion Process: Analysis and recommendations of the EU Network of independent national experts on social inclusion.*2008. Accessed on 27.09.2022: https://ec.europa.eu/social/main.jsp?catId=89&langId=en&newsId=1410&furtherNews=yes

[19] KOK, W. *Facing the Challenge: The Lisbon Strategy for Growth and Employment.* European Communities, November 2004.

[20] SUORSA H, VAN OOIK R. *The OMC and Democratic Legitimacy: Legal Limits of EU Employment Regulation*. University of Amsterdam. 2019.p.6

[21] *The Open Method of Coordination.* Accessed on 27.09.2022:https://epthinktank.eu/2014/11/05/the-open-method-of-coordination/

[22] *Open method of coordination*. Accessed on 27.09.2022: https://eur-lex.europa.eu/EN/legal-content/glossary/open-method-of-coordination.html

thinking and created a more "consensus-oriented decision-making process."[23] in the field of social policy and supported policy change through mutual learning across Member States.[24] In the 2011 resolution on social services of general interest, it views positively the application of OMC in the European Voluntary Quality Framework. Likewise, the 2013 Regulation on common fisheries policy, adopted in codecision with the Council, relies on the use of OMC in the exchange of information and best practice among the Member States in aquaculture.[25]

Even after many critics of the OMC – which is not legally constraining and therefore has a questionable reputation among academics in terms of actual delivery[26] – that the method is still alive and well (amongst others in the form of the European Semester) twenty years after its formal launch, even though open coordination is now far less visible in the European Commission's key documents. Since 2005, the Commission has indeed given precedence to the EU's consecutive overarching socio-economic coordination processes – the Lisbon Strategy, the Europe 2020 Strategy and the European Semester - rather than to 'competing' sectoral strategies such as the OMC.[27]

Some OMC supporters claim that the OMC has shown the potential to influence and achieve convergence in national systems, although not necessarily quantitative convergence. Under the Ljubljana process, the OMC has been identified as a central method of governance for the further development of the European research field.[28]

The official proclamation by the European Parliament, the EU leaders and the Commission[29] Juncker's flagship initiative, the European Pillar of Social Rights, can be seen as a true game-changer in that it effectively revamped the EU social policy agenda and further institutionalised the OMC as a policy instrument.[30]

Although the debate and evaluation of the OMC has never ceased, this article claims that under the context of a community of values in EU, We can easily find that the main value of the OMC lies in the participation of all in decision-making: the EU institutions, civil society, interest groups, the media, etc. play a role through the OMC in the drafting of public policies and in the monitoring and evaluation of their implementation. It may not improve the policies of advanced welfare states, but it may have a very important role

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[23] JACOBSSON, K. and VIFEL, Å. "*Integration by deliberation? On the Role of Committees in the Open Method of Coordination*", 2003, Florence, p. 32.

[24] DE LA PORTE, C. and POCHET,P. *The European Employment Strategy: Existing Research and Remaining Questions*, Journal of European Social Policy, 2004, p. 71–78.

[25] *Open method of coordination*. Accessed on 27.09.2022: https://eur-lex.europa.eu/EN/legal-content/glossary/open-method-of-coordination.html

[26] The initial praise for the OMC, both by politicians and scientists, quickly turned into skepticism. For a literature overview of the four categories of the early OMC literature – theoretical, normative, empirical, and critical – see CITI MAND RHODES M: *New Modes of Governance in the EU: Common Objectives versus National Preferences*, 2007.

[27] VANHERCKE, BART: *From the Lisbon strategy to the European Pillar of Social Rights: the many lives of the Social Open Method of Coordination.* Social policy in the European Union 2019 (1999): p. 99-123.

[28] MC GUINNESS N, O'CARROLL C. *Benchmarking Europe's lab benches: How successful has the OMC been in research policy?*. JCMS: Journal of Common Market Studies, 2010, 48(2): 293-318.

[29] During the European Council's first-ever Social Summit, which took place in Gothenburg in November 2017.

[30] VANHERCKE B., SABATO S. and GHAILANI D. (eds.): *Conclusions: The European Pillar of Social Rights as a game changer, Social policy in the European Union: State of play 2018*, Brussels, ETUI and European Social Observatory (OSE), p.165-186.

for member states with less developed welfare policies. But the impact of the OMC on policy implementation depends to a large extent on the policy instruments and strategies chosen, and on the process of implementation at the national level. There is no guarantee that the target itself will be achieved.

1. 4. The Concept of Long-term Care (LTC)

At the EU level, the following definition was provided by the Social Protection Committee (SPC), which consists of representatives of national ministries of social affairs and the European Commission's Directorate General for Employment, Social Affairs, and Inclusion: " Long-Term Care (LTC) encompasses a range of services and support for people who are dependent over a long period of time on help with their daily living. This need is usually the result of disability caused by frailty and various health problems and, therefore may affect people of all ages. But the great majority of long-term care recipients are older people."[31]

The European Pillar of Social Rights (hereinafter: 'Pillar'), jointly announced by the European Parliament, the Council of the EU, and the European Commission on 17 November 2017, establishes key principles and rights for a new process of upward integration toward better working and living conditions between the Member States. Principle 18 of the Pillar states that everyone has the right to affordable long-term care services of good quality, in particular home-care and community-based services. It thus establishes the right to care at the EU level for the first time, making long-term care a social policy area. The implementation pillar is an effort that the EU, Member States, social partners, and other stakeholders are taking forward together in accordance with their respective responsibilities.[32]

Member States face four common challenges in long-term care:1. The challenge of providing affordable and adequate long-term care services to all those who need them; 2. the challenge of providing quality long-term care services; 3. the challenge of ensuring an adequate long-term care workforce and good working conditions and supporting informal caregivers; and 4. the challenge of providing long-term care in the context of growing demand for care.[33]

1. 5. LTC Benefits Coordination in the OMC

Over the next five decades, the number of Europeans aged 80+ requiring long-term care (LTC) is expected to triple. This factor, with a declining working population, changing

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[31] ALFOSO LARA MOTERO,RONAN MANGAN,MARTIN LICHTE: *Putting Quality First Contracting for Long-Term Care.* Brussels: The European Social Network. 2021, p.10. Accessed on 27.09.2022: https://www.euro.centre.org/publications/detail/3958

[32] *The European Pillar of Social Rights in 20 principles* | European Commission (europa.eu) Accessed on 27.09.2022: https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights/european-pillar-social-rights-20-principles_en

[33] *2021 Annual Report of the Social Protection Committee.* 2021, Accessed on 27.09.2022: https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8432&furtherPubs=yes

family structures, and rising expectations in care services, are the main challenges outlined in the report of 'Adequate social protection for long-term care needs in an aging society'.[34]

There are vast differences between the Member States of the European Union (EU) regarding demography, economy, traditions and the development of systems for Long Term Care (LTC). The common objectives agreed by the Member States on long-term care in terms of accessibility, quality and sustainability form the backdrop for the Social Protection Committee (SPC)'s long-term care cooperation. As part of its task of monitoring the social situation in the EU and developing social protection policies, the SPC produces annual reports[35]. In its 2021 report, the SPC emphasises the need to maintain or expand investments in the social, long-term care, and health sectors and in human capital, where necessary, and the need for Member States to significantly increase their efforts to address the structural challenges related to long-term care.[36]

There is no one-size-fits-all solution to cope with the increasing demands caused by the aging of European societies. However, there is much value in mutual learning between the Member States. That existing evidence about innovative approaches for social protection against the long-term care risks. It demonstrates that it is possible to contain the growth in needs, make care more efficient and ensure dignity in care, if action is taken based on best available knowledge. Several approaches may have to be taken simultaneously and with different emphases in the different Member States.[37]

2. LTC in the European Social Security Coordination System

By way of introduction, it shall be underlined that there is no any link or similarity between the open method of coordination (OMC) and the EU social security coordination.The OMC does not result in EU legislation, it is an EU policy-making process, or regulatory instrument. But the EU social security coordination is formed by international agreements and treaties, it is a part of international supranational law.

2. 1. The Concept of Coordination on Social Security

The original concept of EU social security coordination is part of international supranational law. It has been shaped by international agreements and treaties. This chapter focuses on the EU's supranational social security coordination system. The corollary purpose of the coordination mechanism is to protect the social security rights of

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[34] *Adequate social protection for long-term care needs in an aging society Report jointly prepared by the Social Protection Committee and the European Commission services* (2014) Accessed on 27.09.2022: https://op.europa.eu/en/publication-detail/-/publication/71532344-ddf1-4d34-a7aa-f65c701a22a2

[35] *2021 Annual Report of the Social Protection Committee.* 2021, Accessed on 27.09.2022: https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8432&furtherPubs=yes

[36] Commission Communication (COM/2008/418 final), Brussels, 2.7.2008. Accessed on 27.09.2022: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52008DC0418

[37] *Long-term care: Closing the gap between need and supply.* (2014) Accessed on 27.09.2022: https://www.esn-eu.org/news/long-term-care-closing-gap-between-need-and-supply

cross-border (migrant) persons who leave his/her original social security protection behind when they leave the territory of their country of origin.[38]

The European Union social security coordination law, is predominantly enshrined in the Treaty on the Functioning of the EU (hereafter "the TFEU"), especially in its Article 48, and the Regulations 883/2004, 987/2009 and 988/2009,[39] as interpreted and amended by the judgments of the Court of Justice of the EU (hereafter "the ECJ"), should enable the greatest possible freedom of movement for migrant workers[40] and citizens of the EU in general.[41]

The EU coordination regulation on social security concerns the provisions provided within the framework of the statutory social security system. It aims to ensure equal treatment of workers and persons moving to different parts of Europe under different national social security systems. In essence, the purpose of EU social security coordination is to abolish the territorialization of the application of national social security systems and thus provide the necessary preconditions for the free movement of persons within the EU.[42]

2. 2. The Goals of the European Union in the EU Social Security Coordination

Since the start of the European Economic Community (EEC) in 1957, the free movement of persons has been considered to be one of the basic principles of the Treaty of Rome.[43] Together with the free movement of capital, goods, and services, it still constitutes the cornerstone of the European Union.[44]

Free movement of persons implies that within an internal European market each citizen has the right to travel to another Member State of the EU to work, to look for work, to study or to go on holiday. However, the free movement of persons faces some restrictions. Apart from some "natural" limitations, such as cultural problems, linguistic barriers or differences in standard of living, people can also be confronted with obstacles which are the result of differences in national legislations, in particular in the field of social security.[45]

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[38] JÓZSEF HAJDÚ, MENGXUAN CHEN, *EU Social Security Coordination of Old-age Pensions*, Scientific Journal Of Humanities and Social Sciences, 2022,4(7): p.536-546

[39] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 200/1, 7.6.2004. Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, OJ L 284/1, 30.10.2009.

[40] Emphasised by the ECJ in Jauch (C-215/99), Para. 20, and recently in da Silva Martins (C-388/09), Para. 70.

[41] Stressed also in judgements of the ECJ in the case Stewart (C-503/09), Para. 78 ff. The restrictions to the free movement of the EU nationals (in the host, but also in the home State) should not go beyond what is necessary to attain the objective pursued (principle of proportionality)).

[42] *Directorate General for Internal Policies Policy Department: Economic and Scientific Policy, Coordination of Social Security Systems in Europe* 2017. p.10. Accessed on 27.09.2022: https://www.pubaffairsbruxelles.eu/opinion-analysis/coordination-of-social-security-systems-in-europe/.

[43] *Treaty establishing the European Economic Community (EEC) in Italy*, 25 March 1957. treaty of Roma Accessed on 27.09.2022: https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/treaty-of-rome

[44] ROB CORNELISSEN , FREDERIC DE WISPELAERE: *Sixty years of European social security coordination: achievements, controversies and challenges* Accessed on 27.09.2022: https://www.etui.org/sites/default/files/Chapter%207_13.pdf

[45] *Tress-Network Short introduction to the European Coordination of social security schemes*;Accessed on 27.09.2022: http://www.tress-network.org/TRESSNEW/PUBLIC/ELEARN/intro%20text%20e-learning.pdf

The drafters of the Treaty of Rome were well aware that not only the social security systems in the Member States of the EU are different, but also the social security rules governing were applicable only on the territory of each Member State that this situation was liable to create impediments for the free movement of persons. Mobility of persons would remain an illusion when workers leave their country to work in another EU country, would lose – completely or partly – their social security rights of the State they are leaving, or when they would not be able to obtain benefits in the State where they go to.[46]

In addition, one has to consider the developments regarding EU citizenship, according to which every EU citizen has the right to move and reside freely, subject to certain conditions and limitations, on the territory of the Member States of the European Union.[47]

The legal instruments available: the European coordination of social security rules. For the reasons set out above, the European Treaty provides since its origin in 1958 that the Council of Ministers, the legislative body of the Community (later joined by the European Parliament), with unanimity of votes, must take those measures that are necessary in the field of social security for improvements of the free movement of persons. The Council of Ministers did so as one of the first measures ever taken by the European Economic Community; already on 1 January 1959, Regulations Nrs. 3 and 4 on social security for migrant workers entered into force.[48]

On 1 October 1972, these regulations were completely revised and replaced by Regulation Nrs. 1408/71 and its implementing Regulation 574/72. Since 1971 these Regulations were the subject of several amendments in order to accommodate trends in national legislation and progress resulting from the rulings of the Court of Justice. On 1 May 2010, a new set of regulations, Regulation 883/2004 and its implementing Regulation 987/2009 became applicable. Without changing it dramatically, the new regulations modernise and in some cases also simplify the EU framework for social security coordination.[49]

The overall objective of these Regulations is to install coordination of the various social security systems in the European Union. Rather than to harmonise the different national regulations - which would mean creating a common European system of social security – these Regulations build bridges between the national social security schemes; the national schemes are linked together so as to prevent people moving within Europe from losing out on social security rights on account of their moving.[50]

These coordinating instruments only apply in situations where there is some cross-border element. Coordination is aimed at guaranteeing that someone who wants to go to

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[46] YVES JORENS: *50 years of Social Security Coordination Past – Present – Future Report of the conference celebrating the 50th Anniversary of the European Coordination of Social Security* Prague, 2009. Accessed on 27.09.2022: http://aei.pitt.edu/42168/1/social_security_coordination.pdf

[47] *EU social security coordination;* Accessed on 27.09.2022: https://ec.europa.eu/social/main.jsp?catId=849

[48] JÓZSEF HAJDÚ , MENGXUAN CHEN, *EU Social Security Coordination of Old-age Pensions*, Scientific Journal Of Humanities and Social Sciences, 2022,4(7): p.536-546

[49] ROB CORNELISSEN: *50 Years of European Social Security Coordination European*; Journal of Social Security, Volume 11 (2009),Nos.1–2

[50] *Tress-Network Short introduction to the European Coordination of social security schemes*; Accessed on 27.09.2022: http://www.tress-network.org/TRESSNEW/PUBLIC/ELEARN/intro%20text%20e-learning.pdf

work in another Member State does not lose his/her social security rights due to provisions applying in other social security systems. In addition, its goal is to prevent migrant workers from being treated unfairly in the field of social security in comparison with persons who have worked all their lives in one and the same Member State. Conversely, coordination, and European internal market law in general, do not apply in situations that are wholly confined within a single Member State.[51]

2. 3. Principles of Social Security Coordination

Five coordination principles are used in order to protect the social security rights of migrant persons and to remedy the problems created by the territoriality and diversity of national social security systems:

1st principle: *Determination of the applicable legislation*. In general, an employed or self-employed person is subject to the country of employment, even if he/she lives in another country. It is in this country that he/she has to pay contributions, and it will be this country's institutions that in principle, will pay the benefits. As with any rule, some exceptions are provided for. [52]

2nd principle: *Equal treatment or non-discrimination*. The Regulation provides that all persons to whom it applies enjoy the same rights and have the same obligations under the social security legislation of any Member State as the nationals thereof.[53]

3rd principle: *Aggregation of periods.* Through this principle, migrant workers can obtain certain benefits, regardless of changes or even interruptions in their international career.[54]

4th principle: *It is the right to preserve social security rights that one has acquired within the European Union*. The Regulation provides that "cash benefits payable under the legislation of one or more Member States or under this regulation shall not be subject to any reduction, amendment, suspension, withdrawal or confiscation on account of the fact that the beneficiary or the members of his/her family reside in a Member State other than that in which the institution responsible for providing benefits is situated".[55]

[51] NICOLAS RENNUY *The emergence of a parallel system of social security coordination Common Market Law Review* Volume 50, Issue 5 (2013) p. 1221 – 1266

[52] STEFANO GIUBBONI – FELICIANO IUDICONE – MANUELITA MANCINI – MICHELE FAIOLI: *Coordination of Social Security Systems in Europe, Study for the EMPL Committee* (2017) Accessed on 27.09.2022: https://www.mobilelabour.eu/wp-content/uploads/2017/12/report-EMPL-Comm_Social-sec.-in-Europe_Nov.-2017.pdf.

[53] FRANS PENNINGS and GIJSBERT VONK: *Research Handbook on European Social Security Law* 2015. Accessed on 27.09.2022: https://www.elgaronline.com/view/edcoll/9781782547327/9781782547327.00025.xml

[54] YVES JORENS, FILIP VAN OVERNMEIREN: *General Principles of Coordination in Regulation 883/2004 European Journal of Social Security.* 2009. Accessed on 27.09.2022: https://journals.sagepub.com/doi/abs/10.1177/138826270901100103

[55] JÓZSEF HAJDÚ:*Social Protection of (Im)Migrants by the EU Social Security Coordination Scheme* .. Pravne teme, 2017, 5(09): p.8-26

5th principle: *Good Administrative Cooperation*: It promotes good administrative cooperation among Member States' social security institutions to smooth the effective exercise of rights (and duties) conferred upon individuals by the regulations.[56]

2. 4. LTC benefits coordination

Social security coordination is bound to build a supranational scheme upon the national systems, whatever benefits they provide. Naturally, coordination is much easier and far less complex if national social security schemes are similar and clearly structured. However, this could not be argued for LTC benefits. The risk of "dependency", or the "need for long-term care", or "reliance on care"[57] is among the new(er) social risks. As such, it still lacks a clear definition and clearly defined benefits on the national level.[58]

Long-term care benefits are not currently defined by Regulation 883 or by the Administrative Commission, which are currently covered by the coordination rules in the "Sickness benefits", but will be clearly defined and included in a new, separate part. However, the same coordination rules that are used for sickness benefits will continue to apply. Such a change could lead to significant disadvantages. The separation between sickness benefits and long-term care benefits would in fact, paradoxically, exclude certain situations that are currently covered by the rules on sickness benefits. Lead to a loss of rights and entitlements and create unnecessary obstacles to the free movement of persons. Create unnecessary obstacles to the free movement of persons within the EU.[59]

The LTC has three heavy obstacles to managing social security coordination: One of the great problems of LTC benefits is often their dispersion and location among benefits under traditional branches of social security. It is true that in some countries (DE, LU, ES) a particular branch for LTC benefits has already been created and defined. However, even in these countries and in many others, benefits may exist that hold some elements of LTCs, but at the same time share the goals or objectives of other benefits. The second significant issue for social security coordination is to categorize the LTC benefits under social security benefits or social assistance benefits. The core problem here is that the EU social security coordination system predominantly excludes social assistance and covers only social security type LTC benefits. The third problem which is important to mention is the differentiation of LTC benefits in cash and in kind.[60] In domestic legislations, the

[56] STEFANO GIUBBONI – FELICIANO IUDICONE – MANUELITA MANCINI – MICHELE FAIOLI: *Coordination of Social Secrity Systems in Europe, Study for the EMPL Committee* (2017) Accessed on 27.09.2022: https://www.mobilelabour.eu/wp-content/uploads/2017/12/report-EMPL-Comm_Social-sec.-in-Europe_Nov.-2017.pdf.

[57] ECJ decisions in Molenaar (C-160/96), Para 3, or recently da Silva Martins (C-388/09), Para. 40.

[58] JORENS Y – SPIEGEL B – DE CORTAZAR C G, et al. *Coordination of Long-term Care Benefits-current situation and future prospects*. Think Tank Report, 2011.p. 9

[59] *Directorate General for Internal Policies Policy Department: Economic and Scientific Policy, Coordination of Social Security Systems in Europe* 2017. p.10. Accessed on 27.09.2022: https://www.pubaffairsbruxelles.eu/opinion-analysis/coordination-of-social-security-systems-in-europe/.

[60] Welfare policies, in general, are based on access to two types of services addressing social needs and termed 'in kind' or 'in cash'. Services in kind were first introduced in the Scandinavian countries to support working parents of small children with specific care needs, and access to services was considered universal as a citizen's right. At least since

same or similar LTC benefits are considered in kind in one country and in cash in others. In this sense, ECJ case law must be applied with regard to the distinction between benefits in kind and in cash, regardless of how these benefits are considered or recognised in domestic legislations (most recently case C-466/04, Acereda Herrera).[61]

3. Summary

The European Council has introduced the OMC procedure to facilitate the coordination of economic policy between member states, a principle agreed on in the European Treaties. Following its introduction, the Commission has set rules for using the OMC. This procedure is used mostly in policy areas such as education, employment, social policy, and medical care. Most of these are policy areas where the member states retain full national authority. The great differences between the EU Member States in terms of culture, history, welfare systems, and the development of long-term care (LTC) systems will inevitably cause some difficulties in implementing OMC. Several different approaches may have to be taken simultaneously in the different Member States. However, mutual learning between the Member States is valuable and can greatly assist in developing LTC, especially in countries with relatively poor welfare systems.

The main purpose of the European social security coordination system is to ensure that people who move within EU countries do not lose their social security rights as a result of eliminating the disadvantages that may arise from differences in the systems of member states. The coverage level and definition of the concept of long-term care are different among the EU Member States, and the protection of the rights of formal and informal caregivers majority are women) in long-term care has not been well addressed so far, and when it comes to the free movement of long-term care workers, the identity and rights of workers are difficult to recognise and guarantee due to the differences in policies, regulations, and the perception of long-term care between the Member States. There are three main dilemmas that LTC benefit coordination has faced so far. Firstly, the definition of LTC is not always clear in the welfare states and may even be classified as part of health insurance or pension insurance. Secondly, the EU social security coordination system does not cover social assistance but only the social security type. Thirdly, the LTC benefit model is not uniform from country to country, with some countries providing benefits in kind and others in cash.

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the 1970s, the rationale for supporting family members caring for disabled older people seemed similar. However, carers of older people most often belong to the 45/65-generation (sandwich generation) rather than to the 25/45-generation, and there is also a large group of older carers (65/80) retired from the labor market. As they face different problems, both groups need specifically designed policies and thus specific measures – cash benefits being one of them. (Source: JUDY TRIANTAFILLOU et. all.: *Informal care in the long-term care system, European Overview Paper.* Accessed on 27.09.2022: https://www.euro.centre.org/downloads/detail/768

[61] YVES JORENS, BERNHARD SPIEGEL, CARLOS GARCIA DE CORTAZAR, JEAN CLAUDE FILLON, MAXIMILIAN FUCHS, GREGA STRBAN: *Coordination of Long-term Care Benefits - current situation and future prospects*. 2011 Accessed on 27.09.2022: http://www.tress-network.org/EUROPEAN%20RESOURCES/EUROPEANREPORT/trESSIII_ThinkTankReport-LTC_20111026FINAL_amendmentsEC-FINAL.pdf

CHEN MENGXUAN

A TARTÓS ÁPOLÁSI ELLÁTÁSOK KÉTFÉLE KOORDINÁCIÓJA AZ EURÓPAI UNIÓBAN

(Összefoglalás)

Az Európai Unióban (EU) kétféle koordinációs mechanizmus létezik: az egyik a nyitott koordinációs mechanizmus (OMC), a másik pedig az EU szociális biztonsági koordinációs rendszere. A két rendszer között nincs kapcsolat vagy hasonlóság.

Egyrészt a nyitott koordináció módszere (OMC) az Európai Unió (EU) nem kötelező erejű (soft law) hagyományaiban gyökerezik, amit az Európai Tanács 2000. évi lisszaboni ülésén alakítottak át független kormányzási eszközzé, amelynek célja, hogy eszközként szolgáljon a tagállami szociális vonatkozású jó gyakorlatok megismerésére, terjesztésére és az EU fő célkitűzéseinek nagyobb fokú integrációjára.

A nyílt koordinációs mechanizmussal összefüggésben a tagállamok közötti kölcsönös tanulás (jó gyakorlatok megismerése) nagyon fontos a tartós ápolási rendszerek (LTC) fejlesztése során. A tagállamok eltérő gazdasági fejlettsége, történelme, kultúrája és jóléti rendszerei közötti különbségek országspecifikus megközelítéseket tesznek szükségessé az LTC-re vonatkozó szakpolitikák kidolgozásához és végrehajtásához.

Másrészt az EU szociális biztonsági koordinációs rendszere nem a különböző nemzeti szabályozások harmonizálására, hanem egy közös (szupranacionális szintű) európai szociális biztonsági rendszer létrehozására irányul. Alapvető célja, hogy az Európán belül szabadon mozgó személyek ne veszítsék el szociális biztonsági jogaikat a migráció következtében.

A tartós ápolási ellátások szociális biztonsági koordinációja három alapvető dilemmával szembesül: 1. az LTC tisztázatlan meghatározása, 2. nem megfelelő védelmi rendszer és 3. tagállamonként eltérő, nem konzisztens ellátási modellek.

A tanulmány a két koordinációs rendszer sajátosságainak bemutatásán túl a tartós ápolásra vonatkozó speciális normatív és néhány esetjogi szabályozás alapjait tekinti át.

GYÖRGY ATTILA NÉMETH*

Die mögliche Auslegung der Sorgfaltspflichtverletzung und der Voraussehbarkeit in den deutschen und ungarischen strafrechtlichen Fahrlässigkeitsbegriffen im Spiegel des autonomen Fahrens**

I. Einleitung, Begriffsbestimmungen[1]

1. Zielsetzung

Mit der bevorstehenden Verbreitung der autonom gesteuerten Autos auch im Straßenverkehr,[2] verbindet sich die wichtigste Aufgabe der Strafrechtsdogmatik, auf die von solchen Fahrzeugen verursachten Unfälle gültige und mit den Anforderungen des rechtstaatlichen Strafrechts vereinbare Antworten zu geben. Diese Herausforderung betrifft den ganzen Bereich der Strafrechtsdogmatik und tritt besonders bedeutend im Zusammenhang mit der Auslegung des Begriffes der Fahrlässigkeit auf.[3]

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* PhD-hallgató, Szegedi Tudományegyetem, Állam- és Jogtudományi Kar, Bűnügyi Tudományok Intézete

** Für die Möglichkeit, an seinem Lehrstuhl zu forschen sowie für seine unentbehrliche Ratschläge und konstruktive Kritik, möchte ich mich bei Herrn Prof Dr. BERND HEINRICH an der Universität Tübingen herzlich bedanken.

1 Im Rahmen des *Digicrimjus* Drittmittelprojektes habe ich damit angefangen, mich mit dem Thema dieses Aufsatzes zu beschäftigen. Das *Digicrimjus* Projekt ist eine wissenschaftliche und pädagogische Zusammenarbeit zwischen den Universitäten Szeged, Konstanz und Istanbul. Auf die im Zusammenhang mit diesem Drittmittelprojekt gewonnenen Erkenntnisse beruht dieser Aufsatz. S. ferner: [https://www.digicrimjus.com/].

2 Ab 2018 sind in Deutschland in mehreren Bundesländern neue Teststrecken für das automatisierte Fahren in Betrieb gegangen, die auch Fahrten auf Landesstraßen und im Straßenverkehr möglich machen. S. *GDV – Die deutschen Versicherer.* [https://bit.ly/2Uj3YGq]. In Ungarn gibt es seit 2018 in der Stadt *Zalaegerszeg* auch eine spezielle Testrecke für selbstfahrende Fahrzeuge, auf der anwendungsorientierte Forschung stattfindet. S. *zalazone.hu* [https://bit.ly/2IuTG3R]. Dazu s. noch: BECK, SUSANNE: *3.7. Selbstfahrende Kraftfahrzeuge – aktuelle Probleme der strafrechtliche Fahrlässigkeitshaftung.* In: Oppermann, Bernd H. (Hrsg.) – Stender-Vorwachs, Jutta (Hrsg.): Autonomes Fahren. C.H. Beck. München, 2020. Rn. 6-10.

3 Vgl. VALERIUS, BRIAN: *Sorgfaltspflichten beim autonomen Fahren*. In: Hilgendorf, Eric (Hrsg.) – Beck, Susanne (Hrsg.): *Autonome Systeme und neue Mobilität.* Nomos. Baden-Baden, 2017. 9. p. Im Vergleich der fahrlässigen Haftung wird „ausnahmsweise von einer vorsätzlichen Tötung oder Körperverletzung auszugehen sein."

In diesem Aufsatz verfolge ich die Frage, welche neuen Herausforderungen die selbstfahrenden Kraftfahrtzeuge als Innovation der vierten industriellen Revolution für die Sorgfaltspflichtverletzung und die Voraussehbarkeit im Bereich der strafrechtlichen Fahrlässigkeitshaftung mit sich bringen. Obwohl ich bezüglich der Fahrlässigkeitsdogmatik von dem im ungarischen Strafrecht geregelten Fahrlässigkeitsbegriff ausgehe, nehme ich auf die in der deutschen Strafrechtswissenschaft herrschende Auslegung bezüglich der Fahrlässigkeitsstrafbarkeit Bezug.

Ich betone hier, dass ausschließlich das menschliche Verhalten im Mittelpunkt meiner Untersuchung steht.[4] Aus diesem Grund beschäftige ich mich nicht mit den theoretischen und philosophischen Fragen der strafrechtlichen Verantwortlichkeit der künstlichen Intelligenz.

Zunächst möchte ich erwähnen, dass ich bei der Auslegung der Fahrlässigkeit das Schuldprinzip als einen Grundsatz des Strafrechts nicht verwerfen möchte. Die strafrechtliche Verantwortung soll auf der Vorwerfbarkeit beruhen.[5] Das hat zwei Gründe: Einerseits dürfen die strafrechtlichen Garantien nicht durchbrochen werden, um eine Verantwortlichkeit zu begründen. Andererseits könnte die objektive Haftung die technologische Entwicklung zurückwerfen, weil niemand im Fall eines eventuellen Fehlers seine strafrechtliche Verantwortlichkeit ohne Vorwerfbarkeit gefährden möchte.

2. Autonomes Fahren, die Stufen der Automatisierung

Die autonomen Fahrzeuge, besonders die dem Zweck der Bevölkerung dienenden autonomen Personenkraftwagen können als die radikale Innovation der IV. industriellen Revolution[6] angesehen werden, weil sie nicht nur das Alltagsleben der Menschen, sondern auch die Struktur der Städte und die zahlreichen sonstigen Faktoren des Verkehrssystems radikal verändern.[7]

Es existieren mehrere Lösungen für die Kategorisierung des Automatisierungsgrades des automatisierten Fahrens. Das System des Verbands der Automobilindustrie unterscheidet zwischen sechs Stufen. Auf der Stufe 0 befindet sich das Fahrzeug, dessen Fahrer ohne eingreifendes Fahrzeugsystem dauerhaft Längs- und Querführung ausführt.[8] Auf der Stufe 5 steht das fahrerlose Fahrzeug, bei dem kein Fahrer von Start bis Ziel erforderlich ist und er auch bei der Fahrt, sofern er mitfährt, gar nicht eingreifen kann. Das liegt dann

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[4] „Im Mittelpunkt des Rechtsgeschehens steht der Mensch als Rechtssubjekt." WESSELS, JOHANNES –BEULKE, WERNER –SATZGER, HELMUT: *Strafrecht Allgemeiner Teil. Die Straftat und ihr Aufbau.* 50. Auflage. C.F. Müller. Heidelberg, 2020. Rn. 132.

[5] Zu den Konsequenzen des Schuldprinzips siehe: WESSELS – BEULKE – SATZGER 2020, Rn. 618.

[6] Siehe dazu: *Was ist Industrie 4.0? Menschen, Maschinen und Produkte sind direkt miteinander vernetzt: die vierte industrielle Revolution hat begonnen.* Plattform Industrie 4.0. [https://bit.ly/3kSrAMZ]

[7] LUKOVICS MIKLÓS – UDVARI BEÁTA – ZUTI BENCE – KÉZY BÉLA: *Az önvezető autók és a felelősségteljes innováció.* [*Die selbstfahrende Autos und die verantwortungsvolle Innovation.*] Közgazdasági Szemle LXV. Évf., 2018, 949. p.

[8] Längsführung: Geschwindigkeit halten, Gas geben, Bremsen. Querführung: Lenken. S. *Die sechs Stufen des autonomen Fahrzeugs.* Economy, Unabhängiges Magazin für Wirtschaft und Bildung. [https://bit.ly/30tJSQs]

vor, wenn das System „die Fahraufgabe vollumfänglich bei allen Straßentypen, Geschwindigkeitsbereichen und Umfeldbedingungen" übernimmt.[9] Dagegen erwähnt die Bundesanstalt für Straßenwesen letztlich nur drei Stufen der Automatisation, nämlich assistierter, automatisierter und autonomer Modus. [10]

3. Die jüngste Gesetzentwicklung im Zusammenhang mit den autonomen Fahrzeugen in Deutschland

Der deutsche Bundesrat hat am 28. Mai 2021 dem Gesetzesbeschluss des Bundestages zur Änderung des Straßenverkehrsgesetzes bezüglich des autonomen Fahrens zugestimmt. Am 27. Juli wurde das Gesetz im Bundesgesetzblatt verkündet[11] und trat am 28. Juli 2021 in Kraft. Nach diesem Gesetz ist es in Deutschland als erstem Land in der Welt zulässig, mit Fahrzeugen *in festgelegten Betriebsbereichen* des öffentlichen Straßenverkehrs zu verkehren.[12]

Die Stufe der Autonomisierung des in diesem Gesetzentwurf geregelten Fahrzeuges erreicht nach der Klassifikation von *SAE* nicht die Stufe 5, also die Stufe des vollständig autonomen Fahrens, bei dem die dynamische Fahraufgabe unter jeder Fahrbahn- und Umgebungsbedingung durchgeführt werden kann.[13]

Obwohl die autonom fahrenden Autos nach diesem Gesetz im öffentlichen Verkehr nur im behördlich genehmigten Betriebsbereich betrieben werden dürfen,[14] hat der Gesetzgeber in jüngster Zeit in Deutschland einen großen Schritt in die Richtung der Schaffung des umfangreichen rechtlichen Rahmens für selbstfahrenden Fahrzeuge getan.[15]

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[9] *Automatisierung, Von Fahrerassistenzsystemen zum automatisierten Fahren. VDA Verband der Automobilindustrie.* Berlin, 2015. 15. p. Ähnliche Systematisierung vertritt das *SAE International* [https://bit.ly/2J3gmIm] und das *National Highway Traffic Safety Administration* [https://bit.ly/33ZS6NG].

[10] S. *Bundesanstalt für Straßenwesen, Nutzerkommunikation. Was heißt eigentlich autonomes Fahren?* [https://bit.ly/3pWQm2f]

[11] Bundesgesetzblatt Nr. 48. vom 27.07.2021 – Gesetz zur Änderung des Straßenverkehrsgesetzes und des Pflichtversicherungsgesetzes – Gesetz zum autonomen Fahren. [Im Weiteren: Gesetz zum autonomen Fahren.] Die hier, unter dem Namen „Gesetz zum autonomen Fahren" zitierten Rechtsvorschriften bilden ab 28. Juli 2021 einen Teil des deutschen Straßenverkehrsgesetzes. S. Straßenverkehrsgesetz § 1d (Kraftfahrzeuge mit autonomer Fahrfunktion in festgelegten Betriebsbereichen) - § 1l (Evaluierung).

[12] Gesetz zum autonomen Fahren Art. 1, § 1d Abs. 1, 2.

[13] Die Aufgabe des Gesetzes ist es, der Herstellung von Rechtssicherheit für den Einsatz von autonomen, also führerlosen Systemen im Straßenverkehr entsprechend der Stufe 4 (*SAE*) zu dienen. S. Begründung zum Gesetzentwurf der Bundesregierung. Entwurf eines Gesetzes zur Änderung des Straßenverkehrsgesetzes und des Pflichtversicherungsgesetzes - Gesetz zum autonomen Fahren. (BT Drs. 19/27439) 19. p. [https://bit.ly/3pkFVYs]

[14] Art. 1. § 1d Abs. 2. Gesetz zum autonomen Fahren.

[15] *Automatisiertes Fahren – Gesetzentwürfe, Gesetz zum autonomen Fahren.* Kriminalpolitische Zeitschrift. [Ohne Autor.] [https://bit.ly/3jMX1vp].

II. Das Subjekt der Verantwortlichkeit

Wenn die strafrechtliche Verantwortung im Zusammenhang mit den autonomen Fahrsystemen untersucht wird, soll nicht ausschließlich die strafrechtrelevante Handlung „des Fahrers" beziehungsweise des Verwenders eines autonomen Fahrzeugs, sondern darüber hinaus auch die des Herstellers, des Programmierers und gegebenenfalls der Mitglieder der Behörde, die die gesetzliche Betriebserlaubnis für autonome Fahrzeuge sorgfaltspflichtwidrig genehmigen (sog. „Kontrolleure"), angesprochen werden. Im Hinblick darauf, dass der Betrieb dieser Fahrzeuge ein selbständiges System (sogenannte „Gesamtarchitektur des automatisierten und vernetzten Straßenverkehrs"[16]) beansprucht, kann im Falle eines Verkehrsunfalls die strafrechtliche Verantwortlichkeit aller Personen diskutiert werden, die bei der Planung an einigen Elementen des Systems mitarbeiten oder deren Aufgabe es ist, in geeigneter Weise den Systembetriebs zu sichern, beziehungsweise für die Instandhaltung der verwendeten, technischen Mittel zu sorgen, und die im gegebenen Fall festgestellten Fehler zu reparieren.[17]

Der Bericht der *Ethik-Kommission automatisiertes und vernetztes Fahren* unterscheidet zwischen zehn potentiellen (nicht ausschließlich strafrechtlichen) Verantwortlichen.[18] Das Gesetz zum autonomen Fahren verpflichtet den Halter und den Hersteller eines Kraftfahrzeuges mit autonomer Fahrfunktion, bestimmte Verhaltensregeln einzuhalten.[19] Außerdem schafft das Gesetz den Begriff der „technischen Aufsicht" über ein autonomes Auto und stellt für die Betroffenen daher Sorgfaltsanforderungen auf. Laut dieser Definition ist die technische Aufsicht derjenigen Person anvertraut, die dieses Kraftfahrzeug während des Betriebs deaktivieren und für das Kraftfahrzeug Fahrmanöver freigeben kann.[20] Diese Definition des Gesetzes ist einigermaßen irreführend, weil nicht das Kraftfahrzeug an sich, sondern die selbständige Fahrfunktion deaktiviert wird.

Obwohl die Umsetzung in die Praxis dieser Kategorie noch einige Fragen aufwirft, könnte man sich die Rolle dieses Personenkreises im Verkehr so vorstellen, wie die Funktion eines Fluglotsen, dessen Aufgabe es ist, den Luftverkehr sicherheits- und regelungsgemäß zu lenken.

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[16] S. LEMMER, KARSTEN: *Neue autoMobiltät. Automatisierter Straßenverkehr der Zukunft.* Utz-Verlag. München, 2016. 39.,90. pp.: *4.1.1 Architekturveränderung im vernetzten Mobilitätssystem*, und *4.7.2. Gesamtarchitekturen im intelligenten Verkehrssystem*.

[17] „Daher müssen neben den Haltern und Herstellern des Fahrzeugs die entsprechenden Hersteller und Betreiber der Unterstützungstechniken des Fahrzeugs in das System der Haftungsteilung einbezogen werden." *Ethik Kommission Automatisiertes und Vernetztes Fahren.* 2017. 26. p. [https://bit.ly/3yRMC60]

[18] S. *Ethik Kommission Automatisiertes und Vernetztes Fahren.* 2017. 27. p. [https://bit.ly/3yRMC60]

[19] Vgl. Art. 1. § 1f Gesetz zum autonomen Fahren. Hier werden Pflichten der Beteiligten beim Betrieb von Kraftfahrzeugen mit autonomer Fahrfunktion geregelt. Zu den Verhaltensnormen des Halters, s. Art. 1. § 1f Abs. 1. Gesetz zum autonomen Fahren, zu den Verhaltensnormen des Herstellers s. Art. 1. § 1f Abs. 3. Gesetz zum autonomen Fahren.

[20] S. Art. 1. § 1d, Abs 3. Gesetz zum autonomen Fahren. Zu den sich auf der technischen Aufsicht beziehenden Verhaltenspflichten s. Art. 1. § 1f Abs. 2. Gesetz zum autonomen Fahren.

III. Die Fahrlässigkeit im deutschen und ungarischen Strafrecht

1. Allgemeines über die Fahrlässigkeit in deutschen und ungarischen Strafrechtssystemen

Laut den elementaren Merkmalen des Fahrlässigkeitsbegriffs sowohl im ungarischen als auch im deutschen Strafrechtssystem rechnet der Täter bei *der unbewussten Fahrlässigkeit* zum Zeitpunkt der Tat nicht damit, dass er (rechtswidrig) einen gesetzlichen Tatbestand verwirklichen könnte, während im Fall *der bewussten Fahrlässigkeit* der Täter mit der entfernten Möglichkeit einer Tatbestandsverwirklichung rechnet, aber (rechtswidrig) darauf vertraut, dass alles schon gut gehen wird.[21]

Der Begriff der fahrlässigen Tatbegehung (aber nicht der Fahrlässigkeit!) ist – im Gegensatz zum deutschen Strafgesetzbuch – vom ungarischen Strafgesetzbuch (Gesetz Nr. C. von 2012 über das Strafgesetzbuch) expressis verbis geregelt. Nach dem § 8. uStGB, begeht fahrlässig eine Straftat, wer die Folgen seiner Handlung voraussieht und trotzdem leichtfertig[22] auf deren Unterbleiben vertraut [*bewussten Fahrlässigkeit*], oder die möglichen Folgen seiner Handlung deshalb nicht voraussieht, weil er die von ihm zumutbare Beachtung oder Umsicht unterlässt [*unbewussten Fahrlässigkeit*].[23] In beiden Strafrechtssystemen ist das fahrlässige Verhalten nur dann strafbar, wenn das Strafgesetzbuch dies in einem strafrechtlichen Tatbestand ausdrücklich mit Strafe bedroht.[24] Im deutschen Gesetz ist dies in § 15 geregelt, während es im ungarischen Strafrecht aus dem Begriff der Straftat folgt.[25]

2. Die Struktur der Fahrlässigkeitsdelikten im deutschen Strafrecht

Im deutschen Strafrecht wurde der Begriff der fahrlässigen Tatbegehung, von der Rechtsprechung und der Strafrechtswissenschaft herauskristallisiert.

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[21] HEINRICH, BERND: *Strafrecht, Allgemeiner Teil.* 6. überarbeitete Auflage. Kohlhammer. Stuttgart, 2019. Rn. 972.; EISELE, JÖRG – HEINRICH, BERND: *Strafrecht Allgemeiner Teil für Studienanfänger.* Kohlhammer. Stuttgart, 2020. Rn. 637.

[22] Der im ungarischen gesetzlichen Fahrlässigkeitsbegriff *„leichtfertiges Vertrauen"* geregelte Begriff ist zu unterscheiden von dem im deutschen Strafrecht bekannten Begriff *„Leichtfertigkeit"*. Die ungarische Fahrlässigkeitsdogmatik kennt keine *Leichtfertigkeit* als selbstständigen Begriff, weshalb derjenige, der die gebotene Sorgfalt „in ungewöhnlich hohem Maße" verletzt, entweder wegen einer fahrlässigen oder – im gegebenen Fall – wegen einer vorsätzlichen Straftat zur Verantwortung gezogen werden kann. Zum Begriff der Leichtfertigkeit s.: HEINRICH, B. 2019 Rn. 1005.; WESSELS – BEULKE – SATZGER 2020, Rn. 1107.

[23] Aus dieser Begriffsbestimmung kann der Begriff der Fahrlässigkeit als aus Adjektiv gebildetes Substantiv abgeleitet werden: Die Fahrlässigkeit ist einerseits ein leichtfertiges Vertrauen auf das Unterbleiben der Folgen der Tathandlung, andererseits die Unterlassung der vom Täter zumutbaren Beachtung oder Umsicht, (infolgedessen sieht der Täter die möglichen Folgen seiner Handlung nicht voraus.)

[24] HEINRICH, B. 2019, Rn. 415.

[25] uStGB § 4 Abs. 1. Die Straftat ist die vorsätzlich oder – *falls dieses Gesetz die fahrlässige Begehung auch mit Strafe bedroht* – fahrlässig begangene Handlung, die die Gesellschaft gefährdet und die dieses Gesetz mit Strafe bedroht. [Hervorhebung von mir.]

Obgleich abweichende Stimmen in der Rechtsliteratur existieren, steht nach der herrschenden Meinung[26] irgendeine Sorgfaltspflichtverletzung im Zentrum sowohl der bewussten als auch der unbewussten Fahrlässigkeit,[27] der Sorgfaltspflichtverstoß stellt also den „materiellen Kern des Fahrlässigkeitsunwerts" dar.[28]

Die Mehrzahl der Autoren nennen zwei Maßstäbe (einen objektiven und einen subjektiven) zur Feststellung der Fahrlässigkeit.[29] Diese Konstruktion bezeichnet man in der Literatur als einen komplexen (mehrteiligen)[30] oder nach der Bestimmung von *Kindhäuser* einen zweistufigen Fahrlässigkeitsbegriff.[31] Im Gegensatz dazu steht die Konzeption des einfachen (einteiligen oder einstufigen) Fahrlässigkeitsbegriffs.[32]

Der objektive Maßstab wird von dem objektiven Sorgfaltspflichtgebot also „für alle geltenden und im Verkehr erforderlichen Sorgfalt" bestimmt.[33] Art und Maß der anzuwendenden objektiven Sorgfalt wird von den Anforderungen festgestellt, „die bei einer

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[26] Laut GROPP „traditionelle" Meinung. S. GROPP, WALTER: *Strafrecht Allgemeiner Teil.* 4. überarbeitete Auflage. Springer. Berlin, Heidelberg, 2015. § 12 Rn. 116. S. noch: GROPP, WALTER – SINN, ARNDT: *Strafrecht Allgemeiner Teil.* 5. Auflage. Springer. Berlin, Heidelberg, 2020. § 12 Rn. 116.

[27] HEINRICH, B. 2019, Rn. 976.; KINDHÄUSER, URS – ZIMMERMANN, TILL: *Strafrecht Allgemeiner Teil.* 9. Auflage. Nomos. Baden-Baden, 2020. § 33 Rn. 5. JESCHECK, HANS-HEINRICH – WEIGEND, THOMAS: *Lehrbuch des Strafrechts Allgemeiner Teil.* 5. Auflage. Duncker & Humblot. Berlin, 1996. § 54 Rn. 3.; WESSELS – BEULKE – SATZGER 2020, § 18 Rn. 1101.; RENGIER, RUDOLF: *Strafrecht Allgemeiner Teil.* 12. Auflage. C.H. Beck. München, 2020. § 52 Rn. 5. GRECO hat in der neuesten Auflage des *Roxin-Lehrbuches* die Meinung von ROXIN gleichsam übernommen. Laut ihnen ist die richtige Lösung, „dass der Tatbestand der fahrlässigen Delikte […] allein durch die Lehre von der objektiven Zurechnung ausgefüllt wird". Die Erläuterung dieser Lehre sehen die Autoren darin, dass sich die verschiedenen Zurechnungselemente hinter dem Merkmal der Sorgfaltspflichtverletzung verbergen, „die die Voraussetzungen der Fahrlässigkeit präziser bezeichnen als eine solche Generalklausel". Vgl. ROXIN, CLAUS – GRECO, LUÍS: *Strafrecht Allgemeiner Teil Band I Grundlagen. Der Aufbau der Verbrechenslehre.* 5. Auflage. C.H. Beck. München, 2020. § 24 Rn. 10. Ähnlich ist bei GROPP die Verletzung einer Sorgfaltspflicht Bezeichnung dafür, dass dem Täter „*durch* seine […] *erhöht gefährliche Handlung* verursachte Sachverhaltsunrecht zugerechnet wird." GROPP 2015, § 12 Rn. 129. S. noch: GROPP – SINN 2020, § 12 Rn. 129.

[28] GROPP 2015, § 12 Rn. 18.; HEINRICH, B. 2019, Rn. 1010.; WESSELS – BEULKE – SATZGER 2020, Rn. 1101.; RENGIER 2020, § 52 Rn. 5.; GROPP – SINN 2020, § 12 Rn. 18. Zu der Kritik der „Lehre von der Sorgfaltspflichtverletzung" als Voraussetzung des Unrechtstatbestandes s. BURKHARDT, BJÖRN: *Tatbestandsmäßiges Verhalten und ex-ante-Betrachtung – Zugleich ein Beitrag wider die „Verwirrung zwischen dem Subjektiven und dem Objektiven".* In: Wolter, Jürgen (Hrsg.) – Freund, Georg (Hrsg.): Straftat, Strafzumessung und Strafprozess im gesamten Strafrechtssystem. C.F. Müller. Heidelberg, 1996. 99-134. pp.

[29] So: HEINRICH, B. 2019, Rn. 1026.; WESSELS – BEULKE – SATZGER 2020, Rn. 1103.; JESCHECK – WEIGEND 1996, § 54 3. und § 57 II. 1.; GROPP 2015, § 12 Rn. 190.; ROXIN – GRECO 2020, § 24 Rn. 54.; RENGIER 2020, § 52 Rn. 14. und 83.; GROPP – SINN 2020, § 12 Rn. 190.

[30] SCHMIDHÄUSER, EBERHARD: *Strafrecht, Allgemeiner Teil.* 2. neubearbeitete Auflage. Mohr. Tübingen, 1975. 7/92-94; JESCHECK – WEIGEND 1996, § 54 I. Fn. 5. Vgl. ferner BURKHARDT 1996.

[31] S. KINDHÄUSER – ZIMMERMANN 2020, § 33 III.

[32] Diese Lehre entfernt sich von der Dialektik von objektiv und subjektiv, sondern bestimmt die erforderliche Sorgfalt „allein nach den individuellen Fähigkeiten des konkreten Täters." Vgl. KINDHÄUSER – ZIMMERMANN 2020, § 33 IV. 2. Rn. 51. Nach der einstufigen fahrlässigen Deliktsaufbau von KINDHÄUSER sind sowohl die individuelle Vorhersehbarkeit „des erfolgsverursachenden Kausalverlaufs", als auch die Vermeidbarkeit „der Erfolgsherbeiführung" im Bereich des subjektiven Tatbestandes zu prüfen. KINDHÄUSER – ZIMMERMANN 2020, § 33 VIII. 2. Rn. 76.

[33] HEINRICH, B. 2019, Rn. 1028. Bei der formellen begrifflichen Bestimmung der Sorgfaltspflichtverletzung gehen die Autoren aus dem in dem Bürgerlichen Gesetzbuch geregelten Fahrlässigkeitsbegriff. Laut dem § 276 I 2 BGB: „Fahrlässig handelt, wer die im Verkehr erforderliche Sorgfalt außer Acht lässt." So: HEINRICH,

Betrachtung der Gefahranlage ex ante an einen besonnenen und gewissenhaften Menschen in der konkreten Lage […] zu stellen sind."[34]

Neben der Frage, ob der Täter dieses Gebot tatsächlich verletzt, ist es (bei den Erfolgsdelikten) jedoch erforderlich, die Vorhersehbarkeit des Kausalverlaufs und des tatbestandlichen Erfolgs[35] so wie die Vermeidbarkeit des Erfolgs im hypothetischen Fall der Erfüllung der Sorgfaltspflicht zu untersuchen.[36] Objektiv vorhersehbar ist ein Erfolg dann, „wenn (1) ein umsichtig handelnder Mensch (2) aus dem Verkehrskreis des Täters (3) unter den jeweils gegebenen Umständen (4) auf Grund der allgemeinen Lebenserfahrung (5) mit dem Eintritt des Erfolges gerechnet hätte."[37]

Die Voraussetzung der Unvermeidbarkeit des Erfolges steht mit der Lehre vom Pflichtwidrigkeitszusammenhang, beziehungsweise mit dem möglichen Erfolg des rechtmäßigen Alternativverhaltens im Zusammenhang.[38] Der verursachte Erfolg ist nämlich dann unvermeidbar, wenn er im Fall des rechtmäßigen Alternativverhaltens „mit an Sicherheit grenzender Wahrscheinlichkeit"[39] ebenso eingetreten wäre.[40] Falls bei der Unvermeidbarkeit des Erfolges der erforderliche Pflichtwidrigkeitszusammenhang – neben der Kausalität im Sinne der „*condictio sine qua non*" – nicht vorhanden war, wäre also der tatbestandsmäßige Erfolg unabhängig von dem Sorgfaltspflichtverstoß unbedingt (beziehungsweise mit an Sicherheit grenzender Wahrscheinlichkeit) eingetreten.[41] Mangelt es hingegen an der Vorhersehbarkeit oder Vermeidbarkeit ist dem betreffenden kein Fahrlässigkeitsvorwurf zu machen.

Der subjektive Maßstab der fahrlässigen Handlung kann mit dem Begriff der subjektiven Sorgfaltspflichtwidrigkeit (oder Verletzung) identifiziert werden.[42] Die subjektive Sorgfaltswidrigkeit, bedeutet laut der Bestimmung von *Bernd Heinrich* „das Außerachtlassen der dem Täter individuell möglichen Sorgfalt."[43] Bei den fahrlässigen Erfolgsde-

B. 2019, Rn. 1028.; JESCHECK – WEIGEND 1996, § 55 I. 1.; RENGIER 2020, § 52 Rn. 15.; GROPP 2015, § 12 Rn. 43. GROPP formuliert einen materiellen Begriff auf im Verkehr erforderlichen Sorgfalt: Darunter „versteht man die Verkehrsgepflogenheiten der gewissenhaften und verständigen Angehörigen des Verkehrskreises." GROPP 2015, § 12 Rn. 44. S. noch: GROPP – SINN 2020, § 12 Rn. 44.

[34] HEINRICH, B. 2019, Rn. 1028. S. noch: VALERIUS 2017, 9. p.; RENGIER 2020, § 52 Rn. 15.

[35] Vgl. WESSELS – BEULKE – SATZGER 2020, Rn. 1114.; RENGIER 2020, § 13 Rn. 12.

[36] Vgl. GROPP 2015, § 12 Rn. 20. GROPP engt die Forderung der objektiven Vorhersehbarkeit und der Vermeidbarkeit nicht ausdrücklich auf die Erfolgsdelikten ein, sondern bezeichnet „den Eintritt der Veränderung in der Außenwelt" als Objekt der Vorhersehbarkeit und der Vermeidbarkeit. GROPP 2015, § 12 Rn. 73. S. noch: GROPP – SINN 2020, § 12 Rn. 73.

[37] HEINRICH, B. 2019, Rn. 1014. Vgl. WESSELS – BEULKE – SATZGER 2020, Rn. 1115.; GROPP 2015, § 12 Rn. 70,71.; GROPP – SINN 2020, § 12 Rn. 70,71.

[38] Vgl. GROPP 2015, § 12 Rn. 79.; WESSELS – BEULKE – SATZGER 2020, Rn. 301.; GROPP – SINN 2020, § 12 Rn. 79.

[39] WESSELS – BEULKE – SATZGER 2020, Rn. 1129. Umgekehrt: „Sobald nach den konkreten Umständen die Möglichkeit besteht, dass der Erfolg auch ohne die Pflichtverletzung eingetreten wäre, muss dies nach dem Grundsatz in dubio pro reo zugunsten des Täters angenommen und der Pflichtwidrigkeitszusammenhang verneint werden." Vgl. RENGIER 2020, § 52 Rn. 33. Eine andere Meinung über diesen Maßstab wird vertreten bei JESCHECK – WEIGEND 1996, § 55 II. 2. b) aa).

[40] HEINRICH, B. 2019, Rn. 1016.; ferner JESCHECK – WEIGEND 1996, § 55 II. 2. aa).

[41] Vgl. HEINRICH, B. 2019, Rn. 1012.; RENGIER 2020, § 52 Rn. 26.

[42] So HEINRICH, B. 2019, Rn. 1023.; WESSELS – BEULKE – SATZGER 2020, Rn. 1144.

[43] HEINRICH, B. 2019, Rn. 1023.

likten liegt der subjektive Sorgfaltspflichtverstoß dann vor, wenn der Erfolg und der Kausalverlauf in seinen wesentlichen Grundzügen dem Täter individuell vorhersehbar und vermeidbar war.[44]

Die objektive Sorgfaltspflichtverletzung ist im Bereich der Tatbestandsmäßigkeit zu prüfen, zugleich findet die subjektive Sorgfaltswidrigkeit ihre Prüfungsstandort in der Schuld. Die fahrlässige Tatbegehung wird grundlegend durch diese zwei Sorgfaltspflicht-Maßstäbe bestimmt. Deswegen spricht man auch von der „Doppelnatur" der Fahrlässigkeit, die das Fahrlässigkeitsdelikt als einen sowohl Unrecht- als auch Schuldelemente vereinigenden besonderen Typus des strafbaren Verhaltens bezeichnet.[45]

3. Die Struktur der Fahrlässigkeitsdelikte im ungarischen Strafrecht

Das System der einzelnen Elemente des Fahrlässigkeitsbegriffs im ungarischen Strafrecht unterscheidet sich von dem System der deutschen Strafrechtsdogmatik. Im folgenden Artikel soll versucht werden, das System des ungarischen Fahrlässigkeitsbegriffs zu beschreiben.

Die strafrechtliche Haftung für das fahrlässige Verhalten basiert im ungarischen Strafrecht auch auf irgendeiner Sorgfaltspflichtverletzung. Allerdings hat die gesetzliche Definition der Fahrlässigkeit in der ungarischen Gerichtspraxis mit sich gebracht, dass bei der Feststellung der Haftung für fahrlässige Tatbestandsverwirklichung unmittelbar das Vorliegen der einzelnen Elemente des gesetzlichen Fahrlässigkeitsbegriffs geprüft wird.

Die gesetzliche Bestimmung hat im Bereich der bewussten Fahrlässigkeit besondere Bedeutung, wobei die Untersuchung der Sorgfaltspflichtverletzung durch die Prüfung der Elemente der Legaldefinition, nämlich *der Voraussehbarkeit der Handlungsfolgen* und *des leichtfertigen Vertrauens auf deren Unterbleiben* vollständig abgelöst wurde.[46] Die Untersuchung der Sorgfaltspflichtverletzung hat ihre verhältnismäßige Selbstständigkeit nur im Bereich der unbewussten Fahrlässigkeit bewahrt.

Die im gesetzlichen *negligentia*-Begriff geregelte, von dem Täter zumutbaren Beachtung oder Umsicht, wird in der Praxis und Literatur mit der subjektiven Sorgfaltsfähigkeit identifiziert. Die objektive Sorgfaltsanforderung verkörpert sich in der *allgemeinen zumutbaren* Beachtung oder Umsicht, die im Gesetz nicht expressis verbis geregelt wird. Es ist erforderlich, dass diese bei der Feststellung der Fahrlässigkeitsschuld ebenfalls zu prüfen ist.[47]

Bei der Interpretation des gesetzlichen Fahrlässigkeitsbegriffes (genauso wie beim Vorsatz) unterscheidet die ungarische Strafrechtsdogmatik zwischen der „Wissensseite"

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[44] HEINRICH, B. 2019, Rn. 1023. Vgl. WESSELS – BEULKE – SATZGER 2020, Rn. 1144. RENGIER hält die subjektive Sorgfaltspflichtverletzung und die subjektive Vorhersehbarkeit der Tatbestandsverwirklichung für zwei abgegrenzte Merkmale, die nebeneinander – nach seiner Terminologie – die subjektive Fahrlässigkeit kennzeichnen. RENGIER 2020, § 52 Rn. 83.

[45] WESSELS – BEULKE – SATZGER 2020, Rn. 1102.

[46] Von der höchstrichterlichen Rechtsprechung s. BH1977.92.; BH1983.345.; BH1993.74.; BH1996.570.; BH1999.397.

[47] S. BH2017.317.

und der „Willensseite" der Fahrlässigkeit.[48] Die Voraussehbarkeit der Folge des vom Täter vorgenommenen Verhaltens gehört zur „Wissensseite". Die „Willensseite" beschreibt das emotionale Verhältnis des Täters zu diesen Folgen.

Im Fall der bewussten Fahrlässigkeit ist die Wissensseite vollständig erfüllt, der Täter erkennt also die möglichen (strafrechtlich relevanten) Folgen seiner Handlung.

Die Willensseite der bewussten Fahrlässigkeit ist eine mit Wissensmomenten verbundene Erscheinung. Nur derjenige, dessen Vertrauen nicht unbegründet war, kann auf das Unterbleiben der Folgen seiner Handlung „leichtfertig" vertrauen. Das heißt, dass der Täter seine reale Hoffnung auf das Unterbleiben der strafrechtsrelevanten Folgen seiner Handlung auf einen konkreten Umstand (seine Fähigkeiten, Erfahrungen, Schicklichkeit, die von ihm früher im Interesse der Abweichung der Gefahr vorgenommene Maßnahme usw.) aufbaut.[49]

Unter *„den Folgen der Tat"* versteht man in der Literatur sowie der Rechtsprechung die Tatbestandsverwirklichung, also das tatbestandsmäßige Verhalten und, bei den Erfolgsdelikten, auch die Verwirklichung des tatbestandsmäßigen Erfolges.[50]

Bei der unbewussten Fahrlässigkeit fehlt die Wissensseite. Dabei sieht der Täter die möglichen Folgen seiner Tat nicht voraus. Daraus ergibt sich, dass über die Willensseite nicht gesprochen werden kann. Der Täter kann sich nicht zu einem solchen künftigen Vorkommnis emotional verhalten, dessen Möglichkeit nicht in seinem Bewusstsein erscheint.[51] Bei der unbewussten Fahrlässigkeit basiert die Vorwerfbarkeit darauf, dass die vom Täter vorgenommene Beachtung und Umsicht von dem normativen Maßstab unterbleiben. Der Begriff *Zumutbarkeit* definiert auf der Ebene des Gesetzes diesen Maßstab.[52] In der Legaldefinition der unbewussten Fahrlässigkeit im uStGB verbirgt sich eine Unterlassungshandlung, nämlich das Unterlassen der dem Täter zumutbaren Beachtung oder Umsicht.

Nach der Meinung der *Szegediner Strafrechtsschule* hat sich der Fahrlässigkeitsbegriff im Deliktsaufbau verdoppelt. Man prüft das Vorliegen der Fahrlässigkeit (sowie des Vorsatzes) im Bereich des subjektiven Tatbestandes. Zugleich bilden beide Phänomene der subjektiven Tatseite den Teil des Schuldbegriffes als zwei Schuldformen.[53]

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[48] S. NAGY FERENC: *Anyagi büntetőjog. Alapvetések és a bűncselekmény tana. [Materielles Strafrecht. Grundlagen und die Lehre des Verbrechens.]* Iurisperitus Kiadó. Szeged, 2020. 186-191. pp.

[49] S. BH1978.185.; BH1998.417.; BH2001.255., BH2005.3.; BH2007.1., NAGY 2020, 192. p.; AMBRUS ISTVÁN – GELLÉR BALÁZS: *A magyar büntetőjog általános tanai I. [Die allgemeine Lehre des ungarischen Strafrechtes I.]* ELTE Eötvös Kiadó. 2019. 238. p.

[50] NAGY 2020, 197. p.

[51] AMBRUS – GELLÉR 2019, 238. p.

[52] Der Täter muss vom ihm zumutbare Beachtung und Umsicht erfüllen. S. § 4 Abs. 1. uStGB.

[53] S. NAGY 2020, 163., 258-262. pp. Der von der *Szegediner Strafrechtsschule* verfolgte Deliktsaufbau ähnelt der Auffassung des neoklassischen Verbrechensaufbaus in der deutschen Strafrechtswissenschaft: Der Vorsatz und die Fahrlässigkeit werden in den subjektiven Tatbestand integriert, es bilden jedoch beide Begriffe gleichzeitig Elemente des Schuldbegriffs. Zu der neoklassischen Verbrechensaufbau im deutschen Strafrecht s. HEINRICH, B. 2019, Rn. 101. Nach der Ansicht der *Szegediner Strafrechtsschule*, ist die Schuld eine vorwerfbare psychische Beziehung zwischen dem Täter und seiner gesellschaftsgefährlichen Tat bzw. den Folgen der Tat. Die Elemente des Schuldbegriffes: Die psychische Beziehung zwischen dem Täter und der Tat bzw. den Folgen der Tat, also der Vorsatz *oder* die Fahrlässigkeit; das entsprechende Alter (14. Lebensjahr, bei einzelnen Straftaten 12. Lebensjahr), die Zurechnungsfähigkeit des Täters und die Zumutbarkeit des normgemäßen Verhaltens. NAGY 2020, 258. p.

Es würde zur Auflösung der dogmatischen Einheit der Fahrlässigkeit führen, wenn die ausschließlich bei der Feststellung der unbewussten Fahrlässigkeit relevante objektive Sorgfaltspflichtverletzung aus dem Bereich der Schuld verschwinden und – ähnlich wie in der deutschen Strafrechtsdogmatik – ausschließlich im Rahmen der objektiven Tatbestandsmäßigkeit bewertet werden würde.

Meiner Meinung nach ist es der begrifflichen Definition der Fahrlässigkeit und der begrifflichen Isoliertheit der unbewussten Fahrlässigkeit zu verdanken, dass die Sorgfaltspflichtverletzung in der ungarischen Strafrechtsdogmatik keine dogmatische Selbständigkeit erhalten hat.

Die Fahrlässigkeitsdelikte in der ungarischen Strafrechtsdogmatik können nicht als eine selbständige, mit besonderem Unrechtsgehalt ausgestattete Deliktsgruppe angesehen werden, sondern die fahrlässige Tatbegehung ist im Falle beider Fahrlässigkeitsformen (ähnlich wie beim Vorsatz) im Rahmen des subjektiven Tatbestandes sowie der Schuld zu untersuchen.[54] Die in der ungarischen Strafrechtswissenschaft fundierteste Meinung hat *Imre Békés* in seiner im Jahr 1974 erschienenen Monografie vertreten. Laut ihm ist die tatbestandsmäßige Handlung dann rechtswidrig, wenn sie von der Verletzung der objektiven Sorgfaltspflichtanforderung geprägt ist.[55] Mit anderen Worten: die objektive Sorgfaltspflichtverletzung trägt die Rechtswidrigkeit in sich. Bei *Imre Békés* liegt die Verletzung der objektiven Sorgfaltsanforderung dann vor, wenn die mit der Handlung verursachten Rechtsgutverletzung objektiv vorhersehbar und vermeidbar war.[56] Mangels objektiver Vorhersehbarkeit und Vermeidbarkeit ist das normgemäße Verhalten dem Täter unmöglich, weshalb die Rechtswidrigkeit ausgeschlossen ist.[57] Bei der *luxuria* sind die objektive Vorhersehbarkeit und die Vermeidbarkeit notwendigerweise gegeben, weil der Täter die möglichen tatbestandsmäßigen Folgen seiner Tat subjektiv voraussehen und vermeiden könnte.[58] Nach der Interpretation von *Imre Békés* ist das mit bewusster Fahrlässigkeit vorgenommene Verhalten immer sorgfaltswidrig und somit auch rechtswidrig.[59] Nach dieser Ansicht gerät die objektive Sorgfaltspflichtverletzung in die Rechtswidrigkeit, während die subjektive Sorgfaltspflichtverletzung im Kreis der Schuld verbleibt.[60] Die von ihm vertretene Meinung widerspricht nicht der gesetzlichen Regelung. Die Rechtsprechung bevorzugt jedoch, worauf ich schon hingewiesen habe, die Prüfung des Vorliegens der Elemente des gesetzlichen Begriffes gegenüber der unmittelbaren Prüfung der Sorgfaltspflichtverletzung.

Die Meinung von *Imre Békés* lebt weiter in dem neu erschienenen Lehrbuch an der *Eötvös Lóránd Universität Budapest*. Laut dem Schriftstellerduo *Ambrus – Gellér* kann

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[54] TOKAJI GÉZA: *A bűncselekménytan alapjai a magyar büntetőjogban.* [*Die Grundlagen der Verbrechenslehre in dem ungarischen Strafrecht*.] Közigazgatási és Jogi Könyvkiadó. Budapest, 1984. 232-237. pp. und NAGY FERENC: *Anyagi büntetőjog Általános rész I.* [*Materielles Strafrecht Allgemeiner Teil I.*] Jurisperitus Bt. Szeged, 2014. 185-187. pp.

[55] BÉKÉS IMRE: *A gondatlanság a büntetőjogban.* [*Die Fahrlässigkeit in dem Strafrecht*.] Közigazgatási-és Jogi Könyvkiadó. Budapest, 1974. 223. p.

[56] BÉKÉS 1974, 223., 224., 231. pp.

[57] BÉKÉS 1974, 224. p.

[58] BÉKÉS 1974, 390. p.

[59] BÉKÉS 1974, 390. p.

[60] BÉKÉS 1974, 387-389. p.

die objektive Sorgfaltspflichtverletzung bei der unbewussten Fahrlässigkeit besser gehandhabt werden, wenn sie als objektives Rechtswidrigkeitselement betrachtet wird.[61] Der Täter macht sich wegen des tatbestandsmäßigen Erfolges dann strafbar, wenn der Erfolg sich aus der objektiven Sorgfaltspflichtverletzung ergibt, also wenn der Erfolg für den Täter objektiv vorhersehbar und vermeidbar war.[62] Die Sorgfaltspflichtverletzung ist ein Verhalten, das trotz der objektiven Vorhersehbarkeit und Vermeidbarkeit des tatbestandsmäßigen Erfolges vorgenommen wurde.[63]

Die Meinung der Autoren begrenzt sich auf den Bereich der unbewussten Fahrlässigkeit. Die bewusste Fahrlässigkeit wird bei ihnen dagegen durch die Untersuchung der gesetzlichen Begriffselemente interpretiert.[64]

IV. Die Sorgfaltspflichtverletzung beim autonomen Fahren

Der Regelungsbereich von Sorgfaltsnormen bezüglich des autonomen Fahrens kann in zwei theoretische Teile unterteilt werden: Ich nenne sie „technische Seite" und „Anwender-Seite." Auf der technischen Seite stehen die auf den Hersteller, Programmierer und Kontrolleur bezogenen Sorgfaltsnormen, während es auf der Anwender-Seite solche Sorgfaltsnormen gibt, die verschiedene Anforderungen an den Anwender eines autonomen Fahrzeuges stellen.

1. Technische-Seite

In der Zeit des motorisierten Straßenverkehrs sind die Betriebsvorgänge, Sicherheitsanforderungen und die Genehmigungsverfahren beim nicht autonomen Fahren von verschiedenen Rechtsquellen auf verschiedenen Ebenen der Rechtsquellenhierarchie ausführlich geregelt. Diese Sorgfaltsanforderungen sollten sich immer dynamisch nach der aktuellen technischen Entwicklung richten. Man denke hier an die EU-Verordnungen, die die allgemeine Sicherheit von Fahrzeugen regeln,[65] besonders die darin geregelten gesamten Voraussetzungen der Typengenehmigung,[66] die Norm *IATF* (*International Automotive Task Force*) *16949* als allgemeine Forderungen an Qualitätsmanagementsysteme

[61] AMBRUS – GELLÉR 2019, 239. p.
[62] AMBRUS – GELLÉR 2019, 240. p.
[63] AMBRUS – GELLÉR 2019, 240. p.
[64] S. AMBRUS – GELLÉR 2019, 237., 238. pp.
[65] Z.B.: Die am 1. September im Jahre 2020 in Kraft getretene Verordnung Nr. 2018/858 vom 30. Mai 2018 als die neueste Regelung in der EU über die Genehmigung von Kraftfahrzeugen sowie von Systemen, Bauteilen und selbstständigen technischen Einheiten für diese Fahrzeuge, die Verordnungen Nr. 130/2012, Nr. 715/2007 und Nr. 595/2009. „Die EU-Organe haben eine vorläufige politische Einigung in Bezug auf die Überarbeitung der Verordnung über die allgemeine Sicherheit von Fahrzeugen erzielt. Ab 2022 wird neue Sicherheitstechnik für europäische Fahrzeuge verbindlich vorgeschrieben, um Fahrgäste, Fußgänger und Radfahrer besser zu schützen." S. Pressemitteilung, am 29. März 2019, Brüssel. [https://bit.ly/3hA150y]
[66] Die Typengenehmigung ist ein Verfahren, welches bezeugt, dass ein Fahrzeug allen Sicherheitsanforderungen entspricht, die nötig sind, um das Fahrzeug in den Verkehr zu bringen. Außerdem wird durch dieses Verfahren die Einhaltung des EU-Rechts durch den Hersteller streng kontrolliert. HEGEDŰS-SZABÓ IRÉN:

der Automobilindustrie, an die staatlichen Verordnungen[67] und auch an interne Betriebsordnung des Herstellers.[68] Die Aufgabe des Gesetzgebers ist es, die auf die selbstfahrenden Fahrzeuge bezogene Regelung nach Muster dieser Vorschriften zu schaffen, beziehungsweise die Vorschriften entsprechend dem Sicherheitsbedarf der neuen Technologie weiterzuentwickeln.[69]

2. Anwender-Seite

Die Regelungen über die Sorgfaltspflichten der Anwender-Seite sollen die Voraussetzungen beim Betrieb eines selbstfahrenden Fahrzeuges festlegen. Genau wie man bei nicht autonomen Fahrzeugen das Öl regelmäßig wechselt und den Wagen im Winter mit Winterreifen ausstattet, ist es auch bei autonomen Fahrzeugen notwendig, die Systemerweiterungen zu bestimmten Zeitpunkten herunterzuladen, das Fahrzeug in tauglichen Zustand des Verkehrs zu versetzen, und den vom Programm geschickten Fehlermeldungen angemessene Beobachtung zu schenken.

Die Anforderungen an den sicheren Betrieb gegenüber dem Fahrzeuganwender waren bisher auch nicht unbekannt (*TÜV*). Der Unterschied besteht darin, dass das konkret zumutbare Verhalten verändert wird, dessen Versäumung die strafrechtlichen Folgen herbeiführen kann.

Wenn eine juristische Person, also ein Unternehmer, ein Verein oder eine Stadt, beziehungsweise der Staat selbst der Betreiber (nach dem hier verwendeten Wortgebrauch Anwender) eines autonomen Wagens ist, ist es erforderlich, das Subjekt der strafrechtlichen Verantwortung, beziehungsweise die Adressaten der Verhaltensnorm, exakt zu bestimmen, weil der tatbestandsmäßige Erfolg auf eine vorwerfbare Handlung des Täters zurückgeführt werden muss.[70]

Bei niedrigen Stufen der Automatisation (nämlich bis Stufe 4) können gegen den Anwender konkrete, während der Fahrt zu befolgenden Verhaltensregeln festgestellt werden, zum Beispiel die Pflicht, die Steuerung in bestimmten Verkehrsnot-Situationen von dem Fahrzeug (beziehungsweise von der Künstlichen Intelligenz) zu übernehmen[71].

Szigorodtak a gépjárművek ellenőrzési szabályai. [Die Kontrollregel der Fahrzeuge sind strenger geworden.] Enterprise Europe Network. [https://bit.ly/3yXXLCk]

[67] In Ungarn: 6/1990. (IV. 12.) KöHÉM rendelet a közúti járművek forgalomba helyezésének és forgalomban tartásának műszaki feltételeiről. [6/1990. (IV. 12.) KöHÉM-Verordnung über die technischen Rahmenbedingungen der Inbetriebsetzung und Inbetriebhaltung der Straßenfahrzeuge.] In Deutschland: StVZO, Straßenverkehrs-Zulassungs-Ordnung vom 26. April 2012 (BGBl. I S. 679).

[68] Z.B.: Die Audi Verhaltensgrundsätze (Code of Conduct). Art. Produktkonformität und -sicherheit. 17. p. [https://bit.ly/3rlELex]: *„Stelle ich fest oder habe ich Bedenken, dass möglicherweise durch unsere Produkte Gefahren ausgehen oder Vorschriften nicht eingehalten werden, wirke ich dem entgegen. Ich melde den Fall meinem Vorgesetzten und den entsprechenden Stellen im Unternehmen, beispielsweise dem Produktsicherheitsbeauftragten meines Bereichs."*

[69] Vgl. BECK 2020, Rn. 18.

[70] Vgl. WESSELS – BEULKE – SATZGER 2020, Rn. 1122.

[71] Vgl. StVG § 1b Rechte und Pflichten des Fahrzeugführers bei Nutzung hoch- oder vollautomatisierter Fahrfunktionen.

V. Die Bedeutung des erlaubten Risikos bei der Einhaltung der Sorgfaltsnormen

Fraglich ist, wie die strengen Maßregeln bei einzelnen Planungs-, Betriebs-, Test-, und Genehmigungsvorgängen festgestellt werden sollen, also wo die Grenze der objektiven Sorgfaltsanforderungen durch die Sondernormen gezogen werden soll.

Zwei Interessen stoßen, vereinfacht gesagt, bei jeder technologischen Neuerung aufeinander. Einerseits ist es wichtig, das gewollte Ziel so schnell wie möglich zu erreichen. Dies könnte sein: Das Leben zu vereinfachen, den wirtschaftlichen Vorteil zu erzielen, Effizienzsteigerung oder sogar die Steigerung der Person- und Vermögenssicherheit. Dabei dient eine technologische Entfaltung typischerweise mehreren Zwecken, beziehungsweise könnte ein Hauptzweck mit anderen Vorteilen verbunden sein.[72]

Andererseits geht jede Technologieentwicklung zwangsläufig mit der Gefahr irgendeines Verlustes (= Risiko) einher. Im Zusammenhang damit sollte man gemäß dem aktuellen Stand der Wissenschaft und Technik die höchste Sicherheit anstreben.[73] Man muss sich vor Augen halten, dass der Entwicklungsverlauf (Planung, Erzeugung, Testbetrieb) und der Betrieb der neuen Technologie im Alltag keinen größeren Verlust der Sicherheit, des Vermögens, des Lebens und der Umwelt verursacht, als es unbedingt nötig ist. Dieses Dilemma ist immer bedeutsam bei der Bestimmung des rechtlichen Rahmens der Entwicklung und Anwendung einer neuen Technologie.[74]

Im Laufe der Entfaltung und des Betriebs einer neuen Technologie ist es unmöglich, die Fehler zu 100 % zu beseitigen. Der Hauptzweck der massenhaften Verbreitung der selbstfahrenden Fahrzeuge ist in letzter Konsequenz, mehr Menschenleben zu bewahren.[75] Das Kernproblem ist, die Rahmen der Sorgfaltsnormen zu finden, die noch als sinnvolle Einschränkungen erscheinen und die technologische Entwicklung nicht mehr behindert als es nötig ist. Bei der Bestimmung dieser Maßstäbe kann im Einzelfall die Risikoanalyse und Risikomatrix als allgemeiner Ausgangspunkt dienen.[76] Die Vorführung dieser Methoden ist allerdings nicht die Aufgabe dieser Abhandlung.

Das erlaubte Risiko begrenzt in diesem Sinn die Sorgfaltspflichten.[77] Bei der Beschaffung der neuen Sorgfaltsnormen bietet es dem Gesetzgeber einen Leitfaden.[78] Wenn die

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[72] Zu den verfolgten Zielen des Einsatzes der automatisierten Kraftfahrzeuge siehe die Begründung des Gesetzes zum autonomen Fahren. *Entwurf eines Gesetzes zur Änderung des Straßenverkehrsgesetzes und des Pflichtversicherungsgesetzes – Gesetz zum autonomen Fahren. Begründung, A. Allgemeines, I. Hintergrund.* 18. p. [https://bit.ly/3bBgwSd] Zu den Zwecken der Einführung autonomer Fahrzeuge s. noch: THOMMEN, MARC – MATJAZ, SOPHIE: *Die Fahrlässigkeit im Zeitalter autonomer Fahrzeuge.* In: Jositsch, Daniel (Hrsg.) – Schwarzenegger, Christian (Hrsg.) – Wohlers, Wolfgang (Hrsg.): Festschrift für Andreas Donatsch. Schulthess Verlag. Zürich, 2017. 278., 279. pp.

[73] Vgl. VALERIUS 2017, 13. p.

[74] THOMMEN und MATJAZ stellen das Interesse für die Handlungsfreiheit des Einzelnen in den Mittelpunkt ihrer Abwägung. S. THOMMEN – MATJAZ 2017, 274., 281. pp. noch dazu: THOMMEN – MATJAZ 2017, 294. p.

[75] Vgl. VALERIUS 2017, 19. p.

[76] S. HERING, EKBERT – SCHLOSKE, ALEXANDER: *Fehlermöglichkeits- und Einflussanalyse. Methode zur vorbeugenden, systematischen Qualitätsplanung unter Risikogesichtspunkten.* Springer. Wieweg, Wiesbaden, 2019. 7. p.

[77] HEINRICH, B. 2019, Rn. 1035. Ähnliche Interpretation bezüglich des erlaubten Risikos bei: KINDHÄUSER – ZIMMERMANN 2020, § 33, Rn. 26-29.

[78] Die Rolle des erlaubten Risikos legt VALERIUS im Zusammenhang mit sorgfaltspflichtigem Verhalten beim autonomen Fahren ähnlich aus: VALERIUS 2017, 10. p.

Sorgfaltsanforderungen eingehalten wurden und trotzdem ein Unfall im ursachlichen Zusammenhang mit dieser Tätigkeit eintritt, kann man von keinem fahrlässigen Verhalten und somit nicht von einer strafrechtlichen Verantwortlichkeit sprechen.[79]

Zu den noch in kleiner Zahl zur Verfügung stehenden Verhaltensnormen lässt sich als Beispiel die in dem Gesetz zum autonomen Fahren geregelten Sorgfaltsanforderungen an den Halter und die technische Aufsicht, bzw. den Hersteller erwähnen.[80] Nach der von mir angelegten Klassifikation gehören die sich auf dem Halter und der technischen Aufsicht beziehende Normen zur Anwenderseite und die den Hersteller verpflichteten Normen zur technischen Seite.

VI. Die Voraussehbarkeit beim autonomen Fahren

Das geltende deutsche und ungarische Strafrecht nehme ich bei dem Thematisieren der Problematik der Voraussehbarkeit als Ausgangspunkt nicht in Betracht. Es existiert nämlich derzeit kein spezieller strafrechtlicher Tatbestand weder im deutschen noch im ungarischen Strafrecht, unter den die hier erläuterten Sorgfaltspflichtverletzungen als Tathandlung unmittelbar subsumiert werden könnten.

Die vergleichende Darstellung der Frage, welche Tatbestände – *de lege lata* – im Fall des Eintritts eines Unfalles während des Betriebs eines selbstfahrenden Fahrzeuges, der irgendeine Verletzung auch verursacht, im deutschen und im ungarischen Strafrecht angesprochen werden könnten, bildet keinen Gegenstand dieses Aufsatzes. An dieser Stelle möchte ich nur darauf hinweisen, dass der wesentliche Unterschied zwischen den zwei Systemen, auf dem Boden des geltenden Rechtes, darin steht, dass im ungarischen Strafrecht spezielle Fahrlässigkeitstatbestände mit dem Erfolg des Todes oder der Körperverletzung geregelt werden, bei deren Verwirklichung die fahrlässige Tötung (§ 160 Abs. 4.

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[79] VALERIUS 2017, 10., 12. pp. Im Zusammenhang mit den Regeln des Straßenverkehrs s. NAGY 2020, 247. p. Die Bedeutung des erlaubten Risikos für Strafrecht sehe ich in seiner Orientierungsfunktion, die den objektiven Sorgfaltsanforderungen bzw. der Sorgfaltspflichtverletzung Grenzen setzt. Zugleich kann das erlaubte Risiko, meiner Meinung nach, nicht als Teil der Sorgfaltspflicht bezeichnet werden. Wenn der Täter die von dem Gesetzgeber (oder der Verkehrsgepflogenheit) festgestellte objektive Sorgfaltsanforderung verletzt, kann seine Sorgfaltspflichtverletzung nicht durch seine sonst sozialadäquate Verhaltensweise annulliert werden. Die Sorgfaltswidrigkeit liegt objektiv vor. Die fahrlässige Tat des Täters ist – neben den anderen Voraussetzungen – tatbestandsmäßig.

[80] S. die „Pflichten der Beteiligten beim Betrieb von Kraftfahrzeugen mit autonomer Fahrfunktion." [Art. 1. §1f Abs. 1-3. Gesetz zum autonomen Fahren.] Zum Beispiel hat der Halter insbesondere die regelmäßige Wartung der für die autonome Fahrfunktion erforderlichen Systeme sicherzustellen (Abs. 1.) Die Technische Aufsicht ist verpflichtet, die autonome Fahrfunktion unverzüglich zu deaktivieren, sobald dies durch das Fahrzeugsystem angezeigt wird, die Signale der technischen Ausrüstung zum eigenen Funktionsstatus zu bewerten und gegebenenfalls erforderliche Maßnahmen zur Verkehrssicherung einzuleiten (Abs. 2.) Zu den Pflichten des Herstellers gehört laut diesem Regelwerk unter Anderem den Nachweis über den gesamten Entwicklungs- und Betriebszeitraum des Kraftfahrzeugs gegenüber der zuständigen Behörde, ferner gehört hierzu, dass die elektronische und elektrische Architektur des Kraftfahrzeugs und die mit dem Kraftfahrzeug in Verbindung stehende elektronische und elektrische Architektur vor Angriffen gesichert ist (Abs. 3).

uStGB) und fahrlässige Körperverletzung (§ 164 Abs. 9. uStGB) als allgemeine Erfolgsdelikte zurücktreten.[81] Demgegenüber können nach dem deutschen Strafrecht im Fall eines (Verkehr)Unfalles, bei dem der Tod oder eine Körperverletzung als Erfolg eintreten, als in Frage kommenden Tatbestände der fahrlässige Totschlag (§ 222 StGB) oder die fahrlässige Körperverletzung (§ 229 StGB) bezeichnet werden.[82]

Ich verfolge hier eine umgekehrte Logik und folgere von der allgemeinen Anforderung der Voraussehbarkeit nach herrschenden Fahrlässigkeitsparadigma (also von „der subjektiven Tatseite") auf einen möglichen Aufbau-Modell eines *de lege ferenda* Tatbestandes (also auf „die objektive Tatseite"), der in beiden Strafrechtssystemen von dem Gesetzgeber bei der Beschaffung eines *sui generis* Tatbestandes für die von den selbstfahrenden Autos verursachten Unfälle angewendet werden könnte.

Die objektive und subjektive Voraussehbarkeit des strafrechtlich unerwünschten Erfolges als Voraussetzung der Fahrlässigkeitshaftung soll zum Zeitpunkt der Tathandlung, also bei der Begehung der Sorgfaltspflichtverletzung vorliegen.[83]

Die Antwort auf die Frage, worauf die Voraussehbarkeit sich beziehen sollte, bestimmt den Aufbau des Modelles für einen speziellen *de lege ferenda* Fahrlässigkeitstatbestand bezüglich des Fehlverhaltens des Adressaten der Sorgfaltsnorm, weil das Objekt der Voraussehbarkeit auf der Ebene der objektiven Tatbestandselemente als Erfolg erscheinen soll. Da man in allen Phasen der Entwicklung und des Betriebs des autonomen Fahrens danach streben soll, Gefahren möglicher Verkehrsunfälle auszuweichen, kann man zunächst an den Eintritt eines Unfalls als möglichen Anhaltspunkt der Voraussehbarkeit denken.

Nach dem hier verwendeten Begriff ist der Unfall „ein plötzliches Ereignis im Straßenverkehr, das mit dessen typischen Gefahren in ursächlichem Zusammenhang steht und einen Personen- oder Sachschaden zur Folge hat, der nicht ganz unerheblich ist."[84]

Wenn der herbeigeführte Verkehrsunfall (beziehungsweise die Verletzung oder der Tod des Opfers) als Anhaltspunkt der Voraussehbarkeit gekennzeichnet wäre, stellt sich

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[81] S. *Gefährdung bei der Berufsausübung* uStGB § 165 Abs 1. Wer unter Verletzung von Berufsregeln Leib und Leben oder die Gesundheit einer oder mehrerer anderer Personen fahrlässig einer unmittelbaren Gefahr aussetzt oder einer oder mehreren anderen Personen fahrlässig eine Körperverletzung zufügt, wird wegen eines Vergehens mit Freiheitsstrafe bis zu einem Jahr bestraft. *Herbeiführung eines Verkehrsunfalls* uStGB § 235 Abs. 1. Wer unter Verletzung der Regeln des Straßenverkehrs einer oder mehreren anderen Personen fahrlässig eine schwere Körperverletzung zufügt, wird wegen eines Vergehens mit Freiheitsstrafe bis zu einem Jahr bestraft. Abs. 2. Die Strafe ist *[…] b)* eine Freiheitsstrafe von einem Jahr bis zu fünf Jahren, wenn die Straftat zum Tod führt.

[82] Mit Darstellung statistischer Daten s.: HILGENDORF, ERIC: *§ 4 Fahrlässige Tötung, § 222.* In: Arzt, Gunther – Weber, Ulrich – Heinrich, Bernd – Hilgendorf, Eric: Strafrecht Besonderer Teil. 4. Auflage. Gieseking. Bielefeld, 2021. 105. p.

[83] Nach der Koinzidenzprinzip soll die Fahrlässigkeit (und der Vorsatz) zum Zeitpunkt der Tatbegehung vorliegen. WESSELS – BEULKE – SATZGER 2020, Rn. 640.; EISELE – HEINRICH, B. 2020, Rn. 408.; NAGY 2020, 258. p.

[84] RENGIER, RUDOLF: *Strafrecht Besonderer Teil II. Delikte gegen die Person und die Allgemeinheit.* 21. Auflage. C.H. Beck. München, 2020b. § 46 Rn. 2. S. noch: BGHSt, 8, 264, 265; BGHSt 24, 383; KINDHÄUSER, URS – SCHRAMM, DAVID: *Strafrecht Besonderer Teil I. Straftaten gegen Persönlichkeitsrechte, Staat und Gesellschaft.* 9. Auflage, Nomos. Baden-Baden, 2020. § 68 Rn. 2.

jedoch die Frage, wie ein Ingenieur, der gegen die Sorgfaltspflicht verstoßen hat, voraussehen könnte, was für ein Unfall im Zusammenhang mit seinem Verhalten nach mehreren tausenden Kilometern passieren kann. Ebenso könnte der Anwender keine solchen konkreten Umständen eines Unfalls voraussehen, wenn er seine Pflicht vor der Fahrt des autonomen Fahrens nicht erfüllt hat.[85]

Die Situation ist anders, wenn es der Anwender irgendeines von dem System angeforderten Fahrmanöver unterlässt, diesen Forderungen nachzugehen, weil seine Voraussehbarkeit sich in diesem Fall schon unmittelbar auf die Möglichkeit eines Unfalles erstrecken kann. Ein solches Fehlverhalten ist ausschließlich bis zur 4. Stufe der Autonomisierung vorstellbar, weil der Anwender auf der 5. Stufe nicht mehr eingreifen kann. Wegen des zeitlichen und räumlichen Abstandes zwischen der Tathandlung (= Sorgfaltspflichtverletzung) und dem Erfolg (= Unfall) wäre es eine irreale Anforderung für die Feststellung der Fahrlässigkeitsschuld, die konkrete (subjektive) Voraussehbarkeit eines konkreten künftigen Unfalls und der daraus erfolgten Verletzung von Rechtsgütern von den Adressaten der Sorgfaltsnorm (z. B. von einem Ingenieur, der an der Vollendung des Testes teilgenommen hat) schon im Zeitpunkt der Herstellung oder der Planung zu verlangen.[86]

Gleichzeitig soll sich die abstrakte Voraussehbarkeit der Gefahr eines in der Zukunft möglicherweise eintretenden Unfalles bei dem Täter immer beziehen.[87] Aus diesem Grund kann der Eintritt des Unfalls keine tauglicher Anhaltspunkt für die Voraussehbarkeit sein.

Die Aufgabe des Gesetzgebers ist es, nach einem neuen Element im Kausalverlauf zwischen der Sorgfaltspflichtverletzung und dem Unfall zu suchen, der die entsprechende Rolle erfüllen kann. Meiner Meinung nach würde die Möglichkeit eines Systemfehlers, die kausal mit dem sorgfaltswidrigen Verhalten eingetreten ist, das Momentum als ein weniger problematisches Objekt der Voraussehbarkeit bedeuten. In diesem Sinn ist der technische Fehler immer irgendein Sachmangel,[88] der als technischer Defekt auf die Funktionsfähigkeit des Autos auswirken kann.[89]

Meiner Meinung nach wäre es erforderlich, statt der Anforderung der Voraussehbarkeit des Unfalles und der damit verursachten Verletzung, die Anforderung der Voraussehbarkeit des (von der Sorgfaltspflichtverletzung stammenden, möglichen) technischen

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[85] Vgl. BECK, SUSANNE: *Das Dilemma-Problem und Fahrlässigkeitsdogmatik.* In: Hilgendorf, Eric (Hrsg.): Autonome Systeme und neue Mobilität. Nomos. Baden-Baden, 2017. 122. p.

[86] BECK 2020, Rn. 36.

[87] Wenn das Vorliegen der abstrakten Voraussehbarkeit des Unfalles bei der Feststellung der fahrlässigen Haftung ausreichend wäre, würde die Voraussehbarkeit die abgrenzende Funktion der strafrechtlichen Haftung verlieren, die zu der Richtung der objektiven strafrechtlichen Verantwortlichkeit führen würde, was zu vermeiden ist. Vgl. BECK 2020, Rn. 36.

[88] Das *Klunzinger-Lehrbuch* verwendet den Fehlerbegriff im bürgerlichen Recht auch als Synonym des Sachmangels. Nach ihrer Bestimmung ist der Sachmangel die „ungünstige Abweichung der Istbeschaffenheit von der Sollbeschaffenheit". Vgl. KLUNZINGER, EUGEN: *Einführung in das Bürgerliche Recht.* 17. Auflage. Vahlen. München, 2019. § 46. 481. p.

[89] Im gleichen Sinn erscheint der Begriff der technischen Fehler in der ungarischen Straßenverkehrsordnung [§ 56 KRESZ], in der Rechtsprechung der Ungarischen Obersten Gerichtshof. S. BH 1993.5. S. noch: *Fehler – Definition und Bedeutung des Begriffs in unterschiedlichen Fachgebieten.* Juraforum.de. [http://bit.ly/38iWGKD] Über den Begriff des technischen Mangels s. noch: *Lexikon der Unfallrekonstruktion auf der Internetseite des Institutes von Unfallanalyse Hamburg.* [https://bit.ly/3rZzYiA]

Fehlers einzubauen und immer die Voraussehbarkeit des möglichen technischen Fehlers als Erfolg zu untersuchen.

In diesem Modell sollte der Täter nicht voraussehen, dass dieser Fehler zu einem Unfall führt, weil der Unfall (beziehungsweise die Verletzung) nicht mehr zum objektiven Tatbestand gehört.

Im Folgenden stellt sich die Frage, was die dogmatische Stellung des möglichen Unfalles ist. Der Eintritt des Unfalles kann in dieser Konzeption als objektive Strafbarkeitsbedingung betrachtet werden, also als eine solche im Gesetz geschriebene Voraussetzung, die zur Verwirklichung des Delikts vorliegen soll, aber weder der Vorsatz noch die Fahrlässigkeit, also die Voraussehbarkeit, sollen sich darauf erstrecken.[90] Laut der in diesem Beitrag erörterten Konzeption ist die Formel der strafrechtlichen Verantwortlichkeit somit die Folgende:

Die Begehung einer Sorgfaltspflichtverletzung + ein daraus stammender technischer Fehler, dessen Möglichkeit für den Täter sowohl objektiv als auch subjektiv voraussehbar war + der *Unfall (Verletzung oder Gefahrsituation), der typischer Weise kausal in Bezug auf den technischen Fehler war.*

Es ist immer sorgfältig zu prüfen, wo die Grenzen der Vorwerfbarkeit wegen eines technischen Fehlers liegen. Man kann Parallelen zu den bei Flugzeugkatastrophen verwendeten Fahrlässigkeitsmaßstäben ziehen oder auch Parallelen mit anderen Katastrophen, deren Verlauf von der menschlichen Steuerung unabhängig ist. Das bedeutet, dass deren Ablauf nach einem bestimmten Zeitpunkt schon nicht mehr unter menschlicher Steuerung steht (Kettenreaktion, Atomkatastrophe). Die Zukunft der mit den selbstfahrenden Autos zusammenhängenden Fahrlässigkeitsdogmatik steht – meiner Ansicht nach – diesen Situationen näher als dem heutigen Verkehrsstrafrecht.

Nach der Übersicht der wichtigsten Probleme der Fahrlässigkeitsdogmatik bezüglich des autonomen Fahrens kann man – hinsichtlich der Problematik der konkreten Voraussehbarkeit des Erfolges – sich die Frage stellen, ob der hier erläuterte Problemkreis tatsächlich eine neue Herausforderung für die Fahrlässigkeitsdogmatik mit sich bringt, oder es sich um die alten Herausforderungen handelt, bloß in einem neuen Gewand.

[90] Diese dogmatische Kategorie erscheint im § 231 dStGB, also im Tatbestand der Beteiligung an einer Schlägerei. „(1) Wer sich an einer Schlägerei oder an einem von mehreren verübten Angriff beteiligt, wird schon wegen dieser Beteiligung mit Freiheitsstrafe bis zu drei Jahren oder mit Geldstrafe bestraft, wenn durch die Schlägerei oder den Angriff der Tod eines Menschen oder eine schwere Körperverletzung (§ 226) verursacht worden ist". Dabei sind der Tod eines Menschen und eine schwere Körperverletzung objektive Strafbarkeitsbedingungen. Der Tatbestand Beteiligung an einer Schlägerei kann vorsätzlich erfüllt werden, es existiert jedoch auch ein Tatbestand, der mit einer objektiven Strafbarkeitsbedingung ausgestattet ist, und fahrlässig auch begangen werden kann: § 323a StGB, der Vollrausch, wobei die Strafbarkeitsbedingung in der im Rausch begangene „rechtswidrige Tat" liegt. S. HEINRICH, B. 2019, Rn. 133. S. noch: WESSELS – BEULKE – SATZGER 2020, Rn. 212-216.

ATTILA GYÖRGY NÉMETH

A GONDOSSÁGSÉRTÉS ÉS AZ ELŐRELÁTHATÓSÁG LEHETSÉGES ÉRTELMEZÉSE A NÉMET ÉS A MAGYAR BÜNTETŐJOGI GONDATLANSÁG-FOGALMAKBAN AZ ÖNVEZETŐ JÁRMŰVEK TÜKRÉBEN

(Összefoglalás)

Jelen tanulmányomban az önvezető autók közúti közlekedésben történő szerepvállalásával egyidejűleg megjelenő, a büntetőjogi gondatlanság-fogalom értelmezése előtt álló legújabb kihívásokra szeretnék rávilágítani. A német büntetőjogi dogmatika magyar dogmatikára gyakorolt hatásának ismeretében nem indokolatlan a két ország büntetőjogában a gondatlanság dogmatikáját érintő legfontosabb kérdéseket párhuzamosan is megvizsgálni. A fogalmi keretek felvázolását követően röviden bemutatom a Németországban az utóbbi időben lejátszódó, az önvezető autók közúti közlekedésben történő részvételét lehetővé tevő jogalkotási fejleményeket. Ezt követően két külön fejezetben tárgyalom a gondatlanság-fogalommal összefüggő legfigyelemreméltóbb német és magyar tudományos nézeteket. A tanulmányban önálló részt szentelek a megengedett kockázat (*erlaubtes Risiko*), a gondossági kötelességet meghatározó normák megalkotásánál játszott, általam fontosnak tartott szerepe bemutatásának. Munkám második felében a gondatlanság-fogalom két központi alkotó-eleme, a *gondosságsértés*, valamint az *előreláthatóság* önvezető autók által okozott balesetekkel összefüggésben történő értelmezésének lehetőségeit részletesen is megvizsgálom. A tanulmány végén az *előreláthatóság* értelmezése körében egy olyan szabályozási koncepciót javaslok, amelyet véleményem szerint mindkét ország büntetőjogában megfelelően alkalmazni lehetne.

NOSIRKHON QODIROV*

Understanding EU Perceptions in Central Asian Countries: the Case of Tajikistan

I. Introduction

In terms of geopolitics, trade, and security concerns, Central Asia is once more attracting the attention of the world community. Major international powers' interests intersect here, and each has a unique strategy for building relationships with the countries in the region. There is a growing activity of the countries in close geographical proximity to the region, such as Russia, which is one of the key players in the global energy market and the major supplier of energy, and China with a rapidly growing economy and increasing energy consumption. The US is among the prominent geopolitical actors that significantly impact the region. No less important are the other regional players, such as Turkey, Iran, and India. The European Union, which never considered this region as a geopolitical priority, has been implementing its own Central Asia Strategy since 2007. In his book "The Grand of Chessboard: American primacy and its geostrategic imperatives", *Zbigniew Brzezinski* emphasizes the exceptional geostrategic importance of Central Asia and evokes a "New Great Game" in which major world powers are engaged to control the Eurasian landmass.[1]

The EU's presence in Central Asia has grown in the 1990s and the early 2000s, reflecting both Central Asia's opening to the world after 1991 and the EU's growth as an international actor. This paper follows the same definitions as the EU when determining the states constituting the region of Central Asia.[2] The states of Central Asia – composed of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan – only began to establish relations with the EU after gaining independence in 1991. Today the five Central Asian countries differ in terms of size of the economy and sources of economic income, degree of Russian influence, openness towards the rest of the world, and membership in regional and international organizations. In other words, each country faces different economic and societal challenges within their state. Central Asia's strategic importance has increased with the "war on terror" in Afghanistan as Central Asian states are bordering

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1 BRZEZINSKI, ZBIGNIEW: *The grand chessboard: American primacy and its geostrategic imperatives*. New York, 1997. 37. p.

2 EUROPEAN EXTERNAL ACTION SERVICE: Central Asia, Available at https://www.eeas.europa.eu/eeas/central-asia_en (Retrieved September 13, 2022)

with Afghanistan. Central Asia had to play an essential role in military actions as an important transport hub for the movement of weapons and cargo. The adoption of the EU's 2007 Central Asian Strategy marked a significant upgrade of Brussels's Central Asia engagement. The European Union's Council, on 17 June 2019, adopted the new updated EU Strategy on Central Asia. While Central Asia was historically recognized for its strategic preponderance, it largely disappeared off the world's radar when it fell under Russian control. Central Asia reappeared on the world map in 2001 due to the war in Afghanistan and the planned overthrow of Al-Qaeda. As a result, western governments actively looked for friendly partners who would endorse their fight against terrorism, and became increasingly dependent on the goodwill of Central Asian countries to assist them in the logistical aspects of the war, making a rapprochement inevitable.[3]

As regards to the preference of the Central Asian countries, according to surveys carried out in Kazakhstan, Kyrgyzstan, and Tajikistan, Russia is considered the most positive and influential actor. In terms of influence, China comes second in Kazakhstan, Kyrgyzstan, and Tajikistan. In contrast, Europe and the United States only come in third and fourth places respectively. However, the "West" is vastly ahead of China in terms of cultural appeal.[4] In addition to this, based on a conducted survey of the Central Asia Barometer[5] and Eurasian Development Bank, Russia enjoys evident dominance in public opinion, China is in second place, the US comes in third and EU is in fourth place which indicates that EU is not much visible in Central Asian counties.[6]

Central Asia is arguably one of the few regions that have remained beyond the interest of scholars in studying EU images. Moreover, Central Asian opinions regarding Europe vary from country to country. Indeed, Kazakhstan stands out insofar as both its political authorities and its broader elites identify more with Europe than do their counterparts in the region's other countries. The "Path to Europe" programme, launched by ex-President of Kazakhstan *Nursultan Nazarbayev* in 2010 at the time of Kazakhstan's chairmanship at the Organization for Security and Co-operation in Europe (OSCE), responds to a broadly consensual perception among the country's elites of being at the "crossroads" between Russia, Europe and Asia. Kyrgyzstan also stands out for having the largest contrast in local opinions: while some part of the elite sees Europe as an important and useful ally, others are largely disappointed with the EU's weak capacity compared to Russia, China or the US. In the other three countries, elite perceptions of the EU are more complex.[7] In one of his last papers, *Zhanibek Arynov* argues that what "kind of actor the EU can be in the region and the kind of policies it can successfully implement depends

[3] BOAS, VANESSA: *Who needs goodwill? An analysis of EU norm promotion in the Central Asian context* (Doctoral dissertation, Universität zu Köln). 2015. 3. p.

[4] PEYROUSE, SÉBASTIEN: *How does Central Asia view the EU?* EUCAM Working Paper, 18. 2014. 5. p. This survey was conducted before the war in Ukraine and the results might have been changed ever since.

[5] The Central Asia Barometer is a regional, independent, non-profit institution that measures social, economic, and political atmospheres in Central Asian countries by conducting interviews and surveys.

[6] LARUELLE, MARLENE – DYLAN, ROYCE: *No Great Game: Central Asia's Public Opinions on Russia, China, and the US.* Kennan Cable 56. 2020. Available at https://www.wilsoncenter.org/sites/default/files/media/uploads/documents/KI_200805_cable%2056_final.pdf (Retrieved September 14, 2022).

[7] PEYROUSE 2014, 5. p.

not only on its abilities as international actor and resources at its disposal, but also on what kind of actor Central Asians perceive the Union to be".[8] According to *Aryunov*, EU's role and effectiveness in the region are partly shaped by Central Asia.[9]

The paper's primary goal is to understand how Central Asian countries see the EU and its regional actions and role. In addition, Tajikistan is chosen as a case study to understand EU perceptions in Central Asia better. Tajikistan is selected for two main reasons: a) in comparison to other Central Asian countries, Tajikistan is less researched and consequently not much information is available, b) secondly, at the same time, Tajikistan received more humanitarian aid from the EU in comparison to other countries of the region which assumed that it might affect the perception of the EU. The study comprised of the following sub-parts: introduction, the research question and methodological part, chapter on the theoretical and conceptual framework, the part on understanding EU perception in Central Asia, followed by the chapter on EU perception in Tajikistan, and lastly conclusions provided. For mass-media analysis, the period of 2019-2022 is selected, as in June 2019 the new EU Strategy towards Central Asia was adopted, and counted as the beginning of a new phase of the relationship. The selection of June 2022 can be explained simply by the fact that it was the time when the data collection for this paper ended. The main research aim is to understand EU perception in Central Asia after adopting the new strategy.

II. Research Question and Methodology

The main aim of the paper is to answer the following research question: How exactly has the EU been perceived in official and independent mass media in Central Asia? For answering and analyzing this research question, the case of Tajikistan was taken as a case study to examine how the EU is seen in Central Asian countries. As *Arynov* emphasizes, whatever the EU carries out and promotes needs to be recognized and accepted as legitimate by Central Asians. In this sense, how Central Asians view the EU and its policies significantly impacts the role of the EU in the region and the results of its projects.[10]Although Tajikistan is the less researched country in Central Asia in relation to EU perception, some studies have already analyzed EU perceptions in Kazakhstan and Kyrgyzstan. Therefore, their findings are widely used too in this research to understand EU perception in Central Asia.

Methodologically, this paper is multi-layered. The first part of the paper analyzes literature related to EU – Central Asia relations and EU perceptions in Central Asian countries. Secondly, the paper analyzes mass media articles collected from two Tajikistani news agencies' websites, namely, the National Information Agency of Tajikistan (NIAT) *Khovar*[11] and *Asia-Plus* News Agency[12] with qualitative content analysis. I chose these two sources firstly, because *Khovar* is official (governmental),

[8] ARYNOV, ZHANIBEK: *Global Giant, Regional Dwarf? Perceptions of EU Actorness in Kazakhstan and Kyrgyzstan."* In EU Global Actorness in a World of Contested Leadership. Palgrave Macmillan, 2022. 186. p.
[9] ARYNOV 2022, 186. p.
[10] ARYNOV 2022, 186. p.
[11] https://eng.khovar.tj/
[12] https://www.asiaplustj.info/en

while *Asia Plus* is an independent news agency, and secondly, because they are popular among elites and a significant part of society. Overall, 41 articles in Tajik, Russian, and English for three years from June 2019 until June 2022 are included in my research (for the list of articles see Table 1 and 2). Since no public opinion polls were available to assess how Tajiks perceive the EU, hence this research was limited to examining how the EU has been represented in the Tajikistani mass media.

The paper analyzed media sources' versions of Tajik, Russian and English. These mass media were monitored on a daily basis using e-search. Key search terms for data collection of the EU-related articles were "European Union", “European Commission”, “European Parliament”, “European Court of Justice”, “European Central Bank”, “European Presidency”, “Council of the European Union", "Eurozone" and "Euro". These terms variations and acronyms are used in Tajik, Russian and English languages. Also, it was practical to search for the term “Europe” because the terms EU and Europe are often used interchangeably in media sources in Tajikistan.

Only relevant news articles and opinion papers were gathered. Overall, 41 articles were analyzed, where 23 were retrieved from *Khovar* news agency and 18 from *Asia Plus*. Criteria for choosing the articles were simple: they should have satisfied the general requirement of the EU being a central actor or one of the main participants of the reportage. The content analysis was done mechanically by highlighting the most significant parts of the media messages focusing on the topic and emotional charge with the addition of information about the normative setting. To visualize the material and to be able to do content analysis with basic quantification, media articles and categories, together with sub-categories, were placed in the table (see Table 1 and Table 2).

Theme-based content analysis was utilized for the media analysis, where themes are the main categories. This classification includes division on the following topics: EU-Tajikistan, EU – Central Asia relations, EU security, EU internal politics, EU external politics, and EU economy. Therefore, sub-categories represent the focus on the nature of the media messages, their emotive charge, and connotation, if available: positive, neutral or negative. The EU –Tajikistan, EU – Central Asia relations categories were assigned to the units where the main focus of the activity was the cooperation of any kind between the EU and Tajikistan or Central Asia. The EU security category was applied for the articles dedicated to the issues of internal security of the EU, Afghanistan, and security relations of EU-Tajikistan. The EU internal politics was applied if some domestic issues were discussed. The EU external politics category was assigned if there are discussions on international actions of the EU and relations with other international actors, specifically EU-Russia and EU – Ukraine issues. Finally, the EU economy theme was brought up if the EU-related publications covered financial features and aspects affecting the EU's welfare and EU-Central Asia economic relations.

III. Theoretical and Conceptual framework of research

This paper applies EU external perceptions literature as a conceptual approach and refers to the Normative Power Europe (NPE) discussions. Perception is a multifaceted concept combining features of EU studies, International relations, political psychology, political

science, communication studies and sometimes even linguistics.[13] Thereby, the EU's external perceptions have been investigated with the emphasis on the concept of image, role theory and international identity, as well as the EU's foreign policy capabilities and goals. This paper assumes that perception is the "result of the subjective or psychological cognition of the observer rather than the objective reflection of the object that is being observed".[14] Moreover, the study considers that images are an inevitable part of perceptions.[15] The paper also supports *Hermann's* et al. definition of perceptions focused on the interplay of mutually formed images and expectations created by an abysm between "Self" and "Other".[16] The paper applies a perception-based conceptual framework because the political realm is socially-constructed. That is why awareness of the actors' attitudes towards each other and "interaction between actors can lead to the mutual reformulation of identity and herewith to the reformulation of perceptions"[17], that shows the ability of actors to change themselves through perceptions.

There is an ongoing debate concerning the question of what kind of international actor the EU represents globally. Usually, European "distinctiveness", a specific identity/role as being a "different" international actor, is assigned to the EU mostly by European scholars. Over the years, Europe has been labelled with the adjectives of "civilian", "soft", "post-modern", "ethical", "transformative", and "normative" power. However, the Normative Power Concept provoked the strongest debates among the researchers, this concept has played the most important role in the self-identification of the EU in the international arena. This paper follows the initial understanding of the concept of normative power introduced by *Ian Manners* (2002).[18] The European Union has sought to upgrade its role internationally by placing a range of norms on its foreign policy agenda in recent years. With a perspective of being normative power, the EU seeks to promote its values and norms abroad, a kind of strategy that aims to "Europeanize" the neighbouring countries. The first and most important theme is the EU's vision of itself as a normative actor dedicated to using its resources and expertise to help transform the world. Article 2 of the Treaty of the European Union states that "the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law

[13] CHABAN, NATALIA – HOLLAND, MARTIN: *Introduction: The Evolution of EU Perceptions: from single studies to systematic research*. In Chaban Natalia and Martin Holland (eds.): Communicating Europe in the Times of Crisis: External Perceptions of the European Union. Basingstoke: Palgrave Macmillan. 2014. 3. p.

[14] SHIMING, FAN: *Chinese public perceptions of Japan and the United States in the post-cold war era*. In Gerald Curtis, Ryosei Kokubun, and Wang Jisi (eds.), Getting the Triangle Straight: Managing China-Japan-U.S. Relations. Center for International Exchange. Japan. 2010. 269. p.

[15] CHABAN, NATALIA – HOLLAND, MARTIN: *EU External Perceptions: From Innovation to an Established Field of Study.* In Jrgensen, Knud Erik, sne Kalland Aarstad, Edith Drieskens, Katie Laatikainen & Ben Tonra (eds): SAGE Handbook of European Foreign Policy: Two Volume Set. 2015. 397. p.

[16] HERRMANN, RICHARD – VOSS, STEVEN – SCHOOLER, TONYA – CIARROCHI, JOSEPH: *Images in International Relations: an Experimental Test of Cognitive Schemata*, In International Studies Quarterly 41 (3), 1997. 408. p.

[17] BARCEVICIUS, EGIDIJUS – BROZAITIZ, HAROLDAS – CAICEDO, ELMA et al.: *Analysis of the Perception of the EU and EU's Policies Abroad*. 2015. 13. p. Available at: https://fpi.ec.europa.eu/system/files/2018-11/eu_perceptions_study_final_report_0.pdf (Retrieved June 5, 2022).

[18] MANNERS, IAN*: Normative Power Europe: A Contradiction in Terms?* Journal of Common Market Studies, No. 2(40)/2002.

and respect for human rights".[19] This statement applies to EU's external relations as well: according to Article 21, "the Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement", listing democracy, the rule of law, human rights and related principles.[20]

In both adopted strategies the EU aims to promote its norms in Central Asian countries bilaterally and multilaterally. In the 2007 strategy the EU listed seven main areas of cooperation which were updated by the 2019 strategy including all previous themes in three interconnected and mutually reinforcing priorities, such as partnering for resilience, partnering for prosperity and working better together.[21]

IV. EU perceptions in Central Asia

During the past three decades, the EU-Central Asia relations researches cover mainly such topics as the conflict of great powers' interests in Central Asia and the EU's role in those processes and geopolitical concerns,[22] the application of the EU Strategy for Central Asia,[23] or the EU's promotion of democracy, human rights and the rule of law in the region.[24] Furthermore some of the researches aim to explain the EU's role in Central Asia and the challenges for European policy in the region[25] concluding that the EU is a "donor without influence", and that the EU should "making better use of its prestige in Central Asia, which admires its culture, education, know-how, and quality of life"[26] if it wants to have any means of influence in the region.

Clearly, the EU perceptions in Central Asia, particularly Tajikistan, have been left without worthy attention. Research on how the EU is perceived in Kazakhstan and Kyrgyzstan is just emerging. Only a few studies assess elites and media perception of the EU. *Fabienne Bossuyt* tried to challenge the existing frames about the EU stating that

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[19] EUROPEAN UNION: *Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union*, OJ C202/1. 2016.

[20] EUROPEAN UNION 2016.

[21] DZHURAEV, SHAIRBEK: *The EU's Central Asia policy: no chance for change?* Central Asian Survey. 2022. 5. p.

[22] MEISTER, STEPHAN: *Russia and the EU in Central Asia – Geopolitics or Partnership?* Geopolitics, History, and International Relations, 1. 2009. 166. p.

[23] KASSENOVA, NARGIS: *The New EU Strategy Towards Central Asia: A View from the Region*. CEPS Policy Briefs, 148, January 2008; PIRRO, ELEN: *The EU's Central Asian Strategy in a Globalizing World*. Global Power Europe 2. 2013.

[24] CRAWFORD, GARRY: *EU Human Rights and Democracy Promotion in Central Asia: From Lofty Principles to Lowly Self-interests*. Perspectives on European Politics and Society 9 (2) 2008; AXYONOVA, VERA: *European Union's Democratization Policy for Central Asia*. Ibidem-Verlag. 2014.

[25] DE PEDRO, NICOLAS: *The EU in Central Asia: Incentives and Constraints for Greater Engagement.* In De Pedro Nicolas - Martin Esteban (eds), Great Powers and Regional Integration in Central Asia: A Local Perspective, Exlibris Ediciones. Madrid. 2009.

[26] PEYROUSE, SÉBASTIEN: *A Donor without Influence: the European Union in Central Asia*. PONARS Eurasia Policy Memo No. 478. June 2017. Available at: http://www.ponarseurasia.org/memo/donor-without-influence-european-union-central-asia, (Retrieved July 3, 2022).

"the EU is perceived as a more neutral and benevolent player" in Central Asia.[27] Her work was one of the first attempts to evaluate the EU's perception through the prism of the interviews with government officials. *Sébastien Peyrouse*'s paper is about how politicians, business leaders, scholars, youth and civil society experts from Central Asia view the EU and its approach to the region based on interviews with experts.[28] Based on *Peyrouse*'s findings, the majority of Central Asian elites share many common views about the EU: they feel that the EU is barely visible in Central Asia; that it is unknown to the population; that it has complex bureaucratic procedures; and that it has greater ambitions than its actual leverage. Moreover, ruling elites believe that the EU lacks pragmatism in comparison to Chinese and Russian cooperation and influence.[29] At the same time, as rightly noticed by *Jos Boonstra and Riccardo Panella*, the European Union remains attractive to Central Asia for three reasons. First, as claimed by the authors, the Central Asian states treat the EU as a reasonable axiological-praxeological alternative and a competitive institutional model for Russia and China. Additionally, at least some of the elites of Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan and Turkmenistan are convinced that Europeans can help in the socio-political as well as the economic transformation of their countries, in particular by offering proven and development-oriented patterns in education.[30] Furthermore, EU structures also appear as one of the factors that may encourage Central Asian societies to regulate and deepen their cooperation in solving significant problems afflicting the entire region.[31]

V. Analyzing EU perceptions in Tajikistan

This part of the paper presents the results of Tajikistan's media content analyses. The data was collected from two media sources:

a) The National Information Agency of Tajikistan (NIAT) *Khovar*, previously known as the Tajik Telegraph Agency, was established on December 31, 1925, as the central information agency of Tajikistan. Today, with its multilingual digital platforms available in Tajik, Russian, English, Arabic and Farsi, the most important news about Tajikistan and the world are available on its website. Mostly, official news and press releases from the government side are published on this agency's website, which is the main official information source in Tajikistan. In addition, *Khovar* covers such topics as politics, economy, society, incidents, technology, culture, sport and world news.[32]

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[27] BOSSUYT, FABIENNE: *The EU's Transnational Power over Central Asia. Developing and Applying a Structurally Integrative Approach to the Study of the EU's Power over Central Asia.* PhD. Aston University, Birmingham, UK. 2010. 205. p.

[28] PEYROUSE 2014.

[29] PEYROUSE 2014, 12. p.

[30] WALLAS, TADEUSZ – BARTOSZ, HORDECKI: *The Problem of Harmonization of Values and Interests in Relations between the European Union and Central Asian Countries*. In: Wallas Taduesz, Stelmatch Andrzej and Wisniewski Rafal (eds.): Beyond Europe Reconnecting Eurasia. 2019. 107. p.

[31] WALLAS - BARTOSZ 2019, 109. p.

[32] NIAT Khovar: *Dar borai mo (about us)*. Available at https://khovar.tj/agent/ (Retrieved September 14, 2022).

b) Asia-Plus is an independent media group of the Republic of Tajikistan. The *Asia-Plus* Media Group includes News Agency, a Publishing House and a TV and Radio Company. For collecting data for this paper, only the News Agency of *Asia Plus* was analyzed. The *Asia-Plus* News Agency was registered as a legal entity with the Ministry of Justice in 1995,[33] and the first edition of the Agency's information-analytical bulletin in the English and Russian languages was published in April 1996. The Agency has its correspondent's offices in all regions of Tajikistan. *Asia Plus* News Agency, published in three languages, Tajik, Russian and English, has regular readers in almost fifty countries of the world.[34] Topics covered are Tajikistani news and world news, economy, technologies, culture and incidents, and it positions itself as an independent source.

The content analysis of NIAT *Khovar*, the official news agency, and *Asia Plus* an independent news portal, reveals that *Khovar* has more news articles on EU-related topics than the *Asia Plus* portal. For instance, information on the EU- Tajikistan and EU-Central Asia relations prevails by a wide margin in *Khovar*, whereas in *Asia Plus*, both the EU internal and external politics publications equally dominate. Furthermore, topics related to EU security, specifically related to Central Asia, Tajikistan, EU and Afghanistan, have been discussed in *Khovar* twice as much as in *Asia Plus*. Similarly, the topic of EU donations to Central Asia/Tajikistan has been covered more in the *Asia Plus* portal than in *Khovar*. Nonetheless, in both, *Khovar* and Asia Plus, the EU economy-related articles have been presented nearly equally. The content analysis results are presented in table *1and table 2*.

Talking about the connotation of the media messages, it should be mentioned that a quite rare one can find purely negative, neutral or purely positive publications. Therefore, the study applies the following categorization: if the article contains approximately 2/3 of the material expressed negatively, it goes to the sub-category negative. If both positive and negative characteristics are present equally, then it relates to the neutral category. Also, the neutrally assessed sub-category mainly consists of news articles and primarily represents a neutral emotive charge of the EU activities. When positive aspects are emphasized, then it fits under the positive sub-category.

[33] According to article 10 of the Law of the Republic of Tajikistan, "About periodicals and other mass media", all functioning mass media in the territory of Tajikistan, regardless of the form of ownership, need to register as a legal entity in a government-determined ministry; LAW OF THE REPUBLIC OF TAJIKISTAN: *About periodicals and other mass media*. March 19, 2013. Available at http://mmk.tj/system/files/Legislation/961_tj.pdf (Retrieved September 14, 2022).

[34] Asia Plus: *About us.* Available at https://www.asiaplustj.info/en/info/about (Retrieved September 14, 2022).

Table 1.

List of analyzed articles from NIAT Khovar

	Article's title (the titles of articles translated to English from Tajik or Russian language by author)	Classification of topics	Nature of article
1.	Prospects for the development of multifaceted cooperation between Tajikistan and the European Union were discussed in Dushanbe	EU-Tajikistan	Positive
2.	Sirodjidin Muhriddin met with the Head of the EU Delegation to Tajikistan	EU-Tajikistan, EU-Security	Positive
3.	Leader of Nation Emomali Rahmon receives EU Special Representative for Afghanistan Thomas Niklasson	EU-Central Asia, Tajikistan, Security	Positive
4.	The European Union is providing a € 30 million grant to Tajikistan's energy and environmental sectors	EU-Tajikistan	Positive
5.	Bilateral relations between Tajikistan and the European Union were discussed in Dushanbe	EU-Tajikistan	Positive
6.	Sirodjidin Muhriddin: "The European Union is one of the important partners of Tajikistan in the international arena"	EU-Tajikistan	Positive
7.	The Foreign Ministers of Central Asia and the European Union discussed strengthening peace and stability in Afghanistan	EU-Central Asia, Security	Positive
8.	The meeting of the Ministers of Foreign Affairs of Central Asia and the European Union has started in Dushanbe	EU-Central Asia	Positive
9.	The NIAT "*Khovar*" expert considered the European Union and Tajikistan as guarantors of Eurasian security	EU-Tajikistan, Security	Positive
10.	The President of the Republic of Tajikistan Emomali Rahmon met with the EU Special Representative for Central Asia Ms. Teri Hakala	EU-Tajikistan, Economy, Security	Positive
11.	The Minister of Foreign Affairs of Tajikistan met with representatives of the European Union to discuss the situation in Afghanistan	EU-Tajikistan, Security, Afghanistan	Positive
12.	The Minister of Foreign Affairs of Tajikistan met with the EU Special Representative for Central Asia	EU-Tajikistan	Positive
13.	Sirodjidin Muhriddin took part in a meeting of ministers of Central Asia and the European Union	EU-Central Asia	Positive
14.	The twelfth round of the Dialogue on Human Rights between the Republic of Tajikistan and the European Union was held	EU-Tajikistan	Neutral
15.	The political and security dialogue between Central Asia and the European Union was held via video conference	EU-Central Asia	Positive
16.	The 8th video session of the Cooperation Committee of the Republic of Tajikistan and the European Union was held	EU-Tajikistan	Positive
17.	Video conference of representatives of Central Asia, the European Union and Afghanistan	EU-Central Asia, Tajikistan, Security	Neutral
18.	EU allocates $ 78 million to Tajikistan euro allocates additional funds	EU-Tajikistan, Economy	Positive
19.	The European Union intends to provide up to € 48 million in assistance to Tajikistan to prevent COVID-19	EU-Tajikistan, Economy	Neutral
20.	Cooperation between Tajikistan and the European Union was discussed in Dushanbe	EU-Tajikistan, Economy	Neutral
21.	The Tajik delegation took part in a meeting of foreign ministers of Central Asian countries and the European Union	EU-Central Asia	Neutral
22.	A DAY IN HISTORY. Exactly 28 years ago, the European Union was founded. What links Tajikistan with this organization?	EU-Tajikistan	Positive
23.	Tajikistan and the European Union will continue cooperation in the field of higher education	EU-Tajikistan	Positive

Source: collected by the author from official website of NIAT Khovar

Table 2.

List of analyzed articles from Asia-Plus

	Article's title (the titles of articles translated to English from Tajik or Russian language by author)	Classification of topics	Nature of article
1.	The European Union will adopt a sixth package of sanctions against Russia on May 10	EU-Ukraine, Russia	Neutral
2.	The European Union has so far provided € 1.5 billion in military aid to Ukraine	EU-Ukraine	Neutral
3.	End of the meeting of the Ministers of Foreign Affairs of Central Asia and the European Union in Dushanbe	EU-Central Asia	Positive
4.	The EU Delegation supports the ceasefire in Tajikistan and Kyrgyzstan	EU-Central Asia	Positive
5.	100 thousand Euros of EU aid to flood victims in Tajikistan	EU-Tajikistan	Positive
6.	Central Asia and EU discuss prevention of pandemic consequences	EU-Central Asia	Positive
7.	The European Union and Tajikistan have discussed issues of bilateral cooperation	EU-Tajikistan	Positive
8.	Central Asian countries are discussing with the European Union the fight against COVID-19	EU-Central Asia	Positive
9.	EU Assistance to Flood Victims in Tajikistan	EU-Tajikistan	Positive
10.	The European Union has called on the Tajik government to respect absolute freedom of expression and the media	EU-Tajikistan	Negative
11.	EU and Central Asia: New Opportunities for Cooperation for a Green Future	EU-Central Asia	Positive
12.	EU allocates $ 20 million for construction of Sebzor HPP allocates euros	EU-Tajikistan, Economy	Positive
13.	EU assistance to Central Asian media in combating misinformation	EU-Central Asia	Positive
14.	Central Asian states receive $ 72 million from EU euros will receive additional assistance	EU-Central Asia, Economy	Positive
15.	Adoption of a new strategy of the Council of Europe on cooperation between the European Union and Central Asia	EU-Central Asia	Positive
16.	20 tons of humanitarian cargo arrived in Tajikistan to ensure preparedness for emergencies related to refugees	EU-Tajikistan	Positive
17	What did the High Representative of the European Union promise to Tajikistan?	EU-Tajikistan	Positive
18.	EU-Central Asia Ministerial Meeting in Dushanbe: results	EU-Central Asia	Positive

Source: collected by the author from official website of Asia-Plus

One may ask, why to study EU perceptions in Tajikistan? Both conceptual and practical reasons can explain the choice of this topic and the external perception framework. First of all, no resources are available in terms of reliable and empirical evidence on how Tajikistan views the EU, namely, how the media see the EU, and this research is a pioneer in this term. Therefore, the lack of prior knowledge from the other side of the "coin" or not considering the changing perceptions of the EU in Tajikistan (and generally in Central Asia) may result in problems with the implementation of EU-

Central Asia cooperation, such as a failure of the EU Strategy for Central Asia 2019 or in bilateral EU-Tajikistan relations. Second, the EU is a major investor and donor to the economy of Tajikistan, furthermore a political partner. Based on the received data from media analysis, EU perceptions were analyzed in the following sub-categories:

1. EU as political and security partner

This category includes articles related to security questions in Central Asia, EU-Central Asia political and security relations and security in Europe. The section was clustered from the news only, therefore the emphasis is made on the nature of the message. In *Khovar*, the articles are mostly focusing on the EU-Tajikistan security partnership in relation with Afghanistan issues. In *Asia Plus*, the last articles related to security mostly cover EU – Ukraine relations and Russia's war on Ukraine. In bilateral meetings of EU officials and Tajikistani officials, the security and Afghanistan issues always were in priority of discussion.[35] Basically, the EU is not pictured as an effective actor able to prevent terrorism, extremism or any other kind of security issues, but it can support the Central Asian countries in fighting against security threats.[36] Tajikistan also expects the EU to make a significant financial and practical contribution to resolving such issues as border management and combating illegal drug trafficking, terrorism and extremism.[37] In addition to security issues, according to the materials, the EU is interested in the expansion of transport, trade and energy interconnection. Furthermore, the EU is seen as a party involved in improving Central Asia's environmental component (climate change and water resources) through the European Union – Central Asia Water, Environment and Climate Change Cooperation (WECOOP2) program, particularly through financing. Also, in mass media discussion, attention was paid to the discussion of the EU Strategy for Central Asia, which was launched in 2019.[38]

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[35] NIAT Khovar: *Sirojiddin Muhriddin во rohвari Namojandagii Ittihodi Avrupo dar Tojikiston muloqot namud (Sirodjidin Muhriddin met with the Head of the EU Delegation to Tajikistan),* Available at https://khovar.tj/2022/06/siro-iddin-mu-riddin-bo-ro-bari-namoyandagii-itti-odi-avrupo-dar-to-ikiston-mulo-ot-namud/, (Retrieved June 20, 2022).

[36] Asia Plus: *Namojandagii Ittihodi Avrupo az otasвasi Tojikistonu Kirǫiziston puştiвonī kardaast (The EU Delegation supports the ceasefire in Tajikistan and Kyrgyzstan),* Available at https://www.asiaplustj.info/news/tajikistan/politics/20210429/namoyandagii-ittiodi-avrupo-az-otashbasi-toikistonu-iriziston-pushtibon-kardaast, (Retrieved June 15, 2022).

[37] NIAT Khovar: *Peshvoi millat Emomalī Rahmon Namojandai maxsusi Ittihodi Avrupo oid вa Afǫoniston Tomas Niklassonro вa huzur paziruftand (Leader of Nation Emomali Rahmon receives EU Special Representative for Afghanistan Thomas Niklasson)* Available at https://khovar.tj/2022/04/peshvoi-millat-emomal-ra-mon-namoyandai-mahsusi-itti-odi-avrupo-oid-ba-af-oniston-tomas-niklassonro-ba-uzur-paziruftand/, (Retrieved June 12, 2022).

[38] NIAT Khovar: *DEN' V ISTORII. Rovno 28 let nazad byl osnovan Yevropeyskiy soyuz. Chto svyazyvayet Tadzhikistan s etoy organizatsiyey? (A DAY IN HISTORY. Exactly 28 years ago, the European Union was founded. What links Tajikistan with this organization?)* Available at https://khovar.tj/rus/2021/11/den-v-istorii-rovno-28-let-nazad-byl-osnovan-evropejskij-soyuz-chto-svyazyvaet-tadzhikistan-s-etoj-organizatsiej/, (Retrieved June 12, 2022).

2. EU as a norm promoter

The EU is rarely visible as a norm-setter except for a couple of cases on agriculture, food standards, education and technological standards within the EU – Tajikistan/Central Asia framework. Democracy promotion and human rights are an integral part of the EU's attempts to diffuse its norms in foreign relations, but only two articles in *Asia Plus* cover the EU-Tajikistan human rights consultative meeting. As a result, normative dialogue between the EU and Tajikistan is barely visible in mass media except in the abovementioned areas.[39] Democracy, human rights and rule of law usually have a low visibility within the texts.[40] Such norms as sustainable development covering ecological issues in the region, and peace in the case of Afghanistan's vulnerability were mentioned on the EU-Central Asia platform, and EU is perceived as acting in accordance with these norms.

3. EU as an economic partner and donor

The news concerning the EU economy was mostly about sanctions against Russia in *Asia Plus*. *Khovar* mostly covered bilateral economic relations of Tajikistan with some EU member states, concluding that the EU is one of the main economic partners of Tajikistan.[41] In general, articles in *Asia Plus* were mostly focusing on EU humanitarian aid for Tajikistan arguing that Tajikistan is receiving grants from the EU for developing its economy.[42] Most articles in *Asia Plus* regarded the economic situation in Europe as a consequence of the Russia – Ukraine war.[43] In general, with only four news articles discussing economy-related topics compared to other Central Asian countries, Tajikistan is less attractive to the EU in this term. Interestingly, in *Khovar*, the EU is mentioned as an economic partner in most articles, while *Asia Plus* mainly argues that the EU is the main donor of the Tajik economy.

[39] NIAT Khovar: *Tadzhikistan i Yevropeyskiy Soyuz prodolzhat sotrudnichestvo v sfere vysshego obrazovaniya (Tajikistan and the European Union will continue cooperation in the field of higher education*), Available at https://khovar.tj/rus/2017/05/tadzhikistan-i-evropejskij-soyuz-prodolzhat-sotrudnichestvo-v-sfere-vysshego-obrazovaniya/, (Retrieved July 20, 2022).

[40] Asia Plus: *Ittihodi Avrupo hukumati Tojikistonro ва riojai ozodii mutlaqi вayon va ozodii VAO da'vat kard (The European Union has called on the Tajik government to respect absolute freedom of expression and the media)* Available at https://www.asiaplustj.info/tj/news/tajikistan/society/20200506/ittiodi-avrupo-ukumati-toikistonro-ba-rioyai-ozodii-mutlai-bayon-va-ozodii-vao-davat-kard, (Retrieved June 10, 2022).

[41] NIAT Khovar: *Dar Dushanвe hamkorii Tojikiston во Ittihodi Avrupo вarrasī gardid (Cooperation between Tajikistan and the European Union was discussed in Dushanbe).* Available at https://khovar.tj/2019/10/dar-dushanbe-amkorii-to-ikiston-bo-itti-odi-avrupo-barras-gardid/, (Retrieved May 5, 2022).

[42] Asia Plus: *Kumaki Ittihodi Avrupo ва ва zarardidagoni oвхeziho dar Tojikiston (EU Assistance to Flood Victims in Tajikistan)*. Available at https://www.asiaplustj.info/tj/news/tajikistan/society/20200605/kumaki-ittiodi-avrupo-ba-ba-zarardidagoni-obhezio-dar-toikiston, (Retrieved May 10, 2022)

[43] Asia Plus: *Ittihodi Avrupo вastai shashumi tahrimho alayhi Rusiyaro 10 may qaвul mekunad (The European Union will adopt a sixth package of sanctions against Russia on May 10)*: Available at https://www. asiaplustj.info/ tj/news/world/20220503/ittiodi-avrupo-bastai-shashumi-tarimo-alaii-rusiyaro-10-mai-abul-mekunad (Retrieved June 12, 2022).

VI. Conclusions

It is time for the EU to complete the stage of self-reflection and define its role as a global actor, and pay more attention to the opinion of the other international actors. Despite a comparatively active policy from 2019 to 2022, the EU still remained a relatively weak actor in Central Asia and suffers from visibility issues. This study aimed to examine how the EU is perceived in Tajikistan by looking at what images of the EU are dominant in Tajikistani mass media.

In general, EU – Tajikistan/Central Asia cooperation was perceived positively. Returning to the research questions posed at the beginning of this paper, it is now possible to state that the EU is perceived as a security partner, donor and to some extent a norm promoter in specific areas. The findings of this research show that the perception of the EU as a norm promoter or in other words as a normative power is constrained. Further studies will require more extensive data-analysis in order to be able to make more definite conclusions regarding the questions of norm-promotion of the EU in Central Asia.

Further research in this field would be of great help in conducting a more extensive media analysis involving sources in all Central Asian countries with different orientations, such as business and popular news agencies. In addition, it would be interesting to evaluate perceptions through the overview of social media where government officials' publications could be available. It is also possible to conduct a large-scale sociological survey among the population of Central Asia, but in some countries of the region, it may be problematic due to the sensitivity of topic related to politics. The views of Central Asian countries (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan) need to be analyzed separately, as their opinion and relations are very different from country to country. Obviously, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan remain young states. Their societies are looking for goals and roles that could be fulfilled primarily in the region as well as in the supra-regional dimension. Understanding EU perception in Central Asia might help the EU to propose and implement its projects successfully.

QODIROVN OSIRKHON

A KÖZÉP-ÁZSIAI ORSZÁGOK EU-PERCEPCIÓINAK ÉRTELMEZÉSE: TÁDZSIKISZTÁN ESETE

(Összefoglalás)

Közép-Ázsia továbbra is a világ egyik legkevésbé ismert régiója Oroszország, az Európai Unió, Kína és az iszlám világ találkozásánál, annak ellenére, hogy a nagyhatalmak és a regionális szereplők közötti hatalmi politika jelentős terepe. 2019-ben az Európai Unió – tizenkét évvel az első regionális stratégiai dokumentum elfogadását követően – frissítette a Közép-Ázsiára vonatkozó stratégiáját. Miközben az EU a közép-ázsiai államok egyik legfontosabb adományozójává és gazdasági partnerévé vált, igen kevés információ áll rendelkezésre arról, hogy a közép-ázsiaiak hogyan látják az EU-t.

Jelen kutatás fő célja, hogy elemezze a közép-ázsiai felfogást az EU régióban betöltött szerepéről. A kérdés vizsgálata során a tanulmány a témával foglalkozó másodlagos forrásokat, valamint a tádzsik állami hírügynökség és egy független híroldal híranyagait dolgozta fel, illetve elemezte. A dolgozat első része a közép-ázsiai országok EU-percepciójának szakirodalmi áttekintésével foglalkozik, majd a második részben – esettanulmány jelleggel – az EU-percepció tádzsikisztáni alakulásának vizsgálata következik médiatartalom-elemzés révén.

A tanulmány következtetései szerint az EU – Közép-Ázsia relációt és ezen belül különösen az EU Tádzsikisztánhoz fűződő viszonyát mind a független, mind az állami tádzsikisztáni média alapvetően pozitívan értékeli. Ugyanakkor, amíg az EU normatív hatalomként való felfogása meglehetősen ellentmondásos, addig az EU gazdasági donorként, illetve gazdasági és biztonsági partnerként való érzékelése hangsúlyozottan van jelen a vizsgált médiafelületeken.

ÖMER DOĞUKAN USLU*

Securitization of the EU Against the Refugee Crisis

Example Case: FRONTEX and it's Transformation

I. Introduction

Every possible item or event can be a threat and every possible tool can be utilized to counter these created or existing threats from the beginning or in the long run. But the essential point is to make this threat and the way of making this threat legitimate in the eyes of the public. Once it is put in motion the process of making a threat which in this case it is named securitization consists of delinquent components. The structure is the important factor and to fit the threat within this structure as a tool FRONTEX becomes interesting.

Regarding this context, the paper aims to observe the securitization process on the European Union (EU) level with the example case of FRONTEX with this organisations transformation and evolution through taken measures while assessing the problem of what it represents against immigration and the refugee crisis. Also, the research overall represents a multi-dimensional policy-making strategy regarding the immigration crisis with certain multiple tools and policies and to represent this multi-dimensional policy-making, FRONTEX had been chosen to be looked upon.

Securitization theory provides a wealth of tools for addressing the concerns highlighted by the liberty/security debate, and it's a popular way to analyse how the means of security are used to legitimize problematic laws, policies, and practices that would not otherwise be considered acceptable.[1] The major goal of this paper will be to observe securitization in the European Union (EU) through FRONTEX's transformation by the EU laws and its work over/against the immigration crisis. The goal of this research is to be theoretical and seek new explanations for the securitization process through the example of FRONTEX, as well as to answer the issue of how securitization may exist at the EU level. By assessing the severity of security framing in EU law on immigration and other security concerns,

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[1] NEAL, ANDREW W.: *Securitization and risk at the EU border: The origins of FRONTEX.* JCMS: Journal of common market studies 2009/47-2. 333-356. p.

this research tries to recognize the multifaceted, diversified realities of wide political domains within the EU.

One of the main focuses of this research is about the EU and FRONTEX is to observe how far its structure of security and measures goes. The problem of sovereignty may cause the adopted united decision to be put on hold but with the securitization process this obstacle had been breached through needed legitimisers of threat building. That is why, inside the EU, the securitization theory has a special position, but they also determine their own policies in terms of the EU's exterior and interior policies at the same time as well. The foundation of this research is built on to the answer these events of process over FRONTEX and securitization with the EU's certain security policies. Imagining or through mere observations it might be possible to dig into the machinations of the securitization process taken by the EU by using FRONTEX by following the basic speech acts.

Furthermore, the possibility of the existence of a securitization process on the EU level and how it works function crucial statue in the view of that fact which mechanisms, policies and tools (for example, FRONTEX which had been used as a "weapon" against immigration[2]) of EU enables this process of securitization is to be pin pointed and observed. Moreover, for this research, the securitization process needs a threat or threat-building example. The study will then go on to look at the threat posed by the example of immigration. Since 2015, the EU's internal and domestic politics have been influenced and imbalanced by the immigration issue, and a collective securitization process has formed inside the EU in response to this challenge. This collective securitization process pushed the boundaries of the EU to respond the over-flow of immigration with political unity while claiming to protect European values against threats such as terrorism or economic harm in general.

II. Theoretical Framework: The Securitization Theory of Copenhagen School.

The securitization process that the EU utilizes to ward off immigrant and refugee migration toward its external frontiers is the subject of this article. The Securitization Theory of the Copenhagen School is thus useful in this research to provide commentary on this process. Securitization is a process of extremes, where a securitizing actor or actors simply takes a regular political issue and turns it into or manipulates it into an extreme security concern (it might be a national or worldwide security issue) overall.[3] These actors employ a variety of themes to achieve their stated objectives, which, according to this idea, can be anything. The many themes included in these techniques and processes, which are elements of the securitization process, make up the securitization components.

These components when combined and put into action create the process of securitization for the selected goal or goals. Every component of securitization connects and creates a loop with each other to ensure the persons or groups achieve their targeted

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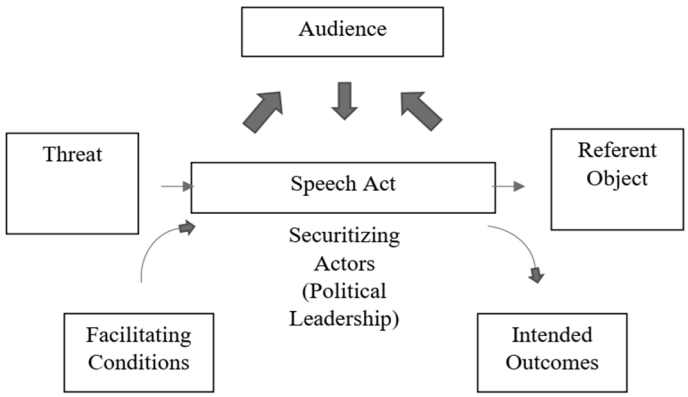
[2] CASOLARI, FEDERICO: *The EU's hotspot approach to managing the migration* crisis: a blind spot for international responsibility?. The Italian Yearbook of International Law Online 2016/25-1. 109-134. p.

[3] BUZAN, BARRY – OLE WÆVER – OLE WÆVER – JAAP DE WILDE: *Security: A new framework for analysis*. Lynne Rienner Publishers, 1998. 25-26. p.

needs. But before understanding and the observation of the process the components of the securitization process should be known and listed accordingly with various examples.

The full list of components is of "*threat, audience, speech act, facilitating conditions, securitizing actors (actor), referent object and the intended outcomes*". The figure beneath shows the securitization process in detail and how it works with its components at their rightful places.

Figure 1.



Source: This figure is based on by the definitions indicated by: BUZAN, BARRY – OLE WÆVER – OLE WÆVER – JAAP DE WILDE: *Security: A new framework for analysis. Lynne Rienner Publishers, 1998.*

The key element behind this procedure is these components. This study will introduce the components of the process by order to make it more comprehensible with various examples; as for *the Threat,* the securitizing actor or actors will present a particular topic of interest as a threat or a concern to the national security or to the people.[4]Threat can be everything within the process If its processed enough. Secondly, *the Speech Act*, it essentially and unambiguously implies that the securitizing actor employs colourful language and techniques to achieve a certain goal.[5]Political speeches, billboards and use of almost every kind of communication on broader sense can be listed under this component to affect the audience. Thirdly, *the Audience,* the population or a group of people from whom by the speech act, securitizing actor draws its strength and legitimacy in the face of overstated threats.[6] Direct example can be a population of a country. Fourthly*, the Securitizing Actor,* a person, group or an organization who coordinates the

[4] BALZACQ, THIERRY: *The three faces of securitization: Political agency, audience and context*. European journal of international relations 2005/11-2. 171-201. p.

[5] TAURECK, RITA: *Securitization theory and securitization studies*. Journal of International relations and Development 2006/9-1. 53-61. p.

[6] LÉONARD, SARAH – CHRISTIAN KAUNERT: *Reconceptualizing the audience in securitization theory*. Securitization Theory. Routledge, 2010. 71-90. p.

securitization process to handle the threat for their interests.[7] Political parties, leaders, companies or groups of power can be seen as actors. As for the fifth*, the Referent Object,* the element that has to be defended against a threat that is being threatened from inside or outside.[8] Culture, valued ideals or even security of one nation can be put as a referent object. Later on for the sixth, *the Facilitating Conditions,* these factors affect how well and how well-received by an audience a speech act is.[9] Lastly, *the Intended Outcome,* the result sought or desired by the securitizing actor during this securitization process. It is very much self-explanatory, the whole reason behind this process is to gather the need and goal which is the intended outcome.

Each of these components contributes to the success of the securitization process. Additionally, this research attempts to examine the securitization process of the EU and makes comments on the rapid transformation of its collective security plans, measures, and policies (for instance, CSDP). This paper's theoretical approach examines the relationships between this process and the EU's security efforts as fundamental securitization steps, using several instruments, rules, and tools (such as FRONTEX) as concrete examples. These changes, policies, and regulations lay the groundwork for a rapid securitization process against the coming immigration. In this research's upcoming chapters, the observation will be based on the FRONTEX's transformation to address the immigration crisis through the fashion of this outlined securitization theory and its process.

In summary through this article the Securitization Theory of the Copenhagen School reflects the needs of the EU and its Member States' policies on the refugees, immigrants and asylum seekers through the structured push back of their collective securitization process. Transforming this crisis (which is political) into a whole new dimension of security for their intended outcomes. Furthermore, for the securitization process to create a threat from normal or political issues it needs to construct its own threats. Which is called *the Threat Construction* with a narrative.

It can be assumed that many different forms of security and safety are born from the existence of various threats. The study of securitization theory has produced a successful body of work and methods on the development of security risks. The theory has become more sophisticated, and empirical research has yielded intriguing insights on topics as diverse as immigration politics, health, climate change, and cybersecurity.[10] Given the increase in securitizing narratives in the latest political elections throughout the world, it is more important than ever to understand how social concerns become viewed as dangers.

The paper provides and argues that a novel method for researching this type of securitization by suggesting that securitization in such a particular context may be viewed as a highly context-dependent activity of negotiating the meaning of threats which creates a new framework for a situated discourse study of securitization by building on the

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[7] FLOYD, RITA: *Securitisation and the function of functional actors*. Critical Studies on Security 2021/9-2. 81-97. p.

[8] EROUKHMANOFF, CLARA: *Securitisation theory*. In: Stephen McGlinchey, Rosie Walters & Christian Scheinpflug (ed.): International Relations Theory. E-International Relations Publishing 2017. 105. p.

[9] ŠULOVIĆ, VLADIMIR: *Meaning of security and theory of securitization*. Belgrade Centre for Security Policy 2010. 1-7. p.

[10] BAELE, STÉPHANE J.–CATARINA P. THOMSON: *An experimental agenda for securitization theory*. International Studies Review 2017/19-4. 646-666. p.

developments of securitization theory and utilizing specific methods from framing theory.[11] The method for the construction of a threat is one of the main points of the securitization process. Understanding and the processing of an issue (it can be a political, cultural, economic or even natural problem) to be a threat to national security might be considered as the attraction line of the securitization theory.

Building any kind of narrative for use within the securitization process requires great work and a well-structured way of selling the idea of purpose or threat. Because it is only making sense that any way of making people or countries follow the processed way of policies goes through a competently made speech act. Imagining a way to transform an idea, a being or even an event into a threat is the beginning to make a narrative work. In this research's case the narrative of threat construction is the refugee crisis and the overflow of immigrants who are running from their countries to Europe to seek haven. An issue like refugees or immigrants is always easy to impose as a threat because the existence of an outsider is always making people cautious and gives them the feeling of fear.

Making everyone afraid is a great way to bind people to your cause and to set the needed policies by your deeds along with that provided threat and fear consumes the population with a direct need for more security while given the securitizing actor even more control and legitimacy over the narrative.

III. Brief History and the Impact of the Refugee Crisis

Since the start of civilizations on Earth's history immigration and seeking safety had been always there for humans. It is not a new thing, or it will never be going away, at least anytime soon. The continuing civil war in Syria over the past couple of years, which has left 22 million Syrians incredibly vulnerable, is the direct cause of the current crisis. The collapse of authority and their governments in Iraq, Afghanistan, Libya, and Eritrea has made the issue even worse. Because of the results of these events, millions of people became refugees, immigrants or asylum seekers for the sake of their lives or their loved ones.[12]

Furthermore, the majority of Syrian refugees have been travelling to Jordan, Lebanon, and Turkey in recent years, expecting to return home once the civil conflict in their country comes to an end. All the weight of the numbers caused by the internal strife of the Syrian Civil War overflow these countries but many of these refugees and immigrants sought even safer and stabile places such as Europe. Overall, globally, 89.3 million people were displaced from their homes by the end of 2021 as a result of war, violence, fear of persecution, and human rights violations. This is the highest number since World War II and more than double the 42.7 million individuals who were still forcefully displaced a decade ago.[13] These growing numbers of people who had been dislocated from their homes and who are seeking new and safer places rightfully drew the attention of many

[11] RYCHNOVSKÁ, DAGMAR: *Securitization and the power of threat framing.* Perspectives: Review of International Affairs 2014/2. 9-32. p.

[12] DRAGOSTINOVA, THEODORA: *Refugees or immigrants? The migration crisis in Europe in historical perspective*. Origins: Current Events in Historical Perspective 2016/9-4. 1-16. p.

[13] UNHCR- Global Trends. https://www.unhcr.org/globaltrends (accessed: 28.09.2022)

nations and organisation because this crisis would have and still have extremely negative impacts on human rights and the value of life.

Moreover, interest should also be drawn to the numbers of refugees and asylum seekers by statistical numbers. Given official numbers of people by The United Nations High Commissioner for Refugees (UNHCR) indicates that 69% of these people are coming from five main different countries. First one is the Syrian Arab Republic with 6.8 million people, second one is Venezuela with 4.6 million, third is Afghanistan with 2.7 million, the fourth one is South Sudan with 2.4 million people and the last one is Myanmar with 1.2 million people who are looking for safety which in total it makes 17.7 million people who had been dislocated from their home countries.[14]

Another important factor in this crisis is which countries are welcoming and housing the most refugees and immigrants. According to UNHCR, Turkey right now hosts 3.8 million refugees (official numbers) which makes it the most on the list and later comes Colombia which is with 1.8 million dislocated people. Uganda (1.5 million), Pakistan (1.5 million) and Germany (1.3 million) come after Turkey and Colombia in the list of the number of refugees in the most refugee-hosting countries in the world.[15]

These numbers reflect the dire situation of this crisis and maybe a broader understanding of why the EU is shifting its security policies and its collective security understanding all together. Because with this many numbers of people from all those different cultural backgrounds the host countries who are welcoming them would be receptive to fear. The fear and change with the coming refugees and immigrants' extreme numbers might reflect one of the EU's hosting country's fears over the disturbances in security, cultural strife, economy and social structure together. Just the best starting reasons for securitization and the democratization of fear for the ones who are wishing to hold or continue their powers. This research connects the obvious trends such as fear and xenophobia to create a better understanding of the securitization process which was the cause of the Refugee Crisis. Understanding and observing it through the framework of *the Securitization Theory of the Copenhagen School* delivers the larger picture of how and why the EU come to the terms of this process with its tools in the long run.

IV. FRONTEX: Is it a weapon or a tool against immigration?

For a threat to be directly securitized you need tools and what is a better tool that you can unite and utilize against many which have legitimized and modernized grounds. As it was mentioned in this chapter of this paper, the securitization process which was utilized by the EU opened the gates for collective securitization through immigration and the overflow of the coming refugees. However, to have more concrete answers for this process this study requires certain examples of the collective securitization strategy of the EU such as the FRONTEX (European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union).

[14] UNHCR- Refugee Statistics. https://www.unhcr.org/refugee-statistics/ (accessed: 28.09.2022)
[15] UNHCR- Refugee Statistics. https://www.unhcr.org/refugee-statistics/ (accessed: 28.09.2022)

FRONTEX was established by Council Regulation EC 2007/2004 on October 26, 2004, with the primary goal of organizing active cooperation among EU Member States to boost and support security at the EU's external borders.[16] This organisation in a sense was created to act as a border control effort by the cooperation of Member States of the EU but afterwards with the consequences of the Arab Spring and the Refugee Crisis of 2015, FRONTEX was transformed into a full border control agency through security strategies against coming refugees.[17]

Before this research dives into the protection/securitization dilemma of FRONTEX's existence as an organisation, there should be clarification of what kind of security building should be made. The reason for this clarification through security building is to put the distinction of how FRONTEX behaves against immigration in an observable sense. In brief words, for the safety of Europe and the EU, the interdiction is transformed into an ethically viable technique of border governance, rather than being viewed as a problematic (possibly fatal) tool of control, thanks to a narrative of "rescue".[18]

The narrative of rescue can be considered in this paper as the facilitating condition within the securitization process for further developing the overall security strategy for the EU. As a result, this might indicate the main attributes of FRONTEX's actions can be considered securitization practice. Another example of behaviour is that FRONTEX can be used within the hotspots of the migrant crisis to put pressure on and support the Member States against this.[19] Through this example of behaviour, it might be observed that FRONTEX is acting as a defence mechanism rather than a tool of rescue.

But how did the FRONTEX transform and evolved into such a mechanism for the securitization process through the years? Liability and blame shifting of the FRONTEX should also be observed and questioned and this is also one of the main points of this paper in general. Moreover, this research will investigate the transformation of FRONTEX and lay in the course how it became its current status at the moment.

V. Transformation of FRONTEX

Initially, FRONTEX was an autonomous regulatory body that had just been allocated the bare minimum of competence to enable the coordinated management of the EU shared border before and during the early months of the migrant crisis, as a result, the organization was only responsible for performing duties and was heavily reliant on the Member States' "goodwill" in carrying out their mandates, particularly in terms of

[16] Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 PE/33/2019/REV/1 OJ L 295, 14.11.2019, p. 1–131. Article 1.

[17] CECCORULLI, MICHELA – SONIA LUCARELLI: *Migration and the EU Global Strategy: narratives and dilemmas*. The International Spectator 2017/52-3. 83-102. p.

[18] MORENO-LAX, VIOLETA: *The EU humanitarian border and the securitization of human rights: The 'rescue-through-interdiction/rescue-without-protection'paradigm*. JCMS: Journal of Common Market Studies 2018/56-1. 119-140. p.

[19] CASOLARI, FEDERICO: *The EU's hotspot approach to managing the migration crisis: a blind spot for international responsibility?*. The Italian Yearbook of International Law Online 2016/25-1. 109-134. p.

manpower and resources.[20] However, this state of FRONTEX was all changed which was triggered by the Refugee Crisis.

In December 2015, EU Commission proposed to create the European Border and Coast Guard Agency against the threat of immigration crisis which the Council and the Parliament quickly approved at the beginning of 2016.[21] FRONTEX's first thorough overhaul was supplemented in November 2019 by the approval of a new Regulation[22] aimed at significantly enhancing the agency's function from it's past structure in the future. Which made it into a full border and coast guard for the EU against the coming over-flow of immigrants caused by the Refugee Crisis.

Legal grounds for FRONTEX's competence were introduced to the EU to adopt necessary means and legislations to fight against irregular immigration towards EU borders, basically introducing the implementation of an integrated management system for external borders is being phased in and also these legal competencies involved various policies over third nationals within the EU, such as guaranteeing the absence of any limits on individuals crossing internal borders, regardless of nationality, conducting checks on persons and effective monitoring of external border crossings which are part of Article 77 of TFEU.[23]

Furthermore, this transformation comes with a further legal arsenal to enhance FRONTEX to repel coming immigrants and refugees on a larger scale. This research considers given legal competence of the EU on FRONTEX as an arsenal (securitizing move through facilitating condition) because it states, "*The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings*."[24] The importance of this article stresses the possibility of the securitizing process even more because the given reason and competences can be used to enact the securitization over the coming immigrants through the speech act while giving the needed legitimacy within the FRONTEX.

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[20] MEISSNER, VITTORIA: *The European Border and Coast Guard Agency Frontex After the Migration Crisis: Towards a 'Superagency'?*. In: Johannes Pollak, Peter Slominski (ed.): The Role of EU Agencies in the Eurozone and Migration Crisis. 2021. 151-174 p.

[21] Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No. 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No. 2007/2004 and Council Decision 2005/267/EC [2016], OJ L251/1, p. 1–76. No longer in force, Date of end of validity: 31/12/2020; Repealed by 32019R1896. 14.09.2016. Article 6.

[22] Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No. 1052/2013 and (EU) 2016/1624 [2019], L 295/1, p. 1–131. 13.11.2019. Article 2.

[23] Consolidated version of the Treaty on the Functioning of the European Union PART THREE – UNION POLICIES AND INTERNAL ACTIONS TITLE V – AREA OF FREEDOM, SECURITY AND JUSTICE CHAPTER 2 – POLICIES ON BORDER CHECKS, ASYLUM AND IMMIGRATION Article 77 (ex Article 62 TEC) OJ C 202, 7.6.2016, p. 75–76.

[24] Consolidated version of the Treaty on the Functioning of the European Union PART THREE – UNION POLICIES AND INTERNAL ACTIONS TITLE V – AREA OF FREEDOM, SECURITY AND JUSTICE CHAPTER 2 – POLICIES ON BORDER CHECKS, ASYLUM AND IMMIGRATION Article 79 (ex Article 63, points 3 and 4, TEC) OJ C 202, 7.6.2016, p. 77–78.

FRONTEX has therefore advanced towards the end of the security continuum, which is marked by survival, existential threats, and militarization, in recent years. This has led to the EU's securitization of migration spiralling out of control.[25] Violations of human rights, turning a blind eye to the people who are in need and the over measures with a structured process of security against these refugees were just the start and this article will continue to discuss and will try to reflect the securitization process' existence over example cases, statistics and ideas through the changing dynamics of EU's foreign and security policy in details.

The EU must choose between upholding human rights and the rule of law and, on the other hand, a rising internal need to control migration in order to safeguard its stability from any threats. These choices compel the EU to adopt various methods for both internal and external security measures. The EU is taking three different tacks. To start, it is establishing fresh alliances with foreign nations to protect European borders and facilitate the repatriation of illegal immigrants. Second, it gradually connects the internal security of the EU with missions carried out in accordance with the CSDP (Common Security and Defence Policy). Thirdly, in order to expand border security and crisis management mechanisms to third countries, the EU uses FRONTEX and Europol in the neighbourhood of Europe.[26]

Furthermore, FRONTEX finally had success capitalizing on the frequent requests for humanitarian aid in relation to the immigration situation from several Member States. The agency has incorporated humanitarian discourse into its official communications, using it as justification for a steady expansion of its role, prerogatives, and resources at the expense of alternative actors in migration policy, rather than having the credibility of its role as a risk management agency tasked with anticipating and avoid possible migratory crises queried.[27] All these occurrences and modifications were included through the securitization process on an EU level. But these activities produce a paradoxical humanitarian act that more broadly defines the growth and change of the EU's shifting security policies and objectives.

Moreover, the courses of policies and transformations regarding the security policies at the point of this paper can be observed as shifting dynamism for a more securitized future by the EU through its taken laws and actions in general.

VI. Discussion

The process of securitization comes into the context of how the FRONTEX evolved and how it used to regulate the flow of refugees toward the EU's gates. Research at hand shows the gradual change and the intended transformation of FRONTEX in that regard. Basically, at the start FRONTEX was created and funded to be a border management

[25] LÉONARD, SARAH – CHRISTIAN KAUNERT: *The securitisation of migration in the European Union: Frontex and its evolving security practices*. Journal of Ethnic and Migration Studies 2022/48-6. 1417-1429. p.

[26] BENDIEK, ANNEGRET – RAPHAEL BOSSONG: *Shifting boundaries of the EU's foreign and security policy: a challenge to the rule of law*. SWP Research Paper 2019. 5-33. p.

[27] CAMPESI, GIUSEPPE: *Frontex, the Euro-Mediterranean border and the paradoxes of humanitarian rhetoric*. South East European Journal of Political Science 2014/2-3. 126-134. p.

mechanism to strengthen the cooperation between EU's member states but now especially after 2015 (because of the Refugee Crisis) this organization's pattern of behaviour and operations resembles the securitization of immigration, which this part of the paper will continue to open on this.

Furthermore, to emphasize the securitization movement of the organisation there should be mentions of the increases or decreases of budget and support, especially after 2015. Chronologically, FRONTEX's initial funding was EUR 6 million in 2005[28] later on with the effects of the Refugee Crisis it increased to EUR 302 million in 2017[29] and finally it became the EUR 754 million in 2022.[30] Overall, the increase of budget can be observed through these explanations and time periods but before 2015 there was a budget although after 2015 the growth of budget cannot be ignored. Which brings the suspicions of the process for the securitization of immigration even more relevant. The increase of budget for 2022 is almost more than 750 million EUR since its creation and this growth of support to FRONTEX might indicate the securitization process might still pull effective support from EU and the Member States.

Moreover, another important factor to pinpoint on the existence of securitization process through the example of FRONTEX is to observe the impact of their operations and their focus during those events. Firstly, the organisation's certain articles within the code of conduct during their operations and for their respectful staff should be explained briefly related to this research's topic.

For example, within Article 1 (*Objectives, scope, and subject matter*) of Code of Conduct of FRONTEX in general indicates that the organisation's goals include advancing the ideals of professionalism founded on the respect for basic rights and the rule of law as well as establishing the moral guidelines for everyone involved in FRONTEX activities. Also under Article 5 (International protection) FRONTEX is charged with promoting, in strict accordance with the principle of *non-refoulement*, that individuals seeking international protection are recognized, receive adequate assistance, are informed of their rights and relevant procedures, and are referred to national authorities in charge of processing their asylum requests while the organisation is also tasked with ensuring that individuals in its custody have proper access to health care and with paying particular attention to especially vulnerable populations of individuals.[31]

The further reasons why these given examples from the Code of Conduct of FRONTEX connects to their certain operations and how these operations do not live up to the FRONTEX's intended code when these operations faced with immigrants or refugees. The violations of human rights, pushing away refugees and immigrants who

[28] The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union Decision of the Management Board on the Budget of the agency for 2005, https://frontex.europa.eu/assets/Key_Documents/Budget/Budget_2005.pdf. (accessed: 28.10.2022).

[29] Statement of revenue and expenditure of the European Border and Coast Guard Agency (Frontex) for the financial year 2017 — amending budget No 2 OJ C 415, 5.12.2017, p. 9–11.

[30] Statement of revenue and expenditure of the European Border and Coast Guard Agency (Frontex) for the financial year 2022 2022/C 141/20 OJ C 141, 29.3.2022, p. 109–114.

[31] FRONTEX Code of Conduct, FOR ALL PERSONS PARTICIPATING IN FRONTEX ACTIVITIES, Article 5.

came to the borders or turning a blind eye to the people who are in need are reported to be seen during those operations of FRONTEX. One of the examples can be given as Greece's border abuses which were turned a blind eye by the FRONTEX against refugees who were running from third-world countries, organisation was investigating inside inquiries but failed to mention several cases regarding the human rights violations which were happening in the border which was reported by the Human Rights Watch.[32]

Another example of human rights violations by the FRONTEX can be found in the case of SS and ST v FRONTEX which was about in October 2016, the Syrian family, who had four small children between the ages of 1 and 7, submitted an asylum request to Greece. The municipal authorities recorded their request. Even so, the family was deported by FRONTEX and by the Greek officials eleven days later, and they put them on a plane bound for Turkey without allowing them to go through the asylum process. Additionally, no official order of expulsion was given and this case was the first case filed against FRONTEX.[33] The claimants claimed that Court should declare that FRONTEX act unlawfully.[34]Through this kind of case or the taken actions by the organisation public or international organisations might assume that FRONTEX's main aim could be shifted towards a more political rather than humanitarian way after the dangers imposed by the Refugee Crisis. There are many more cases like this one, turning a blind eye to the people who need assistance, pushing the refugees back through the borders of the EU or alleged misconducts within the organisation which does not align with FRONTEX's ethics or mission.

In addition to these proofs of discussions, one can assume that FRONTEX is both a scape goat and a tool for the EU and Member States to throw their problems at without much worry. Because at the end of the day EU and Member States can always shift the blames towards each other using FRONTEX as a cover which would drag their problems in a seemingly endless loop. One might assume FRONTEX is a genius tool or even a surgical instrument for a securitization process. Value of the process with this tool pusher higher the success rate and its legitimacy. Precisely that is why the FRONTEX plays a great role for the EU and the Member States to further securitize or even push back the refugees and immigrants.

VII. Conclusion

For a multinational organisation like the EU in the face of a crisis consisting of dangers such as the irregular flow of refugees and immigrants which might include branching layers of danger like terrorism or even biological issues, the EU needed to change and adapt its measures to answer these problems. Evolving and adapting is the essence for

[32] *Eva Cossé: Frontex Turns a Blind Eye to Greece's Border Abuses Internal Inquiry Only Exposed Tip of the Iceberg. March 10, 2021 Human Rights Watch*. https://www.hrw.org/news/2021/03/10/frontex-turns-blind-eye-greeces-border-abuses. (accessed: 25.09.2022)

[33] *Press Release: First Legal Action for Damages against Frontex Before The Court of Justice of the European Union.* https://www.humanrightsatsea.org/news/first-legal-action-damages-against-frontex-court-justice-european-union. (accessed: 28.10.2022)

[34] Order of the General Court (Ninth Chamber) of 7 April 2022, SS and ST v European Border and Coast Guard Agency, Case T-282/21, EU:T:2022:235, paragraph 4.

any kind of being or organisation to survive and in this paper's perspective EU's approach is a realist one but at the same time crashing with its ethical values because it is using securitization to adapt its policies with its Member States at the same time.

Through these changes and the extension of authorities, FRONTEX finalizes its transformation to its current self to this day. For better or worse, this paper considers the FRONTEX also within the EU's securitization process as an important component. Since, FRONTEX was an unimportant organization of the EU up until the immigration crisis' start and then it became transformed to the point of an important tool of immigration flow control through the EU's borders to combat this crisis in a rush with extensive resources and backing. Moreover, the EU's various implemented laws and regulations against the immigration crisis through the initial transformations of FRONTEX show sings of the securitization process is being implemented. Legitimacy and the support of Member States were always needed for the structuring of the securitization process on the EU level and these examples of regulated and directed EU laws on FRONTEX show that.

The framework of this article is the Securitization Theory of the Copenhagen School and because of that, the conditioning facilitators had to be identified. Furthermore, the chosen facilitator was the FRONTEX which was the securitization process' component. FRONTEX's example give an understanding of the EU's process of threat building and how it became used against immigration. In conclusion, the FRONTEX's initial transformation was a tool to counter the overflow of immigration coming to Europe but later on with the EU's changing security strategy it entered more of a securitization process which further proceed to become a measure against immigration.

ÖMER DOĞUKAN USLU

AZ EU BIZTONSÁGBA HELYEZÉSE A MENEKÜLTVÁLSÁG ELLEN

FRONTEX és átalakulása

(Összefoglalás)

Az Arab Tavasz pusztító hatásait követő menekültválság kezdete óta számos ország, például Szíria szenvedett belső konfliktusokat és polgárháborúkat. Ezen események hatására a térség lakói elkezdtek menekülni hazájukból, melynek eredményeként valóságos menekülthullám árasztotta el az Európai Uniót. A menekültek és menedékkérők heves félelmet keltettek az EU tagállamaiban, és egyes helyeken a félelemkeltés eszközeivé váltak. EU. A Koppenhágai Iskola elméleti kontextusba helyezte a folyamatot és annak hatását, és ennek kapcsán a nyilvánossággal szembeni félelem alkalmazása és a fenyegetettség konstrukciója az EU biztonság-koncepcióját is átalakította. A folyamat egyik aspektusa a FRONTEX reformja, amely a tanulmány központi kérdése. A FRONTEX működése az európai biztonság eszközeként az EU

területére érkező menekültek tömegével szemben az egyik szignifikáns védelmi lépcső. A szervezet átalakulása, és – tágabb értelemben – a nemzetközi védelem iránt folyamodókra gyakorolt hatása azt mutatja, hogy az európai biztonság kiépítésének folyamata átalakulóban van. A bevándorlás biztonságba helyezésével foglalkozó szereplők lehetnek uniós szervek vagy maguk tagállamok, amelyek migrációs politikája az uniós célokkal olykor szembemenőnek hat. A tanulmány összességében azt kívánka bemutatni, hogy ebben a folyamatban maga a FRONTEX hol helyezkedik el, és tevékenysége révén összességében milyen politikaformáló erőként tud erre hatni. Összefoglalva, a FRONTEX összekapcsolja az EU-t mint egységet és az egyes tagállamokat a biztonság elérését célzó folyamatban azzal a céllal, hogy a migrációs hullámot legitim módon kezelje.

PÉTER BENCE STUMPF*

The Effects of Ballot Access Requirements and Campaign Subsidies on Candidate Entry**

I. Introduction

Political competition has been considered to be a defining feature of democracies since Schumpeter's seminal work, Capitalism, Socialism and Democracy. He reversed what he called "the classical doctrine of democracy", the theory that individuals elected representatives to carry out their will in specific matters:

"And we define: the democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote."[1]

This extremely influential proposition was then used by Lipset who described democracy as such:

"Democracy in a complex society may be defined as a political system which supplies regular constitutional opportunities for changing the governing officials, and a social mechanism which permits the largest possible part of the population to influence major decisions by choosing among contenders for political office."[2]

Lipset suggested that this definition implied the existence of three specific conditions, namely (1) a set of rules specifying legitimate institutions, (2) incumbent political office holders and (3) their challengers struggling to gain power. Both Schumpeter and Lipset

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1 SCHUMPETER, JOSEPH ALOIS, – RICHARD SWEDBERG: *Capitalism, Socialism, and Democracy*. Routledge. London, New York (N. Y.), 2014. p. 269.

2 LIPSET, SEYMOUR MARTIN: *Political Man: The Social Bases of Politics. Expanded ed.* Johns Hopkins University Press. Baltimore, 1960. p. 45.

emphasized the role of institutions in the democratic process and its competitive nature. Other theorists greatly expanded on this minimalist definition, arguing that the democratic method involves more than the electoral race and does not end with government formation.[3] Whether one agrees with the more restricted approach of Schumpeter or prefers to extend the concept considerably, competition always remains a central element of the definition. Therefore, studying the nature of political competition is fundamental in understanding the democratic process. However, attitudes toward competition in general, both political and economic, are ambiguous at best. Market processes in western democracies are always regulated to some extent. For example, certain types of collusion, like forming cartels, is prohibited, negative externalities are punished by regulatory and redistribution measures. Similarly, there are certain restrictions that apply to the political market as well in many countries. There are specific rules applied to hate speech, campaign funding, or ballot access. This study is concerned with the effects of the latter two.

To appear on the ballot, candidates and political parties are generally obliged to meet certain requirements. Such conditions can be viewed as restrictions on political competition as they limit the potential challengers in contesting the elections: they *increase the barrier of entry*. At the same time, all democratic systems could be characterized as structures where competition, and thus potential challengers are incentivized, often subsidized, and are ultimately institutionalized. Political parties, both inside and outside the legislative body often receive funding from the state and the elected minority has access to necessary infrastructure and influence on the decision-making process. Such incentives and subsidies do the opposite of ballot access requirements – they *decrease the barriers of entry*. Clearly, these two elements of electoral regulation have the opposite effect and yet they coexist in the majority of countries. While in principle they contradict each other, in practice they can work well together due to the sequential nature of the electoral process: Those who have earnt ballot access may receive campaign subsidies. Those who had reached the funding threshold may receive public funds for their operations between elections. Those who had reached the threshold of representation may receive not only funding but also the power to influence decision making in the legislative body. Finally, those who achieved majority, gain the opportunity to form a government.

The question that has not been answered yet, is whether these measures and regulations are effective or even necessary? The goal of this study is to determine if these two, most common regulations on political competition are beneficial or if they unjustly distort the "free market of representation".

II. Theoretical framework

Ballot access restrictions are commonplace in democracies, and while we can only distinguish three main categories of conditions on candidate or party registration, the extent to which they limit competition varies widely.[4] The first type of restriction requires contenders to

[3] DAHL, ROBERT ALAN: *Polyarchy: Participation and Opposition*. Yale Univ. Press. New Haven, 1998.

[4] BISCHOFF, CARINA: *Political Competition and Contestability: A Study of the Barriers to Entry in 21 Democracies*. European University Institute. Florence, 2006.

prove their popular support by collecting signatures from voters, also known as petitioning. This requirement may constitute a substantial entry barrier if the minimum number of signatures is relatively high compared to the size of the constituency where they must be collected and/or each voter can only support a single candidate. It can further increase the difficulty of fulfilling the requirement if the timeframe of collection is narrow. The second type is a monetary requirement, either a fee that must be paid or a sum that is to be deposited by prospective contestants. The difference is that deposits are reimbursed if the candidate gains a certain share of the vote while fees are not. The third type, often presented as an alternative option for established political actors, involves nomination by a party that already has a seat in the legislative body. It should be noted that these are not the only requirements of appearing on the ballot. The most basic one is obviously passive suffrage, but even if that is sufficiently universal, a number of "implicit", administrative requirements are often present, some of these are related to the legal access conditions, others are independent from them. Paperwork must be filed, certificates presented, etc.

While ballot access and campaign subsidies involve separate periods during the electoral competition (although, depending on the system they may overlap), political science theorizes that they both affect a crucial part of the race, namely the decision of candidates or parties to enter. Research on the behavior of political actors supposes a strategic calculus on the part of the contestants before this decision. In his seminal article, Tullock compared the contest for political power to economic competition.[5] He considered governments as natural monopolies and leaving them under the control of a single political party leads to a despotic state. As he so aptly observed: *"In a sense, the whole point of democracy is to prevent this sort of "free enterprise."* The way we prevent this despotic monopoly is political, and specifically electoral competition. In his theoretical model, the central issue here is an extreme high entry barrier faced by the potential challengers. To decrease it, democratic countries have intricate systems in place to make sure that this barrier can be overcome including rules limiting the power of those in power and institutions providing rights, infrastructure, and funding for their competitors. In these terms, maintaining democracy means that we must constantly balance out the monopolistic tendencies inherent to government. Our toolset is vast but so are our challenges, and the task is complicated by the fact that very specific rules in this intricate system may have unforeseen consequences. A great example for such complications is the situation described by the cartel-party theory of Katz and Mair.[6] They present a pattern where a set of political actors maintain their position in the political system by relying on extensive state resources and legislative influence, and ultimately toning down competition through collusion. For the purposes of this study, the crucial element of cartel-party thesis is its implication for electoral competition. Theoretically, both subjects of the research, ballot access and campaign subventions, can be considered as instruments of cartel parties. The former probably more obvious as candidacy requirements can easily be tightened by the legislators to lock out challengers. For the

[5] TULLOCK, GORDON: *Entry Barriers in Politics*. The American Economic Review 55(1965) pp. 456–66.

[6] KATZ, RICHARD S. – MAIR, PETER: *Changing Models of Party Organization and Party Democracy: The Emergence of the Cartel Party*. Party Politics (1)1995, pp. 5–28.

latter, the effects are less clear, as public subsidies can open-up opportunities for new contestants and create a more leveled playing field. However, they can also provide another channel for cartel-parties to funnel tax-money into their capital-intensive campaigns. Obviously, this depends on the way campaign subsidies are introduced, mainly the generosity of the regime and the eligibility criteria.

The effects of ballot access requirements precede the actual political campaign and mainly influence the supply side of the electoral competition, that is it may deter or prevent the entry of potential contestants. The results of subventions are more complex, in the pre-campaign period generous subsidies may incentivize entry, while the lack of funding could effectively prevent it. During the campaign period however, it may level the playing field. This article focuses on what Gary W. Cox called *strategic entry*, asking the question: How does the interplay of these two factors influence the strategic calculus of potential contestants.[7] Cox builds on the well-established literature of political science that analyzes entry with abstract models of decision theory.[8] In this framework, the entry decision is positive when the product of the benefits of office (b) and the probability of success (p) is higher than the costs of entry (c) leaving us with the inequality $p * b > c$.[9] While this formula is quite straightforward, identifying what factors to include in the calculation is not a trivial pursuit.

The benefits of office are especially elusive, as much of the advantages of holding an elected position are not quantifiable – serving as a president or as a member of a legislative body even on a local level can provide a combination of authority, access to knowledge and resources, and also visibility and prestige to political actors, and the value of these bounties is not immediately obvious. It is important to note, that to a lesser extent some of these benefits, especially visibility and prestige, can be gained by simply running for the election. If there are generous campaign subsidies offered, simply entering the race promises certain benefits. For this very reason, the probability of winning may be less important than it seems – as for some actors, simply appearing as a contestant may provide enough incentive. Furthermore, in contrast with political systems like that of the United States, where elections are frequent due to mid-terms and a large number of directly elected bodies and offices, parliamentary systems often have only one national election every four or five years. Political actors who want to appear as viable contenders cannot really skip such opportunities, no matter the cost. Probability of winning is obviously a factor, and the choice of including it in decision theory models is perfectly justifiable, its importance should not be overstated. It could, however, influence the entry decision more when failure may cause additional damage e.g. to the image of the party or candidate. The costs incurred by entrants are varied but they are probably easier to define clearly. They include not only the monetary expenses of running but all aspects of the effort it requires to enter and run as a contestant. For a single candidate it requires a considerable amount of time and possibly certain risks caused by the heightened visibility, while in the case of a party, it may require a serious organizational effort, so

[7] COX, GARY W.: *Making Votes Count: Strategic Coordination in the World's Electoral Systems.* Cambridge University Press. Cambridge, U.K., 1997.

[8] FEDDERSEN, TIMOTHY J. – SENED, ITAI, –WRIGHT, STEPHEN G.: *Rational Voting and Candidate Entry under Plurality Rule*. American Journal of Political Science (4)1990, p. 1005.

[9] PALFREY, THOMAS R.: *Spatial Equilibrium with Entry*. The Review of Economic Studies (1)1984, p. 139.

much so that it may be prohibitive. In the case of local elections, where often an extremely large number of low benefit races are conducted simultaneously, parties can be deterred due to the extreme costs associated with the recruitment and management of thousands of candidates. This could be an explanation for the dominance of independent contestants and ad-hoc organizations observed in many countries on the municipal level of politics. From the above, it may be obvious that in this article, "costs of entry" is a misnomer, because the entire effort of entering and competing are considered.

Notably, there is a somewhat different approach relevant to the research presented here, that can be found in the works of Bartolini.[10] He analyzes competition, although it could also be understood as a study in strategic entry, focused on the *contestability* of elections. Although he arrived at somewhat similar conclusions as Cox regarding the factors influencing the entry decision, his approach to political competition is fundamentally different. He considered the direct analogy between economic and political competition flawed and summarized the differences in three points:

"Competition in politics is altered by the degree of collusion intrinsic to (1) the fact that the normative-legal capsule of competition is set by the same actors who are supposed to compete within it; (2) the achievement of the exclusive good of public authority; and (3) the multiplicity of political arenas. […] Economic theories of party competition ask to be judged by the accuracy of their predictions and refuse to discuss the realism of their assumptions. So far, after almost half a century of research, the issue is not the level of accuracy of such predictions, but more fundamentally whether they have anything to do with the objective facts of political life."[11]

To be fair, it must be noted that researchers of the public choice school of thought recognize many distinguishing features of political and economic competition. Without delving too deeply into this debate, Stigler already recognized an important difference: Political products, in the form of public policies, unlike goods and services encountered in the economic sphere, are mutually exclusive.[12] Consequently (and maybe mistakenly), failing to achieve majority by a small margin (e.g. gaining 49% of the seats) is often considered a failure in politics, while it could easily be characterized as a success in business, if the figure referred to the market share of the runner-up. Stigler does acknowledge that this approach is flawed as political outcome does not always range continuously between failure and success instead of a binary scale. This leads to the suggestion I had before, that the probability of a winning a seat may not be as influential if we consider other advantages of competing. On the other hand, Bartolini suggests that the high level of abstraction and simplification of decision-making models often distances them from political reality.

Regardless of his different approach and apparent distaste for the economic models, Bartolini's dimensions of political competition are somewhat congruent with the factors

[10] BARTOLINI, STEFANO: *Collusion, Competition and Democracy: Part II.* Journal of Theoretical Politics (1)2000, p. 33–65.
[11] BARTOLINI 2000, p. 437.
[12] STIGLER, GEORGE J.: *Economic Competition and Political Competition.* Public Choice (1)1972, pp. 91–106.

built upon decision making theory. These are contestability, availability, decidability, and vulnerability. Contestability includes the entry barriers, although in a much more flexible manner, as these are described to emerge from the structure of competitive interactions – political actors take strategic steps to prevent the entry of their rivals. Barriers to representation also belong to this dimension because it is not enough that anyone can run for office, at least some of them need to have a meaningful chance for success. Finally, the conditions of the race, like access to media and funding are vital to the fairness of the competition. Availability refers to the demand side of elections, the willingness of voters to change positions, to switch their votes – obviously, without this, entry into the race makes no sense. In a word where the alignment of voters is fixed, ceteris paribus (e.g. the composition of the voting age population does not change) the same election result would repeat over and over for eternity, and competition would cease. This extreme and unrealistic example illustrates how the stability or volatility of the vote defines competition. Decidability is the differentiation of the offer provided by the political actors, allowing voters to distinguish them from other alternatives. If the options presented on the ballot are virtually indistinguishable, then voting does not make any sense. Vulnerability refers to the strength of the incumbent candidate, as in Bartolini's model competition is always a contest between the incumbent and their challenger(s).

It is not necessary to accept Bartolini's negative assessment of the economic models developed by public choice theorists, to acknowledge the expediency of his framework. Factors influencing contestability, entry barriers increased by colluding political parties are some of the vital components of the cartel party thesis. Voter availability is examined in detail in the vast literature of voter behavior and volatility. Decidability is also related to a wide range of studies, however, in this case there are intriguing similarities with the research on second order elections, although it may require a broader definition of decidability. Reif and Schmidt[13] (1980) and Marsh[14] (1998) hypothesize that the structure and polarization of the party system has an influence of political accountability. Especially in multi-party systems, where a major actor is continuously in governing position, although with varying coalition partners, consequences of the vote become opaque: Selecting an alternative candidate may marginally change the composition of the government. Let us not forget that "the offer" presented by political parties and candidates at the election is often not just an alternative policy mix as it also has sentimental elements, involves moral values and long-term visions. Expressive voters who want to see national leadership aligned with their own values may be incentivized to vote by the chance of just adding a coalition partner to the reigning elite. Thus, decidability of the offer should encompass the clear consequences of the vote. Finally, a very relevant theory of incumbent vulnerability is directly tied to campaign subsidies. Traditionally, the strength of the party in power is assumed to be, at least in part, determined by economic performance. As Bichay points it out, public financing may significantly decrease the

[13] REIF, KARLHEINZ – SCHMITT, HERMANN: *Nine Second-Order National Elections - A Conceptual Framework for the Analysis of European Election Results.* European Journal of Political Research (1)1980, pp. 3–44.

[14] MARSH, MICHAEL: *Testing the Second-Order Election Model after Four European Elections*. British Journal of Political Science (4)1998, pp. 591–607.

incumbency advantage as the public subsidies provide a safe financial inflow to the parties regardless of economic conditions.[15] Bühlmann and Zumbach (2011) provide a good example of how these dimensions can be applied to empirical research, however, their work gives a comprehensive and thus necessarily low-resolution image of competition.[16] Research presented here is more specific to ballot access and campaign subsidies, although it is built upon a similar theoretical basis.

In democratic systems, political opposition operates in an institutionalized format, it is granted clearly defined rights during the legislative process and is often provided with at least some form of infrastructure and financing from public funds. While public campaign subsidies are not indispensable to this model, they seem to be a logical addition to it. If we do subsidize the operation of an institutionalized opposition then it is justified to also support its formation. Campaign subsidies are treated as a subcase of political party finance in scientific research, and rightfully so, however this often blurs the specifics of such regulations. Campaign finance, in a sense, precedes party finance, as eligibility for the latter generally requires achieving results at the polls. Several different models of political finance regimes can be distinguished ranging from the free market policies to a high level of state control.[17] Laissez-faire regimes have no or little regulations. A very minimal policy solution is to establish transparency requirements, obligating parties, candidates and donors to disclose income, spending and donor information. Setting contribution limits mean that the amount of funds (or indirect support) that can be accepted from a single, or a certain type of donor, is restricted and it can be considered the next step toward firm state control. The imposition of spending limits, ceilings on the amount of money that can be spent by political actors, are usually included in even stricter regimes. Campaign subsidies provided by the state stand furthest from the free market policies and they may be direct or indirect. The former refers to money provided to parties and candidates, while the latter often takes the form of free airtime and advertisement space. On the scale created by Norris and Abel van Es, none of these policies are present at the free market end and all of them are available at the state management end. A hypothetical extreme would be a funding regime that requires full transparency in terms of expenses (possibly in the form of a financial account managed by state authorities), a contribution ceiling that is effectively zero, and a spending limit equal to the amount of direct public subsidy provided to contestants. Under this made-up policy regime, perfect equality of financial resources can be achieved among eligible contestants. However, it would be quite difficult to argue for such a policy in real life. Under such strict state control, to have a proper, meaningful election campaign, where contestants can engage most of the population with their messages, would require a considerable amount of public funds and probably very strict eligibility conditions. Furthermore, it could potentially have a detrimental effect on democratic competition, based on the conclusions of the cartel-party theory.

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[15] BICHAY, NICOLAS: *Public Campaign Financing and the Rise of Radical-Right Parties*. Electoral Studies (66)2020.

[16] BÜHLMANN, MARC, – ZUMBACH, DAVID: *On the Multidimensionality of Political Competition: Measuring Political Competition in a Bartolinian Way*. In: 1st Annual Conference of the European Political Science Association (EPSA), Dublin, 16 June 2011 - 18 June 2011. https://www.zora.uzh.ch/id/eprint/53657 (accessed: April 23, 2020).

[17] NORRIS, PIPPA, – ABEL VAN ES, ANDREA*: Checkbook Elections? Political Finance in Comparative Perspective. First edition.* Oxford University Press. New York, NY., 2016. p. 15.

This leads to the debate that is most prevalent in U.S. politics regarding the liberalization or strict regulation of campaign funds. Those arguing against liberalization suggest that increasing state management in campaigns improving integrity by limiting the influence of donors over policy and increases fairness by leveling the playing field. These two arguments have obvious pairs in terms of policy tools: Transparency requirements and contribution limits would restrain donor influence, while spending ceilings and subsidies are supposed to level the playing field. A free market argument against the former could be that public scrutiny of the decision-making process should take care of such problems in the long-term. While the laissez-faire approach may seem idealistic at first, the practicality of regulations can also be questioned when it comes to decreasing corruption.[18] In terms of increasing fairness, the debate is more theoretical.

III. Hungarian context

The research described in this article was admittedly inspired by the case of Hungary. Beginning from 2010, an extensive legislative reform began in the country, made possible by the two-thirds supermajority of the newly elected right-wing governing coalition in the National Assembly. The reform involved the overhaul of numerous political institutions including the electoral system and related regulations. In the Hungarian mixed-member system, candidate and party list registration had complex requirements since the democratic transition of 1989. Candidates had to collect 750 signatures for their nomination in the form of small paper tickets. The registration of a party list required the successful nomination of a certain number of candidates in a specific regional distribution. In practice each voter was assigned a single ticket by mail making it impossible to support more than one candidate. After the new electoral act was enacted in 2011, the number of signatures necessary was decreased to 500 and they were to be collected in fewer but more populous constituencies. The tickets were abandoned for signature sheets issued to candidates by the National Election Office and citizens gained the right to support multiple candidates – as many as they want. Party list registration was again, tied to the number and territorial distribution of candidate nominations although the specifics were tailored to the new, simplified electoral system. Overall, nomination of candidates obviously became easier, more inclusive. Before 2010, 132 000 signatures were necessary for registering candidates in every constituency, aspirants only needed to gather 53 000.

At the same time, the framework of campaign finance regulation was completely redesigned. Previously, modest public funding for the election campaigns was available to parties. The total amount of money distributed among all the contestants was determined by the National Assembly in each election year. Interestingly, representatives decided on the same amount before each election, 100 million forints (approximately EUR 300 000 today). The share of each party was determined according to the number of candidates they nominated both in single-member constituencies and on party lists. The reform effectively removed this fixed upper limit of total campaign subventions.

[18] NORRIS 2016, p. 248.

Funding was again tied to the number of candidates nominated and successfully registered: The state budget provides 5 million forints to each single-member district candidate, and lists also receive a portion of this sum depending on the number of SMD candidates of the party. For a single party with candidates in all districts and also a national list, the state subsidies amount to approximately 700 million forints (approximately EUR 2 million).

With ballot access restrictions significantly decreased and subsidies dramatically expanded, in 2014, the number of parties and candidates running for office skyrocketed. While the inclusive registration requirements obviously lowered the barriers of entry, the effect of changes in the funding regime can be interpreted in two ways. One could argue that the costs of entry, and the costs of competing in the election were significantly lowered. Another, albeit more cynical narrative, is that the pay-off was drastically increased. Simply by running for office, even without any chance of winning, became a financially attractive endeavor. However, the political outcome was not what our theories of political competition would suggest. The number of actors who decided to enter the race did increase but final results do not indicate any increase in the intensity of competition. More than half of the seats in the Hungarian parliament, 106, are distributed in single-member constituencies. The remaining 93 are distributed among party lists in a proportional manner with the d'Hondt method but besides the votes cast directly for the party lists, votes spent on losing candidates and the margin of the winners are all transferred to the party list vote totals making it possible for a majority advantage to be carried over to proportional seat allocation. These rules support larger political actors and punish fragmentation mercilessly. As the Hungarian party system consists of a unified right-wing and an extremely fragmented center-left, the latter is in an inherently disadvantaged position. Low barriers to entry and increased payoffs exacerbate this situation by affecting the strategic calculus of political actors – potential allies are incentivized by the campaign funding regime to nominate candidates alone, and registration rules make such strategies easily attainable.

IV. Methodology and Data

To operationalize the theoretical framework, we need to determine the possible outcome of ballot access restrictions. The underlying assumption in this study is that such regulation is created to deter frivolous candidates and organizations from entering the electoral competition. The main issue here is that deciding which contender was frivolous is ultimately up to the voters. Donald Trump may have seemed frivolous when he announced his presidential bid but turned out to be a quite serious participant in the campaign and came out winning. Thus, categorizing candidates and parties manually, based on "expert opinion" would be quite questionable and the term frivolous does not seem to be a helpful category for the analysis. Our solution is to use two categories instead: viable and non-viable contenders. Political scientists fortunately possess a very

versatile tool to analyze electoral results, called the effective number of parties.[19] It is generally used to measure the concentration of votes in an election, but one interpretation of the ENP figure is "the number of electorally viable candidates".[20] This index can be repurposed for this study by calculating it for every constituency in the examined countries and dividing it with the number of candidates or parties participating in the election. The result of the division is the ratio of electorally viable candidates, given as a percentage, that functions as the dependent variable of the analysis. Our expectation is that strict ballot access requirements produce a high viability ratio, while low restrictions decrease the figure. The data for the calculation was obtained from the Constituency-level Election Archive (CLEA)[21] for the countries selected to be in the sample.

For the purposes of this research, data was collected on national level ballot access rules and campaign funding regimes of 27 European Union member states and the United Kingdom. One source of the information was the archive of the Office of Democratic Institutions and Humanitarian Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR, more commonly abbreviated as ODIHR). The organization deploys experts to OSCE member states to monitor and evaluate the organization and conduct of elections. The format of the deployment can be a full scale or limited election observation mission (EOM or LEOM), usually preceded by a needs assessment mission (NAM), or sometimes a small-scale election assessment mission (EAM) or an expert team. The outputs of these operations are reports on legislative, logistical and political aspects of national elections. These reports, publicly available in the ODIHR archive[22] provide an extremely useful database of electoral systems and campaign regulations with the added benefit that they are all available in English. Another invaluable resource was the Electoral System Change in Europe since 1945 project[23], the ACE[24] and IDEA[25] databases.

Ballot access restrictions as campaign funding regimes were used to construct one independent variable each. Nomination rules were homogenized by calculating the percentage of supporters needed in a constituency to register a party or candidate. For countries where a deposit is required, it was calculated what percentage of the voters had to donate 1% of the average salary to pay the sum. Due to the nature and low variability of campaign funding regimes, data was coded into a dummy variable, that distinguishes between the presence or the lack of public campaign subsidies. General public funding of political parties was not included in the data as it is not directly related to the entry decision.

Of the 28 countries examined, 19 has provisions for nominating candidates or party lists by collecting a predetermined number of signatures as a proof of public support. The payment of a fee or deposit is required in 13 countries. The important distinction between

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[19] LAAKSO, MARKKU – TAAGEPERA, REIN: *'Effective' Number of Parties: A Measure with Application to West Europe.* Comparative Political Studies (1)1979, pp. 3–27.

[20] VAN DE WARDT, MARC: *Explaining the Effective Number of Parties: Beyond the Standard Model*. Electoral Studies 45(2017), pp. 44–54.

[21] KOLLMAN, KEN, – HICKEN, ALLEN –CARAMANI, DANIELE – BACKER, DAVID – LUBLIN, DAVID: *Constituency-Level Elections Archive [Data File and Codebook]*. 2019. http://www.electiondataarchive.org.

[22] hwww.osce.org/odihr/elections (accessed 2019.10.03.)

[23] PILET, JEAN-BENOIT – RENWICK, ALAN: Electoral System Change in Europe since 1945. Université libre de Bruxelles. Brussels. (accessed: 2019.12.21.)

[24] www.idea.int (accessed: 2019.11.10.)

[25] www.aceproject.org (accessed: 2020.01.25.)

deposits and fees is that the former can be reimbursed and the latter not. However, repayment generally requires the political actors to achieve a certain vote share and for the small parties and candidates who fail to do so, the two are virtually the same. Some countries combine the two requirements: Austria, Bulgaria, Greece, Malta, the Netherlands, and the United Kingdom require both signatures and a monetary payment. In Ireland, prospective candidates can choose either.

In 10 countries, established parties already represented in the legislative body are provided with certain advantages over new political actors and independent candidates. Often, an alternative nomination requirement is available+6 for them, they are permitted to register lists or candidates with the support of standing members of the parliament. This option is available in Austria, Belgium, Germany, Luxembourg, and Slovenia. In Croatia, Italy, Lithuania, the Netherlands, and Spain, established parties do not gain automatic nomination, but they face lower requirements. In France and Sweden however, nomination does not explicitly require either a monetary payment or a proof of public support.

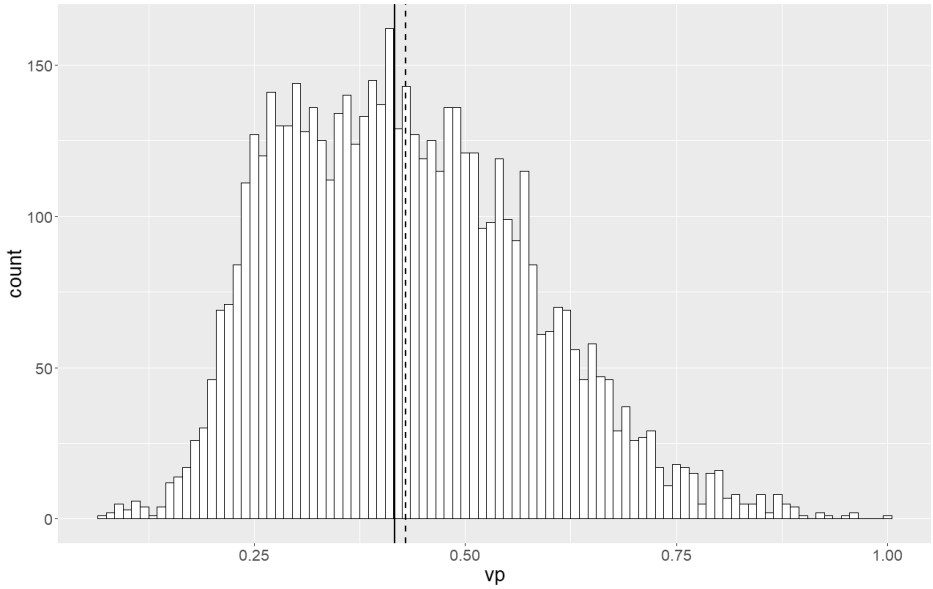
Overall, ballot access requirements do not seem to be especially restrictive. To compare signature and deposit requirements, the data for each country was standardized. For countries with signature requirements, the number of supporters necessary for nomination was expressed as a percentage of the average number of voters in the constituencies. To produce comparable data for countries where deposit requirements were in place, it was determined how many voters have to donate to the candidate, if everyone gave 1% of the median wage, then this number was again divided with the average number of voters in the constituency. This of course is merely an approximation of the effort necessary for nomination. While one could argue that getting people to sign nomination sheets is much easier than collecting donations, deposits may be covered by the candidates themselves or a small number of generous supporters. Wherever both requirements were present, the more difficult (higher calculated value) one was considered.

In terms of campaign subsidies, there are basically three different regimes in place: There are no public funds specifically provided for campaigning in 17 countries. In 8 states, candidates and parties surpassing a certain threshold receive a reimbursement for their expenses after the election. In 3 countries, there are pre-election subsidies available. Additionally, free airtime in television and/or radio is provided to political actors in 15 countries.

V. Analysis

The sample of countries examined include 5586 constituencies. The values for the ratio of viable candidates follow a normal distribution, with a mean of 42.96% and a median of 41.64%. Regardless of the electoral system used, the majority of candidates or parties participating in the electoral contest were not viable electorally.

Figure 1
Distribution of the ratio of viable candidates (vp). Source: Author's calculation based on CLEA data



The mean ratio of viable participants does not show statistically significant relationship with the ballot access requirements. In countries where ballot access requirements are non-existent (like France and to a certain extent Sweden), or very low like in the UK, the ratio of non-viable contenders shows quite high variability. In countries where restrictions are strict, the ratio of viable candidates can be 80% sometimes, indicating the ballot access requirements (see the variable "breq" in Table 1) are not especially effective at deterring them from running. Campaign funding regimes, due to their low variability, were used in the model as a control variable only, together with electoral system type.

Table 1

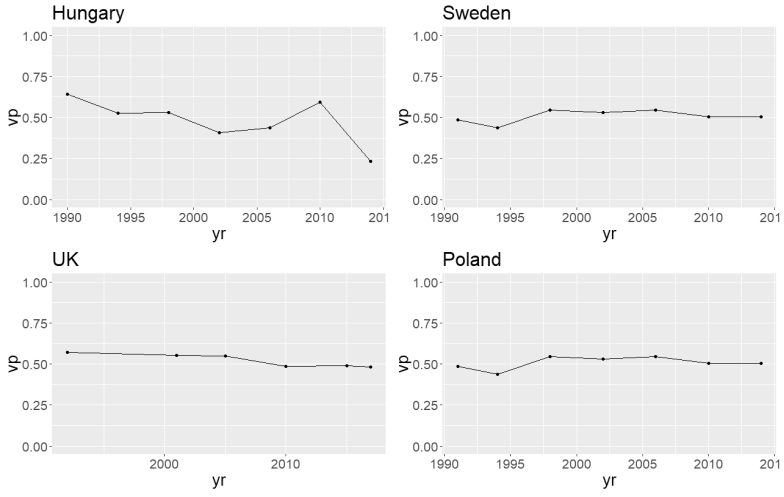
Viability ratio and ballot access requirements plotted with the linear regression line present. Source: Author's calculation based on CLEA data

Coefficients:				
	Estimate	**Std. Error**	**t value**	**Pr(>|t|)**
(Intercept)	0.44404	0.04215	10.534	< 2e-16 ***
breq	1.60043	2.56573	0.624	0.53348
fund	-0.09479	0.02929	-3.237	0.00141 **
sys	-0.1013	0.03922	-2.583	0.01051 *
Residual standard error: 0.2025 on 202 degrees of freedom		**Adjusted R-squared: 0.05704**		
Multiple R-squared: 0.07084,				
F-statistic: 5.134 on 3 and 202 DF		**p-value: 0.001923**		

The fact that no relationship was found in a cross-country analysis does not necessarily mean that ballot access requirements are irrelevant – the results of the analysis indicate that it is simply not the main driving factor behind candidate entry.

Figure 2

Change of the viability ratio (vp) over time in years (yr) in selected countries. Source: Author's calculation based on CLEA data



In Hungary, the ratio of viable candidates plummeted after the 2011 reform, after a continuous decrease during the first two decades after 1990. In Sweden and in the UK, it remained virtually the same. In Portugal, where the electoral system did not change drastically, the figure plummeted by the late 2000's. The main conclusion is that except for very specific cases, ballot access requirements are not the main influencing factor in candidate entry.

VI. Discussion

Apparently, ballot access restrictions fail to deter candidate entry in any meaningful way. On the other hand, they do not seem to distort competition drastically. Fees and deposits are often considered as contributions by the contenders to the organization of elections and thus have legitimacy regardless of their effects on candidate entry.

It is worthwhile to take a closer look at the measure used as an independent variable in the research. It is calculated by dividing the effective number of parties (ENP) by the number of contenders (NP). Its value increases when the number of candidates decreases (e.g. entry deterrence is successful) or when votes are fragmented, distributed evenly among any number of candidates. This explains why we see high values in the Hungarian data during the early 1990s. While there were many contenders who failed to gain seats in the National Assembly, votes were dispersed and did not concentrate on a few political actors. As voters began to gravitate towards the main parties, other candidates kept running for office, but they became less and less viable electorally, thus the figure decreased.

The results of this research definitely do not refute the main tenements of the entry calculus, but they do indicate that the most important entry barriers, the factors that drive up the costs of running are not ballot access requirements. However, these findings could be used as another argument for deposits instead of signatures. A deposit, even though it is reimbursed, is theoretically preventing frivolous candidates from running for office as a hobby with the bill footed by taxpayers. This study, however, seems to fall short of explaining campaign funding effects in detail since public subsidies are rare and are difficult to fit into quantitative models.

STUMPF PÉTER BENCE

A JELÖLTÁLLÍTÁSI KRITÉRIUMOK ÉS A KAMPÁNYTÁMOGATÁS HATÁSA A POLITIKAI VERSENYBE TÖRTÉNŐ BELÉPÉSRE

(Összefoglalás)

A piaci versenyhez hasonlóan a politikai verseny is erősen szabályozott környezetben zajlik. Az európai demokráciák többségében a jelöltek csak bizonyos követelmények teljesítése mellett kerülhetnek fel a szavazólapra. Nem csak a passzív választójogra vonatkozó szabályok korlátozzák az indulást, de olyan további feltétek is, mint meghatározott számú választópolgári ajánlás összegyűjtése vagy adott összegű kaució befizetése. A korlátozásokkal éppen ellentétes hatást fejtenek ki a kampányok költségvetési támogatásaira vonatkozó szabályok. Ezeknek a célja, hogy anyagilag is elősegítse a pártok és jelöltek indulását a választásokon, biztosítsa a rendszer inkluzivitását és serkentse a versenyt. Figyelemreméltó, hogy a legtöbb ország ennek a két ellentétes megoldásnak valamelyik kombinációját alkalmazza. Kérdéses továbbá az, hogy ezek a megoldások mennyiben érik el a kívánt hatást, képesek-e érdemben korlátozni az irreleváns jelöltek elindulását, vagy támogatni az új politikai szereplők belépését. A tanulmány 27 Európai Uniós tagállam szabályozásának áttekintése és elemzése után arra jut, hogy mind a jelöltállítási kritériumok, mind a kampánytámogatás csak minimális hatást gyakorol a választási versenyre. Az eredmények alapján megfontolandó, hogy leszámítva azokat az eseteket, amikor az indulás jelentős anyagi előnyökkel jár, a jelöltállítási szabályok különösebb következmények nélkül lazíthatók – akár elhagyhatók

ORSOLYA SZABÓ PALÓCZ *

Political Enemy-Construction through the 2020 COVID-19 Crisis-Narrative and the 2022 Russian-Ukrainian Conflict Narrative**

I. Introduction

Although the presence of certain techniques and methods of political enemy-construction within political discourses cannot be considered surprising to anyone remotely familiar with the nature of politics, deeper questions are posed by what roles these tools are playing and what *functions* they fulfil within the broader sense of the political sphere. Our understanding (and our perspective) varies greatly regarding these topics, but it can be considered a common ground between scholars of the field that these phenomena go beyond momentary political gain and/or simple campaign logic.

The aim of this paper is to shed light on these questions and to achieve a deeper understanding of how the phenomena of enemy-construction affect political processes and how they alter the prevailing political and power dynamics. The analysis places special focus on the alterations of said functions during times of crises, and how the character, attitude and respective decisions of the incumbent political leader might influence these changes. In order to achieve the abovementioned objectives, we examine two different case studies from the same political environment, with one being the governmental communication regarding the 2020 coronavirus pandemic and the other being the same governmental communication regarding the 2022 Russian-Ukrainian military conflict (within the context of Hungarian politics). To achieve an understanding of the role and mechanisms of enemy-constructing political narratives, first we must call upon the academic literature of Political Discourse Studies and Political Thinking, in addition to the findings and scientific approach of Political Leadership Theory, together with the doctrinal foundations of the regime classification theory most applicable to the political order of the post-2010 Hungary, Plebiscitary Leader Democracy.

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* tanársegéd, SZTE Állam- és Jogtudományi Kar Politológiai Tanszék

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Following a brief overview of the theoretical framework, the second half of the paper is dedicated to presenting the findings of the empirical analysis that attempts to determine whether or not the incumbent political leader, Prime Minister *Viktor Orbán* discursively altered the prevailing political realities and power dynamics, and – if that is the case – to identify the methods and techniques he used to do so. As a means to answer these questions public speeches given by the Prime Minister during the named crises periods were dissected by manual coding, focusing on the identification of the utilised enemy-images and the identification of the speaker's assessment of the developing crisis situation, while also examining the nature and style of the employed language and pinpointing the most relevant reference points presented as bases of legitimacy.

II. Theoretical Framework

Assigning someone the role of one's political enemy is inherent in the ways of political thinking, such as the utilisation of enemy-constructing political narratives and the application of certain linguistic techniques of enemy-construction are integral parts of political communication.[1] Similarly, it is among the most common traits of democratic politics that it provides the opportunity for a legalised and open competition between the political actors of the respective political community, whit that competition also being able to continuously rearrange the relations and boundaries within that community.[2]

In modern politics, political adversaries are not inherently given though, as the role is not predestined but created through discursive practices. Hence, it is the discursive process that constructs and deconstructs them within the political sphere. The environment in which these phenomena take place is not a neutral environment however, but the *constructed reality of politics* that is highly *symbolic* in nature, heavily burdened with *cultural determinations*, and *forcefully discursive* in essence. [3] Within this constructed reality, it is by nature that the symbolic instruments of power are playing an increasingly important role, just as the different *assessments* of certain political situations, competing *concepts of reality* and varying *knowledge-constructs* created and strengthened by them. As *Balázs Böcskei* points out, all these tendencies inherently carry the consequence that when perceiving the reality of politics, we inevitably have to take it into account that within it, different reality-perceptions exist. Therefore, we have to accept the existence of a certain fact-plurality and the persistence of competing concepts of reality. Consequently, he states, we have to acknowledge the legitimacy of such concepts and accept the fact that there is no one

[1] SCHLETT ISTVÁN: *A politikai gondolkodás története Magyarországon – Appendix.* Századvég Kiadó, Budapest, 2018. 42–43. pp.
[2] SZABÓ MÁTRON: *Diszkurzív politikatudomány. Bevezetés a politika interpretív szemléletébe és kutatásába.* Osiris Kiadó, Budapest, 2016. 303–304. pp.
[3] SZABÓ 2016. 469. p.

objective reality of politics – similarly to how during scientific investigations we can only count on the facts of the chosen scientific methods and models.[4]

In this context, the *language of politics* plays a particularly important role even within the symbolic instruments of power (the others being symbols, rituals and myths), as that is the main instrument in creating and implementing the abovementioned competing concepts of reality and the different belief- and knowledge-constructs. Additionally, the language of politics can be considered one of the most important tools in formulating cultural definitions and interpreting realities, since it not only conveys political communication but also functions as a *constitutive instrument* of politics and the power structures that define it.[5] This is also reflected on by *Gianpietro Mazzoleni*, who emphasizes the inseparable and interdependent nature of politics and speech, thus politics and discursive action, that also acknowledges the ability of political language to form its social-political environment.[6]

All these observations are in accordance with the scientific approach of *Márton Szabó*, one of the most prominent researchers of Political Discourse Studies. As he explains, man always acts discursively, while his actions are always imbedded within a certain language or textual structure.[7] Consequently, with regard to *enemy-constructing political narratives*, we can also state that they can be considered as actions carried out by words, that aim to identify and define a common enemy, while often utilising certain performative elements to achieve and strengthen that aim. As it is concluded by *Gábor Pál*, political enemy discourses are therefore a complex web of violent actions of speech.[8] It is of utmost importance however that we separate all this from the phenomenon of *hate speech*, that is a verbal expression of collective negative and often violent emotions, that is able to transform the language of politics into an active political force that can become a component of actual wartime discourses.[9] In contrast to this, the "war rhetoric" often emerging within enemy-constructing political discourses is considered a metaphorical utilisation of the language of politics, not a complete a transformation of it. [10]

All this falls in line with a special characteristic of political thinking itself, namely that it is always aimed to achieve some kind of action. As *István Schlett* explains in his extensive work on the subject, it is to attain this capacity of action that is the main driving force of political thinking. According to him, the *differentia specifica* of political thinking

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[4] BÖCSKEI BALÁZS: *„Tények utániság" mint a politika normális állapota.* In: Horváth, Szilvia – Gyulai, Attila (szerk.): Dialógus, vita, diskurzus. Tanulmányok Szabó Márton diszkurzív politikatudományáról. MTA TK PTI – L'Harmattan Kiadó, Budapest, 2019. 37–47. pp.

[5] ZENTAI VIOLETTA: *Politikai antropológia: a politika antropológiája.* In: Zentai, Violetta (szerk.): Politikai Antropológia. Osiris Kiadó – Láthatatlan Kollégium, Budapest, 1997. 9–36. pp.

[6] MAZZOLENI, GIANPIETRO: *Politikai kommunikáció.* Osiris Kiadó, Budapest, 2006. 102. p.

[7] SZABÓ 2016. 20. p.

[8] PÁL GÁBOR: *A politikai ellenségképzés és a politikai erőszak kérdésköre Szabó Márton írásaiban.* In: Horváth, Szilvia – Gyulai, Attila (szerk.): Dialógus, vita, diskurzus. Tanulmányok Szabó Márton diszkurzív politikatudományáról. MTA TK PTI – L'Harmattan Kiadó, Budapest, 2019. 166. p.

[9] BUGARSKI, RANKO: *A háború és a béke diskurzusa*. Fosszília 2004/3. 132–145. pp.

[10] As for the classification of contemporary hate speech, Pál identified four categories in which the phenomenon can be studied. According to him, these are the 1) societal, 2) the political-ideological, 3) the legal, 4) and the abstract-scientific contexts, with all bearing different characteristics. PÁL GÁBOR: *A vitathatóság keretei: A gyűlöletbeszéd fogalmának jelentésmezői és a kérdéskör metaforizációja a magyar politikai diskurzusban.* MTA TK PTI, Budapest, 2015. 6–28. pp.

– that is, in this context, one of the structural components of politics – can be grasped in its role in political action. In order to achieve this capacity of action with regard to the whole political community, political thinking, in all instances, have to cover the following questions: 1) it has to assess and interpret the prevailing/current political context and – closely related to that – 2) to articulate the desired course of events, therefore declare long- and short-term goals for the community. It also has to 3) map out the possible realisation of the declared aims and designate the necessary tools to their implementation (therefore formulating a political manifesto), and 4) to appoint a group of people most capable of realising the declared goals and dealing with the arising problems most efficiently. The latter aspect inherently includes the aspects of self-identification, as *Schlett* points out, political action is not only oriented *for* something but also *against* something. Therefore, political thinking has to identify the enemies of the declared goals (thus the enemies of the whole community), it has to analyse and interpret said enemies' actions, it has to identify their goals and motives (while also assessing their opportunities and abilities to realise those goals), and it has to pinpoint their weaknesses (while developing counterarguments to their reasonings). As we can see, the designation of the role of the enemy within political discourses is not necessarily an arbitrary phenomenon, but an integral part of the self-identification process, therefore it is also an integral part in attaining the *capacity of action* in the context of the whole political community.[11]

In addition to the nature of political language and political thinking, in order to achieve a deeper understanding regarding the mechanisms of enemy-construction, we also have to consider how different crisis situations alter or amplify these tendencies. Since crisis situations (or their interpretations thereof) are closely related to the situation-assessment of the incumbent political leader, the art of leadership itself can be considered as a complex act of storytelling, in which the leader connects their own interpretations to certain political events, while also designating different narrative roles to the relevant political actors – including their own role and the roles of those opposing them.[12]

Within this construct, the measure of reality for the political leader can be grasped through the reality-perception of their audience. Therefore, political success can be determined by whether or not, and to what extent, the constructed narrative align with the experiences and the reality-perceptions of the audience, and with the political and cultural climate of the time. Political reality hence is defined by the dynamic relations between narratives created by the leadership and experiences gathered by the people.[13]

In his work analysing the migration-narrative of the Prime Minister (*Viktor Orbán*), *Rudolf Metz* quotes the approach of *Keith Grint*, who states that the narratives of political leaders can be characterised by answering five questions.[14] Four among these five

[11] SCHLETT 2018. 41–49. pp.

[12] GARDNER, HOWARD: *Leading Minds: An Anatomy of Leadership*. NY BasicBooks, New York, 2011. KÖRÖSÉNYI ANDÁS – ILLÉS GÁBOR – METZ RUDOLF: *Contingency and Political Action: The Role of Leadership in Endogenously Created Crises.* Politics and Governance 2016/4(2). 91–103. pp. MOLNÁR IVETT: *Válságértelmezés és ellenségképzés a politikai vezetői narratívában.* Politikatudomány Online 2020/1. 39–67. pp.

[13] METZ RUDOLF: *A kis-nagy ember: G. W. Bush és a 9/11-es terrortámadás.* In: Körösényi, András (szerk.): Viharban kormányozni. Politikai vezetők válsághelyzetekben. MTA TK PTI, Budapest, 2017a. 218–239. pp.

[14] METZ RUDOLF: *Határok nélkül? Orbán Viktor és a migrációs válság.* In: Körösényi, András (szerk.): Viharban kormányozni. Politikai vezetők válsághelyzetekben. MTA TK PTI, Budapest, 2017b. 240–264. pp.

questions (e.g., building an identity, interpreting the situation, creating a vision of the correct order and choosing applicable tactics to achieve it) show significant overlap with the questions defined by *Schlett* regarding the essence of political thinking, while the fifth element introduces the concept of reasoning behind the declared goals and methods, in close connection with the aspect of mobilisation of the followers. This latter aspect once again emphasises that the most relevant measure of efficiency regarding the narratives of political leaders is not based on their truthfulness, but their level of persuasiveness. Consequently, within this framework, political leadership – just as political reality itself – can be considered as a social construct, that is determined by the joint actions of the leader and their followers.[15]

Accordingly, we can state that the alteration of political reality through discursive action is an inherent part of political leadership. This also hold true however regarding the alterations of crisis situations themselves, considering that the incumbent political leader is not only able to *react* to an emerging crisis but also has the ability to endogenously *create* one, based on their personal abilities and room to manoeuvre within the given political context.

Consequently, the actions and interpretations of the political leadership in these situations can greatly affect how different political actors will adapt their narratives, especially concerning the choices made by the incumbent political leaders to resolve the crisis at hand. *András Körösényi* and his colleagues developed a conceptual-descriptive typology to describe the potential relationships and interactions between crises and political agency. Each type is helpful in enlightening different types of crises. Although the authors focus on incumbent leaders who led crisis governments that could "make things happen that would not happen otherwise", they also provide a general typology of contingency. The authors describe it as the relationship between political agency (understood as leadership) and structural change (understood as a crisis). According to them, contingency can function both as an external challenge for political action and/or as its constitutive element. As they put it: „contingency can be both the background condition and a constitutive element of political agency."[16]

As a theoretical starting point, they assume that there is contingency in every political situation, when the extent of it is low in every aspect however, we can speak of a normal state of affairs, when conventions are not challenged – neither by an exogenous shock nor by political actors. However, things are significantly different when a high level of background contingency is present. Certain events (typically of exogenous nature, such as economic crises or natural catastrophes) cast doubt on conventions questioning the current rules and norms. In such cases, interpretations of political leaders gain extraordinary importance as they naturally attract more *attention* than the average political actors' explanations for the given situation.[17]

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[15] GRINT KEITH*: Problems, Problems, Problems: The Social Construction of 'Leadership'.* Human Relations 2005/58(11). 1467–1494. pp.

[16] KÖRÖSÉNYI – ILLÉS – METZ 2016. 95. p.

[17] MERKOVITY NORBERT: *Introduction to attention-based politics.* Przegląd Politologiczny 2017/4. 61–73. pp.

As *Körösényi* et al. explain, in an analytical sense, political leaders have two choices in political situations when the level of background contingency is elevated: 1) to try to resolve the crisis within the framework of the existing paradigm and therefore to immediately reduce contingency or 2) to challenge the existing paradigm and offer new meaning of the events, therefore *redefining the crisis* and temporarily inevitably raising contingency. This approach considers the possibility of political actors deliberately increasing the stakes of the given situations through political actions and interpretation.[18]

Within a redefined crisis, the crisis narratives of the political leadership and the mechanisms of political enemy-construction meet naturally, as the designation of certain narrative roles – especially the role of the *scapegoat* – is not only part of the situation-assessment process, but is also a technique for questioning the conventions of the current political order, that can be used to alter the prevailing political or power structures and to broaden the political leaders' room to manoeuvre. Political enemy-construction therefore is not only an inherent part of political processes, but it can also function as a means for political gain.

The first step in transforming enemy-construction into political gain is that the political leader has to *declare* the current political situation as a *crisis* – regardless of whether said crisis was originated from an exogenous shock or endogenously created. By this declaration. the political leader undermines the sense of security of its followers by appealing to their natural fears. The next step is when the speaker designates the narrative role of the *scapegoat*, explicitly and unmistakeably declaring who is to blame for the emerged crisis situation – therefore creating the image of a common enemy. This is followed by the creation of a narrative that places the speaker (the charismatic political leader) as someone who holds exclusive competence over fixing the situation, diverting the crisis and therefore restoring the lost sense of security. The consequently developing narrative construct that is now completed by the creation and designation of the role of a *saviour* is utilized in increasing the leader' supporter base, that is ultimately tested via the next elections: a successful narrative internalised by the audience transforms the election process into a personal yes-no question about the incumbent political leader, reminiscent of the working mechanisms of a plebiscite. Finally, as a concluding step for this cycle, the speaker can utilise the narrative to legitimise both their past actions and future plans, ultimately restarting the cycle once more by labelling another situation as a crisis.[19]

It is also worth noting that the increasing importance of special legal orders (both in a legal and in a political sense) can be considered as the manifestation of effects caused by crisis narratives within the structure of the political system, as the increasingly frequent modifications made regarding the regulation of these legal orders is effectively blurring the line between the normal state of affairs and a crisis situation.[20] These tendencies are tending to strengthen the citizens' sense of a permanent crisis situation, making it even easier for a political leader to successfully execute the abovementioned process of

[18] KÖRÖÉNYI – ILLÉS – METZ 2016. 95–100. pp.
[19] MOLNÁR 2020. 45. p.
[20] KÖRÖSÉNYI ANDRÁS – ILLÉS GÁBOR – GYULAI ATTILA: *The Orbán Regime: Plebiscitary Leader Democracy in the Making.* Abingdon, Oxon; New York, Routledge, 2020. 125–127. pp.

transforming enemy-construction into political gain, and therefore broadening their room to manoeuvre.

III. Case Study

1. The COVID-19 crisis narrative

The first part of the empirical analysis consists of the closer examination the different speeches, interviews and statements made by Prime Minister *Viktor Orbán* between 1st of September 2020 and 31st of December 2020.[21] The analysed timeframe was selected based on the fact that it fell at the beginning of the second wave of the coronavirus pandemic, and based on the premise that due to the preceding period of relative quiescence, the incumbent political leadership had the opportunity to develop a well-considered narrative that is able both to reflect on its performance during the first wave and to develop an action plan in preparation for the second. By choosing this transitional period as the subject of the analysis we are able to offer a wider spectrum for examination. Within this timeframe, forty different speeches of *Viktor Orbán* were uploaded to the official website of the Prime Minister, hence these constituted the base corpus for the textual analysis executed by manual coding. Any statements made during the analysed period, but not appearing on the official website were however excluded from the analysed material, since the aim of the research was to specifically focus on the aspects of the *official governmental narratives*. The main focus of attention was to identify the utilised enemy-images and designated narrative roles, while also pinpointing the main points of reference regarding the legitimisation of certain governmental actions executed during the first wave of the pandemic or planned to be executed during the second one.

Most of the quotations and illustrative examples used within the scope of this paper for the sake of demonstrating certain aspects and narrative techniques used by the speaker were typically selected from the mong the prime minister's most perceptive, comprehensive, programmatic speeches and interviews of *Mr. Orbán*. This is also important to note since – especially in contrast with some shorter statements – these extensive materials could form a basis for a possible future qualitative analysis.

Based on the empirical analysis we can clearly identify each of the steps that *Molnár* defined as different phases of how the political enemy-construction can be transformed into political gain.[22] Regarding the assessment of the situation, Prime Minister *Viktor Orbán* clearly and unequivocally declares that the crisis caused by the COVID-19 pandemic is of exogenous nature as it was "dragged in" from abroad, referring to the fact that the pandemic was first diagnosed among international university students studying in Hungary – albeit testing was rather scarce back then, therefore it cannot be declared that they were the first ones to contract the virus, only that they were the first ones tested positive. However, by

[21] Supported by the Únkp-21-3 New National Excellence Program Of The Ministry for Innovation and Technology From the Source of the National Research, Development and Inno-Vation Fund.

[22] MOLNÁR 2020. 45. p.

placing the blame on foreigners, the Prime Minister also undermined the authority of foreign countries both implying and clearly stating that those "other countries" performed poorly in defending themselves – and consequently, us – against the pandemic. By contrasting these countries with Hungary's defence mechanism responses to COVID-19 during the first wave the Prime Minister also strengthened his role and authority, presenting and interpreting his own actions as undeniably successful ones.

„The second wave of the pandemic is here, and we are in it. It has arrived, as it could be expected, and as we rightly expected it so. Just as the first one, this wave also came from abroad. It was dragged to Hungary from abroad. This is a global pandemic, and we are living in a globalised world, where we not only receive our share from the benefits, but we also share the challenges posed by the pandemic. In Spring, Hungary's defences were at place. We were among the 25 most successful countries. Others could not push back the virus as efficiently as we did, so the epidemic got another chance to come back." (*Viktor Orbán*, 21.09.2020.)

As the quote illustrates, while interpreting the declared crisis situation the narrative also designated the role of the scapegoat that, however, forms a significantly more complex and chiseled construct. The source of this complexity can be explained by the observation that while pointing out the designated scapegoat the narrative combines a series of interconnected enemy-images, using both external and internal, as well as concrete and abstract images. Among the external enemies there are, of course, the abovementioned foreign countries, together with the European Union, its internationality and even some of its representatives (such as *Věra Jourová*, for example). Some of the internal enemy-images appearing in preceding governmental narratives also make a return, such as the domestic opposition (mainly the national left), its liberal ideology or the character of Hungarian-born American businessman and philanthropist *George Soros*. Therefore, we can observe that both in the case of external and internal enemy-images, we can identify abstract ideas and specific individuals as well, with the latter ones being utilised as "the faces" of the abstract ideas, as they are personifying them and giving them a distinct character that can be blamed for the crisis that has developed.

"(...) we will not have peace from the left either, that cannot be counted on, not even now during the greatest difficulties, during a global pandemic. Only the drilling and backstabbing, the weakening of national forces and unity, sniping at the experts and political leaders managing the country's defences, betrayal, treachery and snitching in Brussels, scheming and scheming. That is the left that what we got. In addition, they are now entangled with Jobbik. Now they are fermenting together in one mason jar. One does not know whether to laugh or cry. (...) Their tool is the already repeatedly failed left, whose leader is Ferenc Gyurcsány [former Prime Minister], whose youth organization is Momentum, and whose billionaire sponsor is George Soros. They are the forces of the past who already destroyed this country once." (*Viktor Orbán*, 21.09.2020.)

It can also be observed however that the complexity of the utilised enemy-images is fitting into one overarching scheme, by interconnecting all the individual images within

an extensive web of enemy-images.[23] By combining the individual enemy-images into several groups of interwoven enemy-images they can appear as posing a significantly larger threat then what could have been achieved by utilising the individual enemy-constructs.

"(…) the Hungarian opposition is really crushed and stuffed together from the extreme right to the communists, and now they are all existing within one gut, and I cannot name it after anything other than their financier who is behind it all, and that is George Soros, that's why I call it the Soros sausage." (*Orbán Viktor*, 08.10.2020.)

One of the most frequently occurring group of enemy-images originates in connecting the national left (that the narrative already blurred together with the Jobbik opposition party that is a far-right formation) with the international left (also referred to as "Brussels' bureaucrats"). This construct is advanced further by the addition of the enemy-image of *George Soros*, who appears both as an ideological mastermind and as a financial sponsor, and whose person is inevitably connected to the NGOs he supports (and/or the NGOs that are believed to be supported by him), together with the causes and ideologies represented by them, regardless of exceedingly varying nature of these causes (such as supporting LGBTQ+ rights or helping refugees).

"Schools should protect the idea and the values of family and keep gender ideology and rainbow propaganda away from minors. Liberals see all this as the dark ages at best, clerical fascism at worst (…)" (*Viktor Orbán*, 21.09.2020.)

By connecting the individual enemy images in this way, the narrative creates a construction in which it is enough to recall only one of the utilised enemy images, since the audience automatically associates the other elements of the enemy-image group with it, thereby automatically increasing the level of threat represented by each individual element of the group. This technique is also an effective strategy in terms of capturing and maintaining the political attention of the audience (that is perceived as a resource limited by time and space[24]), since brief campaign messages focusing only on one element of the group also carry the sense of threat associated with the group as a whole. Therefore, shorter, concise messages that are more attention-grabbing are also capable of conveying the entire message without the detailed logical derivation. Hence, as we can observe, the narrative organizes its groups of enemy-images around certain key words and expressions (just as *George Soros*, "the fallen left", etc.) that are able to invoke all the associated meanings as well.

"We all aware of the fact that Ms. Jourová is George Soros's man, or to put it more blatantly, that she eats out of his hand. We have always known this, so Věra Jourová is George Soros's man in the European Commission. She does not represent the Czech Republic, not even the Czech people, not even the European people, and not even the

[23] The gradual interweaving of the individual elements of the enemy-images within the Hungarian governmental communication was also studied by Viktor Glied who graphically traces back the causes of the success of the applied populist communication style and its historical-political context. GLIED VIKTOR: *The Populist phenomena and the reasons for their success in Hungary.* Politics in Central Europe 2020/16 (1). 23–45. pp.

[24] MERKOVITY 2018. 48. P.

Committee, she represents George Soros. Such is the situation, such is European politics." (*Viktor Orbán*, 08.10.2020.)

In addition to the abovementioned tendencies, the narrative assigns a strong threat factor to the groups and networks of enemy-images it had created, according to which each of those represents a serious existential threat to the community and its values, both shaking the audience's sense of security and creating a narrative situation in which the speaker can unquestionably assume the role of *saviour*. This aspect is further strengthened by the fact that the perceived threat is directed towards abstract, symbolically charged elements, such as *Hungarian national identity* and *Christian values*, that, due to their symbolic connotation, are more capable of evoking emotions and encouraging *action*.[25]

"Nowadays, the biggest threat to national self-determination is posed by the global network that promotes a global, open society and wants to abolish national frameworks. The goals of George Soros' network with its unlimited financial and human resources are clear. To create open societies with mixed ethnicities by accelerating migration, to break down national decision-making and put it in the hands of the global elite." (*Viktor Orbán*, 21.09.2020.)

The aspect of the restoration of the lost sense of security appears on two levels within the examined materials. Regarding the short-term, more tangible aspects, the narrative emphases the government's preparedness for the second wave of the coronavirus pandemic, while in the aspect of the long-term security, the narrative explicitly connects its realisation to the governing parties' successful performance in the upcoming elections.

"(...) not even one Hungarian person will have to suffer or die because the healthcare system is overwhelmed and/or cannot provide them with adequate care. Hungarian healthcare is capable of protecting every Hungarian life." (Viktor *Orbán*, 12.09.2020.)

With this more distant aspect, the narrative essentially connects the aspect of the restoration of the lost sense of security with aspects of gaining political advantage and social support, since the connection of the two appears at the level of explicitly declared words as well. All of this is also complemented by a metaphorical-rhetorical language of war that links the possibility of restoring the normal state of affairs and the protection of the supposedly threatened values to the success of the war waged against the coronavirus and the designated enemies.

"They are preparing for a decisive clash in 2022. Backing them, there will be the international media, Brussels" bureaucrats and NGO organizations disguised as civilians. There can be no doubt that they will do anything for power and money. It is time for us to stand up as well. After the difficult years of governance, we must return to the electoral battlefield. Now is the time to gather and to call our banners so that we can ride out at the right moment. A big battle awaits us in 2022. Get ready." (*Vitkor Orbán*, 21.09.2020.)

[25] ZENTAI 1997. 23–24. pp.

In addition to the clear legitimizing aspects of the successful participation in the parliamentary elections, almost all of the analysed texts also refer to the National Consultation as a confirmation of the correct direction of the prevailing governmental policy, which is typically linked to the emphasis that – in contrast to the actions taken during the first wave – there is no need for more serious closures during the second wave or to expect any serious restrictions due to the epidemiological situation.[26]

"I am not alone at this fight as I have one million eight hundred thousand people by my side, I would also like to thank them, to thank everybody who sent back the National Consultation questionnaire and therefore appointed the desired direction of our defence, which is completely clear. The direction of the defence says that Hungary should function normally. The people expect the government, they expect me, the healthcare system, and those involved in the economic management to keep Hungary in a functional state and not allow the virus to paralyze the country and the everyday life of Hungarians again." (*Viktor Orbán*, 12.09.2020.)

All of this contradicts the nature of actual governmental decisions within the analysed timeframe, since during that period the government tightened the rules for crossing the border, banned gatherings and mass events, and introduced a curfew between eight P.M. and five A.M. At the same time, more serious legislative amendments were introduced, such as the *Act CIX of 2020 on the Containment of the Second Wave of the Coronavirus Pandemic* (also known as *Second Authorization Act*), as well as the 9th Amendment to the Fundamental Law – which, in addition to significantly increasing the government's political room for manoeuvre, also regulated matters and issues that were only tangentially (or not at all) related to the crisis situation at hand, yet in certain ways limiting the rights and freedom of movement of the groups branded as hostile by the narrative. One of the most plausible examples of this are the clauses restricting LGBTQ+ rights (especially regarding adoption) or the insertion of an additional paragraph into Article 38 of the Fundamental Law as a result of which the regulation of public funds can now only be modified with a two-thirds majority that significantly narrows down both the political and financial room for manoeuvre of the next government even in a hypothetical case of a change of administration.[27]

2. The crisis narrative of the Russian-Ukrainian military conflict

The second part of the empirical analysis is focused on the timeframe between emergence of the Russian-Ukrainian military conflict (that can be dated to the 24th of February 2022), and the Hungarian parliamentary elections held shortly after (3rd of April 2022). This

[26] In July 2020, the government launched a National Consultation on the coronavirus and the "restart" of the economy, the questions of which were primarily aimed at mapping citizens' attitudes towards governmental measures related to the handling of the epidemic. It is important to note however that the results of the National Consultation are not suitable for reflecting the opinion of the entire population, given that it cannot be considered as a representative survey in any way, and that the return-rate of the questionnaire is only significant among the voters of the governing parties.

[27] HUNGARIAN HELSINKI COMMITTEE: *Flash Report: What happened in tha last 48 hours in Hungary and how does it affect the rule of law and human rights?* Hungarian Helsinki Committee, Budapest, 2020. 1-7. pp.

examination also concentrated on the analysation of the different speeches, interviews and statements made by *Mr. Orbán* within said period of time and appearing on the official website of the Prime Minister. The selection of this timeframe was based on the premise that as a neighbouring country to Ukraine, the effects of the emerging conflict was immediately tangible, and that the intense political climate induced by the upcoming elections offered a fertile environment for political enemy-construction, while the elections themselves also functioned as measure of success of the emerging governmental narratives.

Regarding the aspect of assessing and defining the political situation, the Prime Minister's speeches put a special emphasis on distancing Hungary and the Hungarian government from the emerging conflict and accentuating that Hungary had absolutely no part in the events leading up to it. The other main focus of the narrative was centred around the importance of staying out of the conflict, keeping Hungary as far from it as possible, therefore increasing police and military presence near the Ukrainian-Hungarian border and only offering basic humanitarian aid to those who managed to cross it legally.

"We are capable of ensuring peace and safety for the people living here. The most important thing is that Hungary does not drift into this war, but in the meantime our borders must be protected; our soldiers are capable of this." (*Viktor Orbán,* 26.02.2022.)

Interestingly, while repeatedly stating that Hungary is strong enough to protect itself and its neutrality, the Prime Minister also managed to apply certain elements to the narrative that were aimed at undermining the audience's sense of security. These elements can be sorted into two categories: *financial-economical threats* and *existential threats*. The category of financial threats was mainly centred around the question of gas supplies and the possible increase in gas prices as a result of introducing economic sanctions against Russia. This aspect was strongly interconnected with the theme of the endangerment of *reduced overhead costs* that the incumbent government previously guaranteed for residential customers, and which was also one of the main focal points of the ruling parties' election campaign.

"We cannot accept the ideas proposed by the left [sanctions against Russia]*, that threaten Hungary's energy and gas supply, and that would endanger our achievements in reducing overhead costs of families."* (*Viktor Orbán*, 24.02.2022.)

The category of existential threats on the other hand focused on the dangers on helping Ukraine either by sending military aid or weapon supplies. The narrative also used these supposed dangers by connecting them with the *incompetence* of the national opposition (mainly the left) that – within this narrative – also poses a threat to the peace in Hungary, since – according to the narrative – peace can only be guaranteed by staying neutral in the Russian-Ukrainian conflict.

"The left is on the side of this war – even if they do not see it. (…). To send a soldier means to be part of the war. To send a weapon means that the person we deliver it to may be happy, but the person against whom that weapon is used, we will be our enemy for God knows exactly how long." (*Viktor Orbán,* 04.03.2022.)

Accordingly, the utilised enemy-images also followed the pattern established by the threat-categories, as heavy focus was based on the issues of *incompetence* regarding each of the enemy-constructs. The incompetence of the national left was elevated by the narrative to the level of suggesting *insanity*, while the incompetence of the international left ("Brussels's bureaucrats") was originated – according to the narrative – in their blinding lust for punishing Russia.

"The left has lost its mind and they would lurch madly into a cruel, prolonged and bloody war. The left wants to send Hungarian soldiers and Hungarian weapons to the front lines." (*Viktor Orbán*, 15.03.2022)

"There are leaders in Brussels want to punish Russia at all costs. They want to implement punitive measures that would place an additional, unaffordable burden on the shoulders of European, including Hungarian, citizens. (…) There are also actors in the Hungarian public life who support these ideas and would even turn off the gas taps. This is grave irresponsibility." (*Vikor Orbán,* 22.03.2022)

In contrast with the designated characteristics of the 'reckless' and 'incompetent' opposition, the narrative painted a picture of the incumbent government as the embodiment of unquestionable skill and competence for handling the situation. The designated role of the *saviour* therefore fell to the government and was supported by its many years of experience in the art of governance including – according to the narrative – experiences gathered during two previous military conflicts in the region (referring to the 1991 Yugoslavian Wars and the 2014 Russian annection of Crimea). Therefore, key expressions in the aspects of restoring the citizens' sense of security were *careful and well-considered problem-solving* and the so called "strategic calm", leaving no doubt about who has the ability to prevent the realisation of the irresponsible ideas of the left.

"It is very important that in a country that is situated close to a war region – Hungary is a neighbouring country – this should not happen. I call this strategic calm. That is what we need now." (*Vikor Orbán,* 28.02.2022.)

The governmental crisis narrative also tried turn the intensity of the electoral situation to its own advantage and use the upcoming elections to increase the stakes and to try to achieve some kind of *rally around the flag* effect by explicitly connecting the idea of peace to the governing parties and the ideas of war and conflict to the national opposition. Judging by the electoral victory of the governing paries resulting in a two-third parliamentary majority, it is safe to say that the narrative fulfilled its purpose.

"(...) the threat of war does not reduce the stakes of the elections but increases them, even elevating them to the sky. Pro-peace right or pro-war left? Construction or destruction? Forward or backward? We say, let's preserve the peace and security of Hungary. Whoever votes for Fidesz, votes for peace and security." (*Viktor Orbán,* 15.03.2022)

IV. Conclusion

In conclusion, we can affirm that the governmental narrative within the analysed timeframes corresponded remarkably to the characteristics of a Plebiscitary Leader Democracy,[28] while each step in transforming the creation of political enemies into political advantage can be clearly identified.[29] Consequently, we can confirm that the interplay between the nature of the analysed crises and the personality of the political leader enabled the incumbent government to reshape the power balances and political dynamics[30] – hence to increase their own room for manoeuvre – through his reaction to the emerging crisis situations, his political strategy and the crisis narratives he created.

The frequent application of special legal orders can also be seen as the logic of political centralisation manifesting within the legal system, that is also strengthening the independence of governmental decision-making (with special focus on the head of the government) and the increasingly authoritarian nature of the exertion of power – that is also in line with the Prime Minister's preceding political narratives.[31]

All this coincides with the statements made by *Körösényi* et. al. that – following the works of *Stephen Skowronek* – define *Viktor Orbán*'s governance as *reconstructive leadership*. Within this framework *Skowronek* distinguishes three mutually reinforcing components of reconstructive leadership. These components are *order-shattering, order-creating* and *order-affirming*, with order-shattering referring to the destruction of previously established arrangements (also known as *conventions*), while order-affirming connects the leadership to the community and its values, mostly to justify governmental actions by emphasising the protection and preservation of certain values.[32] The final component, order-creating clears the path for reconstructive leaders to implement new ideas and broaden their room to manoeuvre. It is important to note however that the newly-established standards for action must still "stand the test of legitimacy in relation to the leaders' narrative and definition of the given situation", while the authors also emphasise that within this framework the aspects of order-shattering, order-affirming and order-creating are not to be considered one-time events and/or concluded processes, but as the continuous prevailing of political action over the static nature of the institutional system.[33]

In the light of the empirical analyses, another aspect of the theory of reconstructive leadership seems to be justified, namely that through the principle of "seizing the moment" the continuous forming and reshaping of the already laid-down constitutional order can be perceived by citizens as a part of everyday life, while the narrative exclusively focuses on

[28] ANDRÁS KÖRÖSÉNYI: *The Theory and Practice of Plebiscitary Leadership: Weber and the Orbán regime.* East European Politics and Societies and Cultures 2018/20(10). 1–17. pp.
[29] MOLNÁR 2020: 45. p.
[30] KÖRÖSÉNYI – ILLÉS – METZ 2016. 91–92. pp.
[31] KÖRÖSÉNYI 2018. 13–16. pp.
[32] SKOWRONEK, STEPHEN: *The Politics Presidents Make: Leadership from John Adams to Bill Clinton.* The Belknap Press of Harvard University Press, Cambridge, 1997. 19–23. pp.; 37. p.
[33] GÁBOR ILLÉS – KÖRÖSÉNYI ANDRÁS – RUDOLF METZ: *Broadening the limits of reconstructive leadership: Constructivist elements of Viktor Orbán's regimebuilding politics.* The British Journal of Politics and International Relations 2018/20(4). 790–808. pp.

overcoming the newly-emerging challenges and winning political battles instead of creating and/or maintaining stability, hence providing a certain state of equilibrium.[34]

This unmistakeably observable *voluntarist nature* of the Prime Minister's leadership also highlights the aspect of political thinking, also emphasised by *Schlett*, that it is aimed at creating and maintaining one's capacity to act, therefore reinforcing *political agency*[35] – and that also turned out to be a prominent characteristic in all of the examined speeches, statements and interviews. Meanwhile, the legitimation discourse reflected in the leader's narrative clearly apostrophized the crisis situation caused by the coronavirus pandemic as an exogenous crisis brought in from abroad, both implying and explicitly stating that the instability caused by the external shock can only be handled by a strong government with sufficient political agency, hence designating the role of the *saviour* for the incumbent leadership.

In addition to the temporary broadening of the political room for manoeuvre, the governmental narrative and decision-making also extended this capacity in preparation of the potential long-term possibility that a future election would result in a change of administration, since some of the applied legal measures (introduced as tangible manifestations of the narrative) are decidedly hard to modify, therefore likely to be a part of the legal system for a long time to come.

SZABÓ PALÓCZ ORSOLYA

POLITIKAI ELLENSÉGKÉPZÉS A 2020-AS COVID-19 VÁLSÁGNARRATÍVA VALAMINT A 2022-ES OROSZ-UKRÁN HÁBORÚS NARRATÍVA TÜKRÉBEN

(Összefoglalás)

Jelen tanulmány az ellenségképző retorika természetének egy speciális szegmensét, az ellenségképzésnek – tágabb értelemben a politikai diskurzusok valóságkonstruáló jellegének – a hatalmi viszonyokkal kapcsolatos összefüggéseit vizsgálja, mindenekelőtt a COVID-19 járványhoz, valamint a közelmúltban kirobbant ukrán-orosz konfliktushoz kapcsolódó válságnarratívák tanulmányozásán keresztül. A vizsgálódás elméleti keretét a plebiszciter vezérdemokrácia koncepciója adja, amelyet annak módszertani realizmusa tesz igazán alkalmassá a jelenség vizsgálatára. Az esettanulmányi vizsgálódás szűkebb területét az *Orbán Viktor* miniszterelnöknek a koronavírus-járványhoz kapcsolódó felszólalásai által meghatározott válságnarratíva jelenti, a miniszterelnök 2020. szeptember 1. és 2020.

[34] KÖRÖSÉNYI 2018. 14. p.
[35] SCHLETT 2018. 46–47. pp.

december 31. közötti időszakban elhangzott beszédeinek, felszólalásainak és interjúinak közelebbi vizsgálatán keresztül, kiegészítve a miniszterelnök 2022. február 24-e (az ukrán-orosz fegyveres konfliktus kirobbanása) és 2022. április 3-a (a magyarországi országgyűlési választások) közti időszakban elhangzott nyilvános megnyilvánulásaival, elsősorban a hatalmi-politikai vonatkozások feltérképezésére, illetve a politikai ellenségképzés technikáinak beazonosítására fókuszálva.

YASIN TOKAT*

Attempts to Regulate Artificial Intelligence: Regulatory Practices from the United States, the European Union, and the People's Republic of China

I. Introduction

Artificial intelligence, or AI for short, is one of the most remarkable developments of this decade. Unlike the natural intelligence exhibited by humans and other animals, artificial intelligence is intelligence demonstrated by machines. AI research has been characterized as the examination of intelligent agents, which relates to any system that comprehends its surroundings, and takes decisions and actions to maximize its likelihood of success.[1] AI is being used in a growing number of industries, and it has a promising future in the coming years. Having said that, AI is nothing short of a revolution. It involves highly complicated processes, and sometimes even engineers who write the algorithms do not understand why they function the way they do and create the phenomenon called artificial intelligence.[2]

Beyond the technical aspects of artificial intelligence, there are also philosophical and psychological dimensions to it. Therefore, it is worth examining the background of artificial intelligence from the human perspective. Even though it is only recently that AI has become generally understood and employed in its modern sense, its origins may be traced back hundreds of years. Ancient mythology provides some of the earliest examples of humans striving to make a perfect companion, their own creation that is exactly like them. *Pygmalion*, a Cypriot sculptor from Greek mythology, for example, failed to find any women that met his expectations. As a result, he resolved to build a sculpture of a woman

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1 POOLE, DAVID – MACKWORTH, ALAN – GOEBEL, RANDY: *Computational Intelligence: A Logical Approach*. Oxford University Press. New York, 1998.

2 BONET, BLAI – GEFFNER, HECTOR: *Learning depth-first search: A unified approach to heuristic search in deterministic and non-deterministic settings, and its application to MDPs*. In: ICAPS'06: Proceedings of the Sixteenth International Conference on International Conference on Automated Planning and Scheduling. AAAI Press. Palo Alto, 2006. pp. 142–151.

that embodied the greatest attributes of aesthetics. As a result, he could not help himself but fell in love with the statue he had created.[3] This tale is frequently used as an example of artificial intelligence because it demonstrates how people can bring about things with which they can have emotional connections. Beyond the flaws of human judgment, mental limitations, and psychological fragility, artificial intelligence has evolved as a phenomenon capable of overcoming these limitations.

Since its early years, there have been significant improvements in the field of artificial intelligence. It has become progressively more and more sophisticated while being employed in a wide range of processes from self-driving cars to the development of more realistic video games or assisting humans with tasks such as data entry and machine-aided translation. There is a wide range of potential applications for this technology. Handling highly complicated issues that society has been facing is one of the reassuring potentials of AI. To better comprehend and address the difficulties humanity encounters, people will require ever-sophisticated technologies, as the world is becoming more dynamic and interconnected. The use of self-learning algorithms can help overcome some of these complex problems. Artificial intelligence can help people identify potential risks in the environment and come up with effective solutions. Furthermore, resource management processes can be improved with the help of this technology. As a result, business processes can become more effective by the increase in production output, and the reduction in waste and its negative environmental impacts. The development of novel drugs and medical therapies is another field in which artificial intelligence can make a difference. It can help people with the treatment of fatal diseases, extend human life expectancy and improve quality of life. Furthermore, AI can impact the food and agriculture sector positively. It can help manage food production most effectively by conserving energy and water sources by optimizing the agricultural management processes. Finally, supply chain and logistics can benefit from the use of automation and machine learning. As Supply Chain management is one of the most crucial areas of production and economy, sustaining a high standard of living within society depends on the well-functioning of the supply chain systems. It is not possible to create an affluent society without efficient logistics and supply chains. Hence, AI applications can be employed to provide better communication between suppliers and customers, improve storage conditions and optimize transportation, which could increase the quality of goods and services while keeping the prices at an optimum level. Ultimately, the increasing application of artificial intelligence technologies into more and more businesses and sectors will lead to the development of more technologies and the creation of new fields. Hence, the door to innovations and to the new future potential of AI must remain open if we are to maintain a thriving economy and improve the standards of living for the public.

Nonetheless, it is important to use technology responsibly and constructively. Despite the numerous potential benefits of AI, some challenges come along with its development and application. Due to this reason, it is important to pay attention to how we create and use AI technologies. If the regulations are drafted carelessly, it could have serious detrimental effects on technological advancement, innovation, and society. One of the major challenges of AI is its increasing complexity and the difficulty it brings in understanding and analyzing

[3] HAMILTION, EDITH: *Mythology*. Vidyodaya Library Private LTD. Calcutta, 1953. p. 108.

its implementation. If left unchecked, this can create some hazardous situations, such as making decisions that harm people emotionally, psychologically, or even physically, while causing property damage along the way. Another abusive approach can come from the state institutions. If they deploy this technology for mass surveillance and filtering, the fundamental rights of the citizens, such as privacy, freedom of speech, and civil liberties, will be compromised. Another gloomy picture can be made if AI technologies are wielded to build sophisticated weapons that could cause major damage. Military use of AI can open Pandora's box with unforeseeable consequences. Another negative aspect can be given from an economic perspective, with considerable social implications. Automation and machine learning have the potential to displace some workers because of their high levels of accuracy and efficiency in comparison with human labor. For instance, AI systems may replace workers who perform simple analyses or data entry tasks that are amenable to automation. In such instances, the owner of those technologies will reap all the profits. As it happened in the United Kingdom with the advent of the industrial revolution and the use of machines in wool production, this has the potential to spark civil unrest and civil wars due to massive unemployment and social injustice. From this perspective, it is worth considering how these negative aspects associated with AI applications can be overcome while increasing societal wealth rather than growing inequalities between rich and poor.

To address these challenges, the leading countries and regions in AI technologies come up with an increasing number of AI regulations and legal frameworks. Nonetheless, there are several ethical concerns about artificial intelligence that need to be considered when developing regulations. For example, AI systems are often trained on data sets that contain bias. This can lead to biased results when the AI system is used in the real world.[4] There is also a risk that AI could be used for malicious purposes, such as creating fake news or spreading misinformation.[5] However, others believe that too much regulation could stifle innovation and hamper the development of better AI applications and advocate for a more balanced approach that considers the risks and benefits of AI.[6] Inexorably, the AI revolution is upon us, and it comes along with both its opportunities and its challenges. These complications due to the faulty application of AI technologies accentuate the need for increasing awareness of the potential risks. This can help in finding effective solutions to mitigate those risks. It also means ensuring that AI technology is accessible to everyone and benefits society as a whole, not just a select few. At the same time, we must embrace AI's potential to enhance our lives and transform the world. To reap the most benefits from AI technology, we must ensure that it is developed responsibly and used for the greater good of humanity. Only in this way can a prosperous future for the greater society be achieved. This paper will investigate the Artificial Intelligence Regulatory practices of the leading countries and regions in this field.

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[4] NTOUTSI, ERINI – FAFALIOS, PAVLOS – GADIRAJU, UJVWAL ET AL.: *Bias in data-driven artificial intelligence systems—An introductory survey.* WIREs Data Mining and Knowledge Discovery 10(3), 2020, e1356.

[5] See: GIANSIRACUSA, NOAH: *How Algorithms Create and Prevent Fake News*. Apress. Berkley, 2021.

[6] See: CHESTERMAN, SIMON: *We, the robots?* Cambridge University Press. Cambridge, 2021.

II. Aim of the Study and Methodology

The study aims to evaluate a variety of issues generated by the expanding use of AI algorithms in various processes and to investigate how leading nations in the development of AI technology intend to deal with this issue from a legal standpoint. It compares and contrasts the regulatory systems adopted by the United States, the European Union, and the People's Republic of China. This approach may be useful in giving a comprehensive view while tracking the differences by examining the similarities and limitations of the most current legal developments.

A qualitative research methodology was employed to conduct the main parts of this study. Non-numerical data were gathered as part of the evaluation of regulatory frameworks and critical analysis in order to comprehend key ideas, challenges, and objectives. This data is used to draw a connection between the issues caused by AI technology and how governments have responded to these developments. This connection facilitates comprehension of AI-related challenges and offers novel ideas for AI policymaking by focusing on the contemporary legal responses from those nations.

Furthermore, data from prior regulatory initiatives and frameworks from three significant geographies – the U.S., the EU, and the People's Republic of China – were acquired utilizing the secondary research methodology. The focus of this study is shifted to these three regions since they serve as the primary hubs for the major AI development initiatives with their technical, economic, and legal capabilities. The EU is included as a region as comprehensive regulatory frameworks are developed at the EU level for the member states to draft at the national level. Refer to section 2 "AI Regulation Internationally versus at the National Levels" for further information on the differences between national and international AI regulation. Since AI regulation is a relatively new issue, a secondary research approach is utilized to examine the broad patterns across different legal systems and relate the place of such developments within the larger international regulatory initiatives. Existing legal frameworks and AI regulations are evaluated thematically to find patterns across different regulatory systems and to interpret them in light of such patterns. In this way, the parallels and differences between regulatory initiatives were investigated.

III. Literature Review

Artificial intelligence is still a relatively young field within the statistics and computer science fields. As a result, the available literature scarcely extends beyond a decade. Furthermore, this is a dynamic sector with constantly evolving methodologies, applications, and tools. Legal approaches to AI are still in their infancy. Many regulatory methods were implemented within this decade, and there has been an engagement of experts and their perspectives on regulatory approaches through reports and white papers. Nonetheless, this chapter will have to narrow the scope to scientific literature rather than reports and white papers.

Literature comes in a variety of forms with a range of theoretical assumptions, methods, and applications. In this literature review section, numerous scientific papers have been grouped into three categories. The first category contains technical scientific studies that

examine artificial intelligence and its functions from a computational and technological standpoint. They explain various aspects of artificial intelligence, machine learning, and how algorithms work from a technical and mathematical approach. The second body of work looks at the connection between the human mind and artificial intelligence from a philosophical standpoint. The ethical use of AI algorithms is also questioned in this grouping. Finally, the third body of study focuses on the negative implications of artificial intelligence and analyzes topics of AI governance. Because the technology parts of AI were established earlier than the legal considerations, the first group has the richest and most established literature among the latter two. As a result, the themes linked to AI regulation and legal procedures around AI are the most recent and have the least amount of literature. Since the regulatory sector is relatively new, this study aims to fill a gap in the scientific literature by addressing issues in the face of AI regulation and analyzing how major stakeholders approach regulation in their similarities and disparities.

In the first group, several notable works that describe the phenomenon of artificial intelligence can be cited. One of the first and most renowned introductions to artificial intelligence was written by *Patrick Henry Winston* in 1984 and is titled 'Artificial Intelligence'. Winston is an outstanding artificial intelligence scientist who headed MIT's Artificial Intelligence Laboratory, and his hands-on AI research expertise gives a layer of quality to his writing.[7] *Winston* includes full pseudo-code for the majority of the techniques described, making it possible to create and test the algorithms right away for his predecessors. Another early example is 'Multiagent Systems, A Modern Approach to Distributed Artificial Intelligence,' which is edited by *Gerhard Weiss* and published in 2000. This is a notable publication since it is the first thorough introduction to multiagent systems and modern distributed artificial intelligence. The book covers basic issues in depth as well as other closely connected ones, bringing together several renowned specialists to ensure a broad and diversified basis of knowledge and skill. It addresses both theory and application and includes several instances and examples.[8] The concepts can be also compared with the earlier examples of computation in order to understand the analyze the nature of AI better. The book 'The Essential Turing: Seminal Writings in Computing, Logic, Philosophy, Artificial Intelligence, and Artificial Life: Plus the Secrets of Enigma,' edited by *Jack Copeland* is an essential work that delves into the early developments of AI in the system devised by Alan Turing, a computing pioneer, and World War II codebreaker[9]. This compilation brings *Turing*'s most important articles to a wider audience for the first time. These ground-breaking writings, which are also rich in philosophical and logical insight, are significant historical works. This study is significant because it gives insight into the early machines that generated current computational theory, cognitive science, artificial intelligence, and artificial life. There began to appear earlier works on artificial intelligence in the first decade of this century.

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[7] WINSTON, PATRICK HENRY: Artificial intelligence. Addison-Wesley Longman Publishing Co. Reading, 1984.

[8] WEISS, GERHARD (ed.): *Multiagent systems: a modern approach to distributed artificial intelligence*. MIT press. Cambridge, 1999.

[9] COPELAND, JACK (ed.): *The Essential Turing: Seminal Writings in Computing, Logic, Philosophy, Artificial Intelligence, and Artificial Life: Plus the Secrets of Enigma*. Oxford University Press. Oxford, 2007.

The book 'Artificial General Intelligence', which was edited by *Ben Goertzel* and *Cassio Pennachin* is specifically about developing universal intelligence – independent, self-reflective, self-improving intelligence. In each chapter, authors describe a distinct component of artificial general intelligence in depth, while simultaneously analyzing common themes in the work of several organizations and addressing the great, unanswered problems in this critical field[10]. The book focuses on a unified discussion of artificial general intelligence and the connections between AI and other subjects such as physics, engineering, biology, neurology, linguistics, sociology, psychology, anthropology, and philosophy. *Tim Jones*'s book 'Artificial intelligence: a systems approach' presents a unique glimpse into the fundamental principles of AI. The book discusses a wide range of AI applications, including game programming, intelligent agents, neural networks, and artificial immune systems.[11] Besides the fundamental subjects and theoretical approaches, practical parts concerning data intake, reduction, and output are also covered. This is why the study is crucial since it examines current industry methods from a fresher angle as opposed to theoretical old-school AI concepts like pattern recognition, numerical optimization, and data mining, which were only transformed into other sorts of algorithms.

In the second group of publications, several prominent works will be covered in this part. To begin with, *Aaron Sloman*'s work 'Interactions between philosophy and artificial intelligence: The importance of intuition and non-logical reasoning in intelligence' is one of the earlier examples of its kind which examines AI from a philosophical perspective.[12] His book is published in 1971 and it is a fundamental philosophical work that examines AI. Philosophical issues with the use of intuition in reasoning are linked to issues of the simulation of perception, problem-solving, and the development of meaningful sets of alternatives when deciding how to behave via the idea of analogical representation. This book may be used to assess the limits of AI, the likelihood of a super AI, and if AI can outperform human cognitive capabilities. There is another essential work titled 'Minds and Computers: An Introduction to the Philosophy of Artificial Intelligence' by *Matt Carter*.[13] It is a fundamental introduction to AI as a philosophical theory of mind. It includes themes in cognitive science related to the human mind, computing, logic, language, and philosophical questions. The approach is moderately technical and philosophical, with each chapter indicating theory and arguments. The book dives into themes such as consciousness, identity, and emotions, as well as functional neuroanatomy and brain networks detailed in twenty chapters. 'Mind Design II' by *Haugeland* brings together virtually all the important philosophical approaches in Cognitive Science. This volume, released in 1997, maintains the conceptual underpinnings, with discussions of classical AI constructed on top of them, while also introducing connectionism, situated

[10] GOERTZEL, BEN – PENNACHIN, CASSIO: *Artificial General Intelligence.* Springer. Berlin, 2007.
[11] JONES, M. TIM: *Artificial Intelligence: A Systems Approach*. Infinity Science Press. Hingham, 2008.
[12] SLOMAN, AARON: *Interactions between philosophy and artificial intelligence: The role of intuition and non-logical reasoning in intelligence.* Artificial intelligence 2(3–4), 1971, pp. 209–225.
[13] CARTER, MATT: *Minds and Computers: An Introduction to the Philosophy of Artificial Intelligence*. Edinburgh University Press. Edinburgh, 2007.

AI, and dynamic systems theory.[14] The work is critical for understanding the public's perception of AI before the turn of the century.

Another source is 'The Oxford Handbook of Ethics of AI' which is edited by *Markus D. Dubber*, *Frank Pasquale*, and *Sunit Das* is published in 2020. The book investigates the rapidly growing topic of Artificial Intelligence, mapping existing discourse as part of a broader endeavor to identify current developments in ethical AI applications while also forging new ground in taking on novel subjects and exploring creative methodologies.[15] The volume analyzes the issues faced by the current level of AI and poses fundamental concerns about individual and community wellbeing, democratic decision-making, moral agency, and the prevention of damage. This research includes investigations of normative restrictions on particular machine learning algorithms employed in various sectors. Connected further with the philosophical aspects, there are also various works concerning the ethics of AI. The book 'AI for Everyone? Critical Perspectives', edited by *Pieter Verdegem* in 2021, examines the novel period of technological determinism and solutionism whereby policymakers and business actors pursue data-driven transformation, presuming that AI has now become inescapable and omnipresent. This book pulls together critical interrogations of what AI is, its influence, and its disparities to providing an understanding of what it means for AI to benefit everyone. The book is divided into three sections; the first, 'Humans vs. Machines', give opposing viewpoints on the concept of human-machine dualism. The second section, 'Discourse and Myths About AI', deconstructs metaphors and laws to pose normative queries about what constitutes "good" AI and what circumstances permit it. The third section, 'AI Power and Inequalities', analyzes how the use of AI poses significant problems that require immediate attention.[16] This book offers a crucial intervention on one of the most overhyped topics of our times by bringing together academics from various disciplinary backgrounds and geographical situations. The final work in the second group is a suitable recapitulation of the philosophical and ethical issues with the rising AI technologies. 'Towards Intelligent Regulation of Artificial Intelligence' by *Miriam C. Buiten* examines the unpredictability and uncontrollability of AI. Her paper analyzes what it would mean to demand AI openness while arguing for research that goes beyond mere conceptualization. It focuses on the actual dangers and prejudices associated with machine learning systems. The article examines the biases that algorithms may develop as a result of the input data, algorithm testing, and the decision model. Any demand for algorithm openness should result in explanations of these biases that are both clear for potential users and technically viable for producers. Before debating how much openness the law should demand from algorithms, the author suggests that we assess if the explanation that programmers may provide is relevant in certain legal scenarios.[17]

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[14] HAUGELAND, JOHN (ed.): *Mind Design II: Philosophy, Psychology, and Artificial Intelligence*. MIT press, Cambridge, 1997.

[15] DUBBER, MARKUS DIRK – PASQUALE, FRANK – DAS, SINIT (eds.): *The Oxford Handbook of Ethics of AI*. Oxford University Pres. New York, 2020.

[16] VERDEGEM, PIETER (ed.): *AI for Everyone? Critical Perspectives*. University of Westminster Press. London, 2021.

[17] BUITEN, C. MIRIAM: *Towards Intelligent Regulation of Artificial Intelligence*. European Journal of Risk Regulation 10(1), 2019, pp. 41–59.

Finally, some major pieces of work touching the legal and regulatory aspects of artificial intelligence are included in this third group. Furthermore, this is the most limited section of the existing literature on AI to which this research hopes to contribute. To begin, a research unit funded by the European Parliament issued an important report titled 'Artificial intelligence: From ethics to policy' in June 2020, which illustrates the spectrum of potential issues that can be caused by the invention, development, and application of malicious algorithms.[18] The major research concern is how to go from AI ethics to specific laws and policies for regulating AI. This study develops policy recommendations based on the framing of 'AI as a social experiment' for public administrations and governmental organizations interested in deploying Artificial Intelligence and Machine Learning solutions, as well as for private enterprises developing these services for public use. The major considerations driving the emphasis of this proposed application are the need for a high level of transparency, respect for democratic norms, and legitimacy. The policy solutions mentioned here demonstrate how accountability may be achieved; morally dubious behaviors and judgments are frequently documented prior to the employment of an AI system. This tracking is the first step toward enabling ethics to be a key consideration in the application of AI for the common good. There is another considerable paper regarding the legal aspects of algorithms. In this paper titled 'Argument in Artificial Intelligence and Law' *Trevor Bench-Capon* welcomes the importance of debates concerning AI and Law by providing an overview of work, and the connection between the various standards.[19] He distinguished four areas where the argument has been applied: in modeling legal reasoning based on cases, in the presentation and explanation of results from a rule-based legal information system, in the resolution of normative conflict and problems of non-monotonicity, and as a basis for dialogue, games to support the modeling of the process of argument. His approach of argument offers prospects of real progress in the field of AI and law. Furthermore, *Jacob Turner* also explains why AI is unique, what legal and ethical problems it could cause, and how we can address them in his book 'Robot Rules: Regulating Artificial Intelligence'. He claims that AI has enormous potential, unlike any other prior technology, due to its capacity to make judgments freely and unexpectedly. He contends that this possibility raises three issues: responsibility – who is accountable if AI does harm; rights – the contested ethical and pragmatic reasons for granting AI legal personhood; and the ethics of AI decision-making.[20] According to the book, new organizations and rules on a cross-industry and worldwide level are required to solve these challenges. Incorporating clear explanations of complex topics, the book is an important work from a multi-disciplinary aspect. In 2020, Springer published the book 'Regulating Artificial Intelligence' edited by *Thomas Wischmeyer* and *Timo Rademacher*. The book has several chapters prepared by a group of renowned academics from all major

[18] SCIENTIFIC FORESIGHT UNIT (STOA) EPRS – EUROPEAN PARLIAMENTARY RESEARCH SERVICE: *Artificial Intelligence: From Ethics to Policy*. Brussels, 2020. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2020/641507/EPRS_STU(2020)641507_EN.pdf (Accessed on: 21.09.2022)

[19] BENCH-CAPON, TREVOR: *Argument in Artificial Intelligence and Law*. Artificial Intelligence and Law 5(4), 1997, pp. 249–261.

[20] TURNER, JACOB: *Robot rules: Regulating artificial intelligence*. Springer. London, 2018.

legal disciplines in this respect. The writers discuss a range of topics related to AI regulation. The book provides a thorough examination of the legal foundation for artificial intelligence while making thorough policy recommendations for the eventual regulation of AI.[21] Lastly, there is an outstanding essay that answers what AI is and how it relates to the practice and administration of law by offering a high-level review of AI and its use in law. In the paper 'Artificial Intelligence and Law: An Overview' *Harry Surden* addresses the nature of AI and how it is being utilized by attorneys in the practice of law, persons and businesses controlled by the law, and government officials who administer the law. His main motivation for producing the paper is to present a realistic, fully explained the perspective of AI that is grounded in the technology's actual capabilities.[22] This is intended to contrast with conversations concerning AI and law that are distinctly futurist in tone.

To sum it up, artificial intelligence is still a relatively new topic in statistics and computer science. Significant scientific publications and sources have been included and studied in this literature review part, first considering AI's technical features, then philosophical concerns, and finally legal and regulatory arguments. According to the review, there are still gaps in the legal and regulatory literature. Because the regulatory industry is still in its early stages, the subjects related to AI regulation and legal procedures involving AI have the least quantity of literature. As a result, the purpose of this study is to fill a gap in the scientific literature by addressing concerns related to AI regulation and assessing how key players approach regulation in their similarities and differences.

IV. Regulating AI and Challenges that Come with Regulation Attempts

The need for some level of artificial intelligence regulation is getting clearer as AI is getting into every aspect of our life by using internet technologies. Nevertheless, a functional regulatory approach can be easier said than done because AI is a highly complicated subject for many policymakers in a world divided into numerous political borders. For many countries throughout the world, the right method to regulate artificial intelligence is still a matter of debate. Some think regulation of AI is necessary to protect society, while others think it will hamper innovation and the positive aspects of AI technologies. The best course of action might be to strike a balance between the regulatory aspects and supporting the applicable surface of AI technologies. In this way, regulations can safeguard people against dangers while supporting innovation and enabling businesses to improve their operations. It is important to keep regulations clear, understandable, and enforceable no matter which strategy is employed. The difficulty lies in recognizing whether an AI system is acting in a damaging or unethical manner due to insufficient levels of understanding of this technology. Laws and regulations pertaining to artificial intelligence are critical, but they must be carefully drafted to avoid strangling

[21] WISCHMEYER, THOMAS – RADEMACHER, TIMO (Eds.): *Regulating Artificial Intelligence*. Springer. Cham, 2020.
[22] SURDEN, HARRY: *Artificial Intelligence and Law: An Overview*. Georgia State University Law Review 2019(1305), pp. 19–22.

the processes. To make sure that the advantages of this technology are maximized while the hazards are minimized, a sound regulatory strategy will necessitate extensive consideration and dialogue among various stakeholders, academics, and the larger public. Among many questions, one crucial concern is data protection. How can we guarantee the security of personal data when it is used by AI systems? Liability is still another important topic. Should someone be held accountable if an AI system harms someone?

A variety of strategies have been proposed to govern the development and use of AI. The creation of ethical and technical standards for AI systems, restrictions on the development of certain AI applications, and the imposition of liability upon the organizations or the people that develop or apply AI systems are a few examples. There are both benefits and drawbacks to each of these strategies, while it is not yet obvious which among them would be the most practical in general. Each specific case might require a specific approach. In order to properly regulate AI, a mix of various different strategies is often required. As a result, there is no universally applicable method of controlling AI. The optimal course of action will probably differ from case to case, based on the precise risks posed by AI and the specific context in which it is being employed. It is therefore crucial to pass laws and regulations that precisely address those specific issues. For example, regulations may require private companies that collect data for AI systems to disclose information. This could include requiring companies to disclose information about their AI usage or establishing standards for the development and testing of AI systems. Another approach can be using existing laws and regulations to address the risks posed by AI. For example, data protection laws could be used to ensure that personal data is not mishandled by AI systems. Another approach is to regulate the algorithms themselves. This could involve setting standards for how algorithms are designed and keeping those applications auditable.

Any regulatory framework should be flexible and adaptable enough to keep up with the rapidly expanding IT ecosystems. There is an inherent duality of regulation as it has the potential to be used as an encouraging and discouraging mechanism.[23] Therefore, regulatory systems may result in the following benefits and drawbacks specifically in the artificial intelligence field.[24] Data regulation, for instance, may help prevent the exploitation of personal data, but it might also make it harder for AI systems to develop their self-learning and self-improvement capabilities over time. Although algorithm regulation can render AI systems more transparent, it also runs the risk of making them less dynamic and less able to adapt to new circumstances. Additionally, although rules can assist to ensure that AI is used properly, they may also limit its future potential applications and stop the development of new businesses and job prospects.

There are several main challenges that are rather difficult to resolve. One of the most difficult aspects of regulating AI is that, unlike other technologies, it is not easily understood or controlled. Even the developers do not have the full picture behind their function. Another issue is that AI technology is evolving at a breaking pace. This means that any regulations must be adaptable to new technologies as they emerge and respond quickly to technological changes. Another issue is that AI technology is frequently developed or

[23] MAJUMDAR, K. SUMIT – ALFRED, A. MARCUS: *Rules Versus Discretion: The Productivity Consequences of Flexible Regulation*. Academy of Management Journal 44(1), 2001, pp. 170–179.
[24] IBID. 171.

used by companies located in numerous locations. This makes it difficult to develop regulations that are acceptable and applicable globally. Even if regulations are created at the national level, it may be difficult to enforce them elsewhere if the company responsible for developing or using the AI technology is based in another country while the customers are based in another one. Last but not least, another main challenge is that AI systems are often incorporated into other products and services, such as self-driving cars or facial recognition software and so forth This makes it difficult to regulate AI without also affecting other areas.

1. AI regulations at the international level versus the national level

One approach to regulating AI is for states to work together internationally. This is the best approach because cyberspace and AI technologies have no borders, whereas countries and their jurisdictions do. International approaches to AI regulation can include establishing global standards for AI use as well as sharing best regulatory practices. This approach, however, is fraught with difficulties. To begin with, getting all countries on board with such an initiative can be challenging. Second, even if all nations agree to work together in the meetings, they might not be willing to adhere to the standards that are established afterward. Third, there is a risk that global standards will stifle AI innovation by making companies reluctant to develop new technologies that may not meet the standards.

Although it would be the most ideal, true international cooperation may not be as feasible to define and achieve functional regulatory objectives. Therefore, there is another strategy that can be employed at the national level. With a local regulatory approach, each nation has the authority to regulate AI under its own laws. This has the benefit of being more adaptable, as each country can tailor its regulations to its own needs and values. However, because there is no central authority overseeing the implementation of the regulations, they can be more difficult to enforce. Furthermore, this approach may result in a patchwork of different regulations around the world, making it difficult for companies that operate in multiple countries. This can certainly make it difficult for nation states to collaborate with the global IT sector, while large tech companies may face difficulties with various regulatory mechanisms in each country in which they operate.

As a result, the best approach to regulating AI is likely to be a combination of global and national regulatory frameworks. Global regulation can establish the general standards for AI development and use, while national regulators can customize these standards according to the specific requirements and values of their respective countries. This strategy would permit flexibility while still guaranteeing that there are some fundamental requirements that all nations must meet. Additionally, because there would be just one set of rules to follow, it would level the playing field for technology companies doing business in multiple nations.

Whether rules are made at the national or international levels, what matters is how Artificial Intelligence can be regulated without impeding too much technological progress. Any legislation must consider the potential risks and benefits of AI technology, as well as the need for transparency and accountability. Furthermore, any regulations should be drafted in such a way that they can be revised and adjusted as new AI

technologies and applications emerge. There are numerous approaches to regulating AI, and the best approach will most likely differ from country to country. When regulations are made at the national level, several issues may arise due to the regime of the state that drafts the regulation. Having said that, the rule of law and a state's democracy indicators are also important. An autocratic state may use artificial intelligence more for anti-democratic and surveillance purposes while still regulating it on one side. The question is still how to promote AI regulation while preventing flawed democratic states from abusing it, given that full democracies are in the minority among nations. This is one of the difficulties with the legal frameworks for issues involving information technology.

2. Innovative forces in the United States and AI regulation efforts

For many years, the United States of America has been a global leader in artificial intelligence. The country has been at the forefront of AI research and development, as well as a major player in establishing global AI regulatory standards. Due to the increased risk surface associated with information technologies, there has recently been growing concern about the potential misuse of AI technologies at the national level. The American government has passed several laws, regulations, and frameworks such as S. 1558, the Guidance for Regulation of Artificial Intelligence, and Accountability Framework for Federal Agencies and Other Entities in response to these concerns to make sure AI is used responsibly and for the good of its citizens.[25] The urgency of regulating AI, the design of the federal regulatory framework to support AI research, and the control over the use of algorithms have all been topics of discussion in the United States. In addition, there are issues like who should oversee the regulatory processes, what powers an agency should possess in terms of regulation and governance, how laws should be amended to reflect technological advancement quickly, and what each state's and the courts' roles should be.[26] In general, rules and regulations aim to ensure that AI technologies are used securely, and responsibly and that they do not endanger the security or privacy of Americans. These guidelines attempt to make sure AI is utilized for well-intended purposes while keeping its designs transparent and its deployment responsible. In this manner, the legislative approach seeks to ensure that AI technologies are inclusive and accessible to everyone. Furthermore, these regulations also seek to make sure that American companies continue to lead the way in developing and using these transformative technologies.

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[25] See: HEINRICH, MARTIN: *Text - S.1558 - 116th Congress (2019-2020): Artificial Intelligence Initiative Act*. 116th Congress. Washington DC, 2019. Available at: https://www.congress.gov/bill/116th-congress/senate-bill/1558/text (Accessed on 19 September 2022); THE WHITE HOUSE: *Memorandum for the Heads of Executive Departments and Agencies: Guidance for Regulation of Artificial Intelligence Applications*. White House. Washington DC, 2020; GAO: *Artificial Intelligence: An Accountability Framework for Federal Agencies and Other Entities (GAO-21-519SP)*. Gao. Washington DC, 2021.

[26] WEAVER, JOHN FRANK: *Regulation of artificial intelligence in the United States*. In: Barfield Woodrow – Pagallo, Ugo (eds.): Research Handbook on the Law of Artificial Intelligence. Edward Elgar Publishing. Cheltenham, 2018, pp. 155–212.

The National Security Commission on Artificial Intelligence (NSCAI) was founded on August 13, 2018. It produced a study outlining some schemes for prevailing in the age of artificial intelligence. The proposed sixteen chapters outline the actions the U.S. must take to face up to the challenges raised by AI and ensure the responsible employment of AI technologies, secure national interest, protect the security and defense of the homeland, and foster AI innovation. It offers specific strategies for the U.S. Government to put the recommendations into practice. An integrated national plan is presented in the NSCAI final report to reform the government, reorient the nation, and mobilize American allies and partners to defend and compete in the impending era of AI-accelerated conflict and rivalry.[27]

Another noteworthy legal development is the proposed law known as S. 1558, which includes sections dealing with Artificial Intelligence. The AI Program Act aims to establish a federal project to accelerate AI research and development for the benefit of the U.S. economy and national security, among other goals.[28] This regulation covers sections on national AI research centers, offices dealing with artificial intelligence practice, and workforce actions involving artificial intelligence. It also includes information on interdisciplinary AI research and education facilities, as well as programs for engineering artificial intelligence and related research and education.

The creation of the Guidance for Regulation of Artificial Intelligence by the White House's Office of Science and Technology Policy (OSTP) on January 7, 2020, is another significant step in the policy instruments pertaining to AI. This regulation was issued in response to President Donald Trump's Executive Order on Maintaining American Leadership in Artificial Intelligence. The manuscript provides ten principles that agencies should consider when deciding when and how to regulate AI. These high-level AI principles specify when regulatory mechanisms should be activated regarding the employment of AI technology within the commercial sector.[29]

Furthermore, another critical area that requires some regulatory mechanism concerns the usage of data to train AI systems. The United States Government Accountability Office (US GAO) published a report titled 'Artificial Intelligence: An Accountability Framework for Federal Agencies and Other Entities' in June 2021. This report encompasses important guidelines concerning the use of AI technologies. According to the report, all data used to train AI systems must be obtained and managed according to ethical standards, according to the US government. This means that information must be gathered in a transparent manner, with people's knowledge and consent, and it must be handled in a manner that respects their right to privacy. [30] Another key area of regulation is the use of AI for decision-making purposes. The U.S. government requires that all AI systems used for decision-making to be fair, unbiased, and accountable. This means that AI systems must be designed and tested to ensure that they do not discriminate against any group of people and that they can be audited and explained if needed.

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[27] NATIONAL SECURITY COMMISSIONATION ON ARTIFICIAL INTELLIGENCE (NSCAI): *Final Report*. 2019. Available at: https://www.nscai.gov/wp-content/uploads/2021/03/Final_Report_Executive_Summary.pdf (Accessed on 18 September 2022).

[28] HEINRICH, 2019.

[29] THE WHITE HOUSE 2020.

[30] GAO 2021.

The U.S. government is still working on developing new artificial intelligence regulations. Based on recent developments, it is apparent that they are dedicated to ensuring that artificial intelligence is utilized responsibly and for the benefit of all Americans. Furthermore, the US government's regulations are anticipated to have a substantial influence on the worldwide development of AI technology. As the world's largest market for AI technology, the United States can set the bar for how these technologies are deployed. It is conceivable that other nations will adopt a similar strategy to compete in the global market for AI technology. Additionally, the US government wants to guarantee that American businesses continue to rule the artificial intelligence industry. China is significantly investing in AI and has the potential to overtake the United States as the world leader in this field. As a result, it is critical for the United States to keep ahead of the curve by regulating these technologies in a beneficial direction.

3. AI regulatory practices in the European Union

Given the rising use of AI technology in a variety of areas and applications, ranging from self-driving cars to social media platforms, AI regulation is a topic that is becoming increasingly significant for the European Union. As a significant economic area, the rapid application of artificial intelligence necessitates the implementation of algorithm regulations to ensure that AI technologies are used safely and ethically within the European Union. As a result of these technological breakthroughs, the EU has been active in drafting regulations, frameworks, and guidelines such as the Ethics Guidelines for Trustworthy AI, the Digital Markets Act, the Digital Services Act, the Artificial Intelligence Act, and the Horizon 2020 initiative.[31] The purpose is to address certain aspects of AI that have the potential to be exploited, such as personal data protection, disinformation dissemination, and consumer protection. Several regulatory works and EU-level proposals will be assessed in the parts that follow.[32]

To ensure that AI is developed and employed in an ethical way that respects data privacy, user safety, and the fundamental rights of individuals, the EU has made some efforts since 2018. A High-Level Expert Group on Artificial Intelligence (HLEG AI) was established as one of these initiatives in June 2018. The HLEG AI was entrusted with creating ethical guidelines for the creation and application of artificial intelligence as well as making policy suggestions on how to do so. The team's work was published in the April

[31] See: HLEG AI: *Ethics Guidelines for Trustworthy AI*. European Commission, Brussels, 2018; DIRECTIVE 2000/31/EC: *Regulation of The European Parliament and the Council on a Single Market for Digital Services (Digital Services Act)*. European Commission. Brussels, 2020; STOLTON, SAMUEL: *Digital agenda: Autumn/Winter Policy Briefing*. Euroactiv.com, 18 August 2020. Available at: https://www.euractiv.com/section/digital/news/digital-agenda-autumn-winter-policy-briefing/ (Accessed on 24 September 2022); EUROPEAN COMMISSION: *EU-funded projects that use Artificial Intelligence technology*. European Commission. Brussels, 2021a; EUROPEAN COMMISION: *Proposal for A Regulation of the European Parliament and of the Council, Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) And Amending Certain Union Legislative Acts*. European Commission. Brussels, 2021b.

[32] See: STOLTON 2020.

2019 issue of 'Ethics Guidelines for Trustworthy AI'. These principles are supported by three pillars: the rule of law, respect for fundamental rights and values, and an inclusive society. These principles outline seven essential characteristics that AI systems must follow, such as respecting human autonomy and dignity, being fair and unbiased, being transparent, protecting the privacy and personal data, being accountable, and safeguarding security. The guidelines also offer a series of action suggestions aimed at both public and private entities involved in the development or deployment of AI. These proposals emphasize the need of creating an enabling environment for the development of AI applications to address the complex difficulties that mankind confronts.[33]

Due to the rapid digitalization of society and the economy, a handful of major platforms have significant control over emerging digital ecosystems nowadays. They have become the gatekeepers of the digital market, with the power to act as private rule-makers who can impose limitations on other market participants through their executive and technical capabilities. These restrictions can be detrimental to the businesses that use these platforms while also reducing the available options for customers, resulting in unfavorable market conditions. A modern legal framework that safeguards user safety online, offers governance with the protection of fundamental rights and maintains an open and fair online environment is what the European Union has devised considering these developments. Therefore, the Digital Services Act (DSA) and the Digital Markets Act (DMA) were proposed pieces of legislation by the European Commission to the European Parliament and the European Council on December 15, 2020.[34] The European Union has spent the last two years developing viable and long-term workarounds for regulating the operations of online platforms that use users and employ algorithms to improve their operations and services. These pivotal endeavors aim to govern how fundamental rights such as online privacy, data safety, and free speech are guarded in the digital. The DSA's ultimate goal is to modernize the European Union's legislative framework, specifically the e-Commerce Directive, which was passed in 2000.[35] Briefly, these frameworks encompass supplementary regulations on unlawful material, manipulative algorithmic applications, deceitful advertisement, disinformation, and misinformation. The expanding use of artificial intelligence and implementation of various AI algorithms that are fed on user data can lead to various issues. These algorithmic systems have the potential to accelerate the spread of misinformation and propaganda, among other detrimental consequences if implemented in abusive directions. These new concerns, as well as how platforms address them, have a significant impact on the practice and safeguarding of fundamental rights. Before the creation of the Digital Services Act, there were still significant gaps and regulatory impediments despite several focused, sector-specific initiatives taken at the EU level. To effectively combat illegal content on the internet, the resolutions urge transparency, informational requirements, and accountability for digital service providers. Additionally, they call for cross-jurisdictional

[33] HLEG AI 2018.
[34] DIRECTIVE 2000/31/EC 2020.
[35] STOLTON 2020.

cooperation in upholding the law, particularly when dealing with cross-border concerns, as well as public scrutiny at the national and EU levels. [36]

The Commission is also funding research on AI through the Horizon 2020 programme. Research and innovation are key components of high-value economic production, providing countries with a competitive advantage in the information era. Consequently, there is a strong emphasis on incorporating artificial intelligence technology constructively into numerous facets of daily life. As information and communication technology and digitalization become more important in the future, the EU does not want to fall behind in the race for IT leadership. As part of the Horizon 2020 programme, the Commission has launched a public-private partnership on AI, which is investing in developing European excellence in AI and ensuring that AI technologies benefit society as a whole. There have been several projects which received substantial funding from the EU as part of the Horizon 2020 programme.[37]

The Commission published its 'Proposal for a Regulation of the European Parliament and of the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) And Amending Certain Union Legislative Acts Regulation on AI'' in April 2021. This proposal establishes a comprehensive legal framework for the development, deployment, and use of AI in the EU.[38] Those rules seek to guarantee that AI systems used in the EU are secure, reliable, and trustworthy while also abiding by ethical standards and fundamental rights. By clarifying standards on data governance, liability, and certification, this proposal aims to designate a fair ground for enterprises utilizing AI. A European Artificial Intelligence Board, made up of specialists from the Member States, is set to be created by the law to offer guidance on concerns regarding the technical and ethical aspects of AI technologies.[39]

As AI technologies improve, the EU's approach to regulating AI is likely to evolve as well. The EU also aspires to forge closer alliances with other regional actors including the U.S., UK, Canada, and other allied countries. Big technological corporations that are engaged in the development and use of AI are still active in their work with the EU and significantly participate in the lobbying process.

4. Chinese approach to AI regulation

The Chinese government recognizes the potential power of AI and is taking measures to guarantee that China is a crucial player in this field. They are making significant investments in AI research and development to achieve this goal, and they are also attempting to establish rules for the AI sector operating in China. As previously discussed, the Chinese government is not the only one interested in achieving AI supremacy. There is a worldwide race for AI dominance, and China is only one of the countries pushing for it. However,

[36] IBID.
[37] EUROPEAN COMMISION 2021a.
[38] EUROPEAN COMMISION 2021b.
[39] IBID 97.

owing to its investment in AI and experience in handling information technology, China has the potential to be a key player in AI in the coming years.[40] They have the knowledge, tools, and aptitude to develop effective AI algorithms and applications. For AI to be utilized for the good of their citizens, they are drafting regulations to enforce the employment of AI technologies in a responsible way.

Due to the large number of individuals who utilize the internet and social media in China, there is a large amount of data available. How this data will be used to train AI is thus one of the ethical questions. While such data is utilized to train AI systems, it can also be exploited for less desirable ends. The Chinese government acknowledged this aspect and hence is taking action to guarantee that AI is utilized for good purposes. They are making huge investments in research and development for AI applications that can assist in addressing problems such as poverty, sickness, and climate change. They are also working on creating regulations for the AI industry so that it can be used ethically and for the benefit of society.[41]

To keep the AI sector in check, China has been developing significant standards and frameworks such as the Internet Information Service Algorithmic Recommendation Management Provisions.[42] These standards are designed to make sure AI is utilized for the good of society rather than for its detriment. One of the rules, for instance, mandates that AI businesses utilize data to address challenging issues. This will make it easier to ensure that artificial intelligence is used for beneficial rather than malevolent purposes. Another way that China is employing AI responsibly is via ethically training AI algorithms. This entails making sure AI systems are not biased against particular demographics. If an AI system is trained to detect faces, for example, it should be able to distinguish faces, independent of race or gender.[43] Finally, China is employing AI to aid in regulating other aspects of society. For example, artificial intelligence is being used to monitor environmental pollutants and to aid with traffic management. China is assisting in ensuring that AI is used for the benefit of society by employing it for these reasons.

China's Cybersecurity Administration has enacted a new set of recommendation algorithm laws, which go a long way toward governing how the technology may be utilized. They released a set of standards 'Internet Information Service Algorithmic Recommendation Management Provisions' which is effective as of the 1st of March 2022. These standards are the most comprehensive set of restrictions ever devised for the deployment of algorithms in the world, demanding greater openness into how the algorithms work and giving customers greater choice over which data corporations may use to feed the algorithm. However, the restrictions go beyond addressing user rights,

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[40] LI DAITIAN – TONG, W. TONY – XIAO, YANGAO: *Is China Emerging as the Global Leader in AI?* Harvard Business Review, 18 September 2021. Available at: https://hbr.org/2021/02/is-china-emerging-as-the-global-leader-in-ai (Accessed on: 20 September 2022).

[41] HULD, ARENDSE: *China's Sweeping Recommendation Algorithm Regulations in Effect from March 1*. China Briefing, 6 January 2022. Available at: https://www.china-briefing.com/news/china-passes-sweeping-recommendation-algorithm-regulations-effect-march-1-2022/ (Accessed on: 20 September 2022).

[42] ROBERTS, HUW – JOSH, COWLS – MORLEY, JESSICA ET AL.: *The Chinese Approach to Artificial Intelligence: An Analysis of Policy, Ethics, and Regulation*. AI & Society 36(1), 2021, pp. 59–77.

[43] IBID 64.

requiring algorithm operators to adhere to an ethical code for developing a positive online environment and avoiding the spread of undesired or unlawful content.[44]

The standards include a wide range of applications and responsibilities. One of the key areas is the technical and policy requirements for recommendation algorithm operators, which mandates that algorithm mechanisms, models, data, and application outcomes be reviewed, evaluated, and verified on a regular basis. Furthermore, it calls for the filtering of unlawful and unpleasant information, as well as ecosystem management and news distribution standards. The user's ability to adjust keyword recommendations is another crucial technological consideration. The regulations also aim to ensure the safety of algorithms for senior users while simultaneously protecting labor rights. Furthermore, there are ethical criteria for recommendation algorithm providers such as positive content promotion, child protection, and elderly protection in general. Finally, the rules prevent algorithm operators from engaging in the following actions: supporting unlawful activities, fabricating or altering information or data, engaging in anti-competitive conduct, jeopardizing the health and well-being of children, and engaging in discriminating practices.

However, there is a negative component to the regulatory processes since the government is also pursuing a novel paradigm for state surveillance. There are concerns that the Chinese government themselves would employ AI unethically, such as for mass surveillance or population control via predictive analytics. The Chinese government sees AI as a means for maintaining control over its population and utilizing AI for surveillance.[45] The government is also aggressively investing in AI research and development in order to remain at the forefront of this technology.

Because of their distinct political leanings, the Chinese approach may be unique diverging from the U.S and European approaches. Nonetheless, if the potential good and negative repercussions of such regulatory procedures are considered, we might anticipate some pragmatic answers to specific challenges surrounding the tech ecosystem. With their AI technological capability and applications, the Chinese government may set an example for other countries in addressing tough issues such as disease outbreaks, climate change management, and natural source management. The world may profit from China's experience as an emergent AI power, as they take a careful approach to AI policy while exhibiting strong leadership for this purpose.

V. Discussions

There have recently been rising concerns regarding the possible abuse of AI technology due to the increased threat surface associated with information technologies. This development sparked a wave of AI legislation across several major nation-states and regions. Economic,

[44] CREEMERS, ROGIER – WEBSTER, GRAHAM – TONER, HELEN: *Translation: Internet Information Service Algorithmic Recommendation Management Provisions – Effective March 1, 2022*. Digichina, 10 January 2022. Available at: https://digichina.stanford.edu/work/translation-internet-information-service-algorithmic-recommendation-management-provisions-effective-march-1-2022/ (Accessed on: 20 September 2022).

[45] ANDERSEN, ROSS: *The Panopticon Is Already Here*. The Atlantic, September 2020 Issue, Available at: https://www.theatlantic.com/magazine/archive/2020/09/china-ai-surveillance/614197/ (Accessed on: 20 September 2022).

scientific, technological, data privacy, and security components of technology applications might be seen differently by each state, resulting in diverse levels of worry among policymakers. The existing regulatory frameworks are somewhat immature, with only a limited ability to address specific aspects of issues related to the misuse of this technology. However, the algorithms used in artificial intelligence are exceedingly complicated. The inherited complexity of the non-deterministic mathematical techniques utilized in the creation of AI applications causes the results to be non-deterministic. This implies that the outputs of AI algorithms, regardless of the inputs and design, will remain arbitrary and untraceable. As a result, the AI begins to develop a mind of its own, which is not to say that it is conscious, but rather that it can generate results that are not under human control.[46] If the inspectors want to follow the path taken by specific algorithms to arrive at results, this feature will pose a special regulatory issue.

From the analysis of regulatory frameworks coming from the U.S., the EU, and the People's Republic of China, we can observe that their regulatory attempts share many similarities. The most prevalent concerns among them were linked to data security, data manipulation, and information management. All these issues, if improperly handled, might lead to disruptive effects including mass data manipulation, stealing of sensitive data, the spread of misinformation, and fake news via AI algorithms on social media platforms. As a result, regulatory efforts frequently strive to guarantee that AI is used to serve society rather than harm it. The constraints also usually prohibit AI systems from making judgments that are biased towards specific demographics. In summary, the primary objectives of the regulatory frameworks are to make the inner workings of algorithms more transparent while providing users with broader rights concerning their personal data. By doing so, the users can be given better assurance that their data is secure and that the harmful effects of technology will be prevented.

The goal of establishing an ethical foundation for AI applications is another prevalent feature of the regulations. To foster a healthy digital platform and prevent the spread of undesirable or unauthorized algorithmic methods, models, and applications, the technology platforms are required to abide by a code of ethics. These restrictions require content monitoring and the removal of offensive and illegal material. The regulations forbid algorithm operators from promoting illegal activity, falsifying, or modifying data, participating in anti-competitive behavior, endangering the health and welfare of minors, and engaging in discriminatory acts.

There are, however, certain areas where there is divergence. On one hand, the regulations may take on the characteristics of the state that develops them. This means that the laws and regulations can be utilized for widespread surveillance and repression of political opponents if the state is less democratic and oppressive toward its population. On the other hand, the states also struggle for AI hegemony in cyberspace which is reflected in their regulatory goals. China has some particularly ferocious and ambitious objectives, and it has created legislation to support its goal of becoming the world's AI powerhouse. In reaction, the US makes efforts to strengthen its own AI capabilities and to slow the expansion of the Chinese IT sector. Trade and patent restrictions on certain IT-related goods and services are one example of the conflict between these two economic

[46] See: BONET – GEFFNER 2006.

behemoths. While these rivalries incite national protectionism, they are no longer the best options in the twenty-first century and in borderless and global cyberspace. In some ways, this leads to the internet's balkanization. If this trend continues, there is a risk of regulatory regimes that favor monopolies while limiting new start-ups' ability to develop genuinely unique features of AI technology by raising the cost of entry into the IT sector. Furthermore, another issue is content filtering and censorship. The views on what is offensive and undesirable content tend to vary depending on the country. As a result, the scope of free speech varies from culture to culture. This affects the sensitivity of rules that restrict and remove user-generated content automatically. As the boundary between censorship and the removal of offensive content gets blurry, aggressive policies that incentivize content screening and removal using the power of AI algorithms may result in violations of free expression and information sharing.

Since artificial intelligence is still a new discipline, there is a dearth of literature that takes a comparative approach to the regulatory practices governing the AI field. As a result, this study presented a comparison among the leading players in the AI area to assess commonalities and variations in their approaches. Beyond the presumed benignity of AI regulations, it has been demonstrated that there are risks that can fragment the unity of the global internet while preventing access to impartial information under the state's monopoly that mandates its conditions on IT platforms. Furthermore, the AI sector is a highly dynamic one that is always changing. The regulatory footing for the technology area will remain slippery in the absence of sufficient due diligence. As a result, a significant degree of interdisciplinary and international cooperation in cyberspace will be inevitable, if we want to get the best out of technological advancements. Due to its influence on many facets of society, artificial intelligence needs a variety of perspectives and knowledge from the fields of computer science, international relations, international law, political science, psychology, philosophy, and sociology. Therefore, there is a need for further studies in an interdisciplinary way to follow up on the developments in the IT and AI fields and their impact on the world.

VI. Conclusion

Despite the numerous potential benefits and future potentials of AI technology, creating and deploying AI algorithms poses significant risks to data security, data privacy, basic rights, and the proper functioning of society. As a result of these growing concerns, there has been a surge in AI legislation in a number of major nation-states and regions. The most prominent objectives of AI regulations are to ensure data security, prevent unauthorized selling of personal data, build an ethical framework for AI applications, and prevent algorithmic manipulations on social media. The key actors in AI research and development, such as the United States, the European Union, and China, are scrutinizing various regulatory strategies around their agendas. While they have developed certain regulatory frameworks, they are still immature that handle only particular aspects of AI. Despite several commonalities, there appear to be divergences across the drafted regulatory frameworks. Due to this fact, they also lead to fragmentation in their approach to handling AI-related vulnerabilities. Although AI can be disruptive in the absence of regulation, its progress can be hampered

by excessively strict regulations that are implemented prematurely and without proper consideration. To create the most efficient legislation, various institutions also need to work more collaboratively across multiple disciplines. Another factor to consider is that some major powers dominate the AI industry and bring their political struggle for power also within cyberspace. Nevertheless, these tendencies are quite detrimental to the optimal functioning of AI technologies. To effectively serve humanity, the tech ecosystem needs to be more inclusive and less hegemonistic. Therefore, to create more efficient solutions internationally, there has to be greater global cooperation, awareness, and complicity in the digital environment. This is part of the ethics of AI, and effort must be made to ensure that AI algorithms are designed ethically and deployed in a way that benefits all of humankind. From this aspect, this study attempted to assess the tendencies among the subject states and regions while detecting the breaking points in their regulatory practices.

TOKAT, YASIN

A MESTERSÉGES INTELLIGENCIA SZABÁLYOZÁSÁRA TETT KÍSÉRLETEK: AZ EGYESÜLT ÁLLAMOK, AZ EURÓPAI UNIÓ ÉS A KÍNAI NÉPKÖZTÁRSASÁG SZABÁLYOZÁSI GYAKORLATA

(Összefoglalás)

A század egyik legmegdöbbentőbb és előremutató vívmánya a mesterséges intelligencia, vagy röviden az MI. A mesterséges intelligencia a gépek általi intelligencia, ami szemben áll az emberek és más állatok által mutatott természetes intelligenciával. Egyre több iparág alkalmazza a mesterséges intelligenciát, és az elkövetkező években várhatóan tovább fog nőni a számuk. Az MI alkalmazások segíthetnek az embereknek a bonyolult problémák elemzésében és a hatékony megoldások meghatározásában. Emellett az MI technológiákat egyre több iparágban és vállalkozásban tervezik alkalmazni, ami új területek kialakulását és újfajta technológiák fejlesztését ösztönzi. A különböző potenciális előnyök ellenére az MI algoritmusok fejlesztése és alkalmazása néhány jelenlegi és jövőbeli kihívást is felvet. Ezért különösen fontos odafigyelni arra, hogy hogyan történik az algoritmusok fejlesztése és alkalmazása. Ha ezt gondatlanul teszik, a technológiával való helytelen bánásmódnak súlyos következményei lehetnek. Ráadásul további akadályok is felmerülnek, mivel a mesterséges intelligenciával kapcsolatos egyik legjelentősebb probléma a növekvő komplexitás, ami megnehezíti az alkalmazott algoritmusok megértését és értékelését. Ennek eredményeképpen a szabályozás kidolgozásakor meg kell vizsgálni a mesterséges intelligenciával kapcsolatos főbb etikai kérdéseket. A túlzott szabályozás továbbá gátolhatja az innovációt és akadályozhatja a jobb MI alkalmazások fejlesztését. Biztosítani kell, hogy a fejlesztés etikusan történjen, és az egész emberiség javát szolgáló módon használják, ha azt akarjuk, hogy a technológia minden előnyét kiaknázzuk. E szempontok alapján a kutatás célja, hogy összehasonlítsa és szembeállítsa az USA, az EU és Kína által elfogadott különböző szabályozási stratégiákat.