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PART I

Regular Section

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Effectiveness and Efficiency of Administrative Appeal Procedures: a Case Study on Tax Disputes in Romania[1]

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ABSTRACT

The aim of this article is to evaluate the effectiveness and efficiency of (internal) administrative appeal in tax or fiscal matters in Romania, in comparison to the more time and resource consuming court action against an administrative decision imposing fiscal obligations. In order to evaluate the effectiveness and efficiency of administrative appeals, we analysed data from the reports and documents issued by the Romanian National Agency for Fiscal Administration (NAFA) regarding efficiency related indicators, as well as dispute settlements and the amount of collected tax as effectiveness criteria. Furthermore, data regarding the results of the administrative procedure is compared to the results of the judicial procedure in terms of the number of admitted legal actions that annulled fiscal obligations. The results show that at least in the 2013–2017 period, the administrative procedure was both inefficient and ineffective since, on average, less than 7% of fiscal disputes were solved/settled in favour of the appellant. Moreover, the procedure was rather time consuming – although the disputes should have been settled in 45 days, the answer was provided after 70 days. Hence, the administrative procedure is often seen as a mere stepping stone toward subsequent legal/court actions, with no possibility to provide a satisfactory solution and thus lessen the workload of the court. Surprisingly, the taxpayers seem to consider the

1 A previous version of this research was presented at the 27th NISPAcee Annual Conference held in Prague (May 24-26, 2019) in the Rule of Law & Public Administration panel; only the abstract was published in the conference proceedings. We are grateful to all panel participants and the two coordinators (Polonca Kovač and Anamarija Musa) for their valuable inputs which allowed us to considerably improve our research.

courts as a more favourable/efficient means as more than half of legal actions brought against fiscal administrative acts were settled in favour of the taxpayer, i.e. the fiscal obligations were annulled. The effectiveness of the preliminary administrative procedure was further analysed from multiple perspectives pertaining to the players that have a direct or indirect legitimate interest in this procedure. These are (i) the courts, which should/could benefit from a reduced workload if the procedure was effective, (ii) the taxpayers filing administrative appeals, which could have a feasible alternative to the time and resource consuming judicial means, and (iii) the fiscal bodies that issued fiscal administrative acts or that must respond to the appeals. The fact that this procedure is a mandatory predecessor of the judicial one and not an alternative means of dispute resolution seems to significantly impede its efficiency and effectiveness. The results can serve as a basis to analyse and compare the respective data in other countries with similar legal and tax systems.

Keywords: administrative appeal procedure, judicial procedure, tax disputes, effectiveness, efficiency, tax/fiscal administration, Romania

JEL: D73, J52, K34

1 Introduction

The internal administrative appeal can be seen as one of the two means by which an interested party can appeal against a decision considered unlawful, alongside the judicial review – or court action (Dragoș and Neamțu, 2013, p. 72). More specifically, the administrative appeal is 'a request addressed to a public authority by which the aggrieved person asks for an administrative measures to be taken regarding the administrative decision: annulment, modification or even issuance of a decision – when this has been refused by the administration' (Dragoș and Neamțu, 2013, p. 72), while judicial review can be defined as 'a contested (adversary) proceeding by which an individual brings a conflict with a public authority to the (administrative) courts' (Dragoș and Neamțu, 2013, p. 72; also see Dragoș, Swora and Skoczylas, 2012, pp. 39-40; Dragoș, 2011, pp. 100-107).

In this respect, it is important to observe the difference between the common procedure of the administrative appeal applicable for administrative decisions/acts (except the cases where there is a special regulation) and the specific rules applicable for tax decisions and other measures of the fiscal authorities. Thus, in general (i.e. according to Law no. 554/2004, the general regulation concerning the decisions and measures of public authorities), an administrative decision is not annulled, but revoked by the issuing authority. That means that an administrative appeal, according to the general rules, is in fact always settled by the issuing authority, but only if the contested decision has not been executed yet. If the contested administrative decision is effective by the time the administrative appeal has to be settled, the issuing authority is not allowed to revoke it even if the administrative appeal is considered valid, and

the only remedy available is the judicial review. Therefore, if the administrative decision is executed, the administrative appeal becomes a useless procedure. The ineffectiveness of the administrative appeal in this cases was recently (or finally) recognized in the Romanian legislation, considering that according to Law no. 212 from August 2nd, 2018, the administrative appeal is no longer a mandatory preliminary procedure, before the judicial review, for the decision of the public authorities that already produced legal effects.

By exception, Romania has specific rules for tax decisions and other decisions of the fiscal authorities, therefore the usual administrative appeal governed by Law no. 554/2004 is inapplicable. The main differences, according to the Romanian Fiscal Procedure Code (Law no. 207/2015) are in fact essential: (i) the fiscal administrative appeal is always mandatory, regardless of the moment the tax decision produces its legal effects; (ii) the terminology regarding a favorable solution to the administrative appeal is not only a formal one – the decisions of the fiscal authorities are annulled, not revoked, if the arguments sustained in the administrative appeal are validated; (iii) the administrative appeal formulated against a decision that implies establishing fiscal obligations or with similar effects is not settled by the issuing fiscal body, but by a special structure for administrative appeal, established at a regional or national level within the Romanian National Agency for Fiscal Administration (NAFA from here on), depending on the amount of the fiscal obligations that are contested).

Although the administrative appeal is often presented as an alternative to the judicial review/court action in comparative public law (see Evans, 1993; Darcy and Paillet, 2000; Miranda, 2006), according to Romanian legislation (art. 7 of the Law no. 554/2004) the internal administrative appeal (or the preliminary administrative procedure) is, in general, mandatory in order to pursue future court actions. As such, the issues of efficiency[2] and effectiveness must be further scrutinized in regard to the internal administrative appeal, which seems to be transformed from a mean of alternative dispute resolution into a simple preliminary procedure for the judicial phase.

The aim of this paper is to evaluate the effectiveness and efficiency of the internal administrative appeal in fiscal matters in Romania, in comparison to the more time and resource consuming court actions against an administrative decision which imposes fiscal obligations. As such, in order to observe if the internal administrative procedure can be effective and efficient in fiscal matters, or if it is just a hollowed out concept which seems good in theory but is fruitless in practice, similar to public private partnerships in Romania (see Moldovan, 2017), the paper will continue with a brief literature review in Section 2 (discussing taxpayers rights and alternative means of dispute resolution, as well as the internal administrative appeal both the European

2 According to Milovanović, Davinić and Cucić (2012, p. 95), 'efficiency is understood as a pre-condition for preventing appellants from seeking judicial protection and thus reducing the workload of the court'.

level and at the national one) and a methodological section (presenting the main data sources and the data collection and analysis procedure). The main results will be discussed in Section 4, under a double sub-heading dealing with both (i) a comparative analysis of the internal administrative and legal/court actions in fiscal matters and (ii) an actor centered game theory analysis regarding the effectiveness of the internal administrative appeal in fiscal matters; the last section (5) concludes and discusses potential further research avenues.

2 Theoretical background

2.1 Taxpayer rights and alternative means of dispute resolution

Even if the primary role of taxation is to ensure sufficient funding for the state to provide and redistribute social goods, taxpayer rights are nonetheless necessary to protect citizens and to limit how far the state can reach in its grasp for resources, especially in the context of globalization (Bentley, 2015). According to the Internal Revenue Service (2014), taxpayers have the following rights: to be informed, to quality service, to pay no more than the correct amount of tax, to challenge the RS's position and be heard, to appeal an IRS decision in an independent forum, to finality, to privacy and confidentiality, to retain representation and to a fair and just tax system. OECD (1990) noted that the basic rights of taxpayers identified in its member states (to be informed, assisted and heard, to appeal, to pay no more than the correct amount of tax, to certainty, to privacy and to confidentiality and secrecy) also imply basic obligations on taxpayers behalf (to be honest, to be co-operative, to provide accurate information and documents, to keep records and to pay taxes in time). Bentley (2015, pp. 8-9) argues that a legitimate and effective tax framework cannot be built in void and must be based on a set of taxation principles, such as: equity and fairness, certainty and simplicity, efficiency, neutrality and effectiveness.

Bentley (2015, pp. 10-11), based on an extensive review of documents (ranging from constitutions to treaties, legislation, administrative charters and service standards) provides a list of 16 basic taxation rights which are assume to protect taxpayers and the basic taxation principles from which they are derived, as shown in Table 1.

Table 1: Primary Legal Rules to protect taxpayers' rights

Taxation rights	**Reference to the basic principles**
1. Tax must be imposed by law	Tax rules should not be arbitrary
2. Tax law must be published	Tax rules should be transparent
3. Tax law must not be imposed retroactively	Taxpayers should be able to anticipate in advance the consequences of a transaction
4. Tax law must be understandable	Tax rules should be certain, clear and simple to understand
5. Tax law must not be contradictory	Tax rules should be certain
6. Taxpayers must be able to obey the law	Tax rules should be effective and certain
7. Frequent change must not undermine the tax law	Tax rules should be certain
8. Tax law must be applied	Tax rules should be certain, fair, transparent and effective
9. Taxpayers need to pay no more than the correct amount of tax	Tax rules should be effective and certain
10. Tax law should not impose double taxation	Tax rules should be fair and effective
11. Tax rules should not discriminate and there should be equality before the law	Tax rules should be fair and equitable
12. Tax rules should satisfy the principle of proportionality	Tax rules should be effective, fair and equitable
13. Taxpayers should have the right to privacy	Tax rules should be fair
14. Taxpayers should have the right to confidentiality and secrecy	
15. Taxpayers should have the right of access to information	
16. Taxpayers should have the right of access to the courts, which should demonstrate the following characteristics: – an independent and impartial tribunal; – a fair and public hearing; – a fair trial; – the right to remain silent; – the right to representation; and – public judgment within a reasonable time.	

Source: Adapted after Bentley, 2015, pp. 10-11

Besides the previously discussed basic rights and legal principles, taxpayers can often also use alternative means of disputed resolution (ADR from here on) to settle their divergences with tax administration bodies. ADR differs from both the internal administrative appeal and from the court/judicial review as usually a third party (not the court) is brought in with the agreement of both parties to offer a mutually satisfactory solution. According to the International Monetary Fund (2013, p. 31) ADR 'can involve procedures that are more flexible and less burdensome for the taxpayer as well as being more cost effective for the tax administration', without undermining the rule of law; furthermore, ADR mechanism are often appropriate in cases where the law is open to interpretation and fiscal/taxation decisions were made with the use of administrative discretion. Depending on the situation, the type of the taxpayer and its relationship with the tax administration body, we can distinguish between multiple ADR mechanisms (International Monetary Fund, 2013, pp. 32-40; Parsly, 2007, pp. 677-715; Tran-Nam and Walpole, 2012, p. 479):

– A cooperative approach to large taxpayers, which are often in a more reduced number, have greater capacity to challenge the decision made by tax administration and generally contest or dispute significant amounts. Tax administration bodies often build and maintain a special relationship with large taxpayers.
– Mediation / conciliation by an independent third party as 'both parties accept a third party intervention in the procedure to get them together in cases where it is no longer possible for them to reach an agreement on their own' (International Monetary Fund, 2013, p. 33). The conciliator/mediators helps the parties identify disputed issues, consider multiple alternative solutions and reach a mutually satisfactory solution; the mediator often assumes a lighter role as it does not 'give advice on the content', but the difference between the two is often blurred in practice.
– Settlements or agreements between the two parties which can often occur in the pre-trial period or even during litigations; fast track settlement programs can be designed for large, mid-size or small businesses and even for self employed (Parsly, 2007, pp. 691-697).
– Arbitration, in which both taxpayers and tax administration agree to bring in an independent third party and accept its decision.
– A tax ombudsman institution can also help settle disputes or prevent them from arising by ensuring a better interaction between tax officials/bodies and taxpayers.

Based on an empirical research conducted on 340 Australian taxpayers (ranging from individuals to micro/small and even large businesses) involved in different ADR mechanisms (conciliation, mediation and evaluation) between 2013 and 2014, Sourdin (2015, p. 13) concluded that 'the perceptions of those involved in the ADR processes were generally very positive', 'the processes were fair and if a settlement did not occur at the intensive ADR session, that the ADR event had an impact on finalization of the dispute within a short time

frame'; furthermore, ADR was seen as being both cost and time effective. According to Tran-Nam and Walpole (2012) classical forms of tax dispute resolution (such as the internal administrative appeal or judicial review) entail multiple cost for taxpayers, ranging from explicit ones (monetary expenses) to implicit ones (opportunity cost of lost time or psychological cost) which make them ineffective; as such, we could posit that alternative dispute resolution procedures (such as the ones presented above) could alleviate these costs and represent more socially just means to settle tax disputed.

2.2 Internal administrative appeal in the EU

Although from a chronological perspective administrative legal remedies (such as the internal administrative procedure) were the first forms of controlling the activity of the administration (preceding alternative means of dispute resolution), they 'did not lose their position and significance in the process of protection of rights and legal interests of private parties (natural persons and organizations) vis-à-vis administration', are 'equally important means for the protection of legality and public interest' and 'remained a vital ingredient in the proceeding for review of administrative acts' (Cucić, 2011a, p. 51).

Administrative legal remedies are often assumed to 'help developing greater respect for individuals' rights and freedoms and building a climate of confidence between administration and citizens' (Cucić, 2011a, p. 51) and to 'keep judicial disputes to a minimum and relieve the workload on the courts' (Themis Project, 1997, p. 149), thus such mechanisms are also being consistently encouraged and promoted by the Council of Europe (1980; 2001; 2007). Furthermore, according to the World Bank (2019, p. 3) a 'well-designed internal administrative process for reviewing tax decisions can contribute to economic efficiency, competitiveness, and growth by accurately identifying errors in tax administration, lowering compliance costs for taxpayers, and enhancing the credibility and popular legitimacy of the tax regime'.

As Kovač (2013, p. 40) mentions, the administrative appeal, as any other legal remedy, 'must be (1) easily accessible and well publicised, (2) simple to understand and use, (3) speedy, with established time limits for action, and the parties kept informed of progress, (4) fair with a full and impartial investigation, (5) effective, namely addressing all the points at issue, and providing appropriate redress, and (6) informative, i.e. providing information to management so that service can be improved'. The World Bank (2019, pp. 28-44) also offers a list of international good-practice principles in the case of administrative tax review, as follows: (1) to legally define the rules of the process; (2) to harmonize internal review procedures; (3) to ensure the independence of the review institution; (4) to communicate effectively with the public and with taxpayers involved in the review process; (5) to resolve disputes as early in the process as possible; (6) to collect, publish, and report performance data; (7) to embrace ICT solutions; (8) to train officials

continuously; (9) to improve the quality of tax documents, and (10) to establish and use performance indicators.

Albeit empirical literature on internal administrative appeal in the EU is rather scarce as the lion's share of work in the field is either theoretical, legally focused or based on single case (country) studies, there are a few sources which have to be carefully reviewed in order to provide a better understanding of the phenomena. For example, Kovač (2013) compared administrative appeals and court actions in Slovenia between 2007 and 2011 and found that although the number of acts issued by Administrative units has increased, the number of appeals has decreased; furthermore, 'approximately 20% of the denied appeals parties decide to pursue further court action' and that 'the number of appeals and court actions seems to depend more on the awareness of the right to legal remedies than on mistrust in the administration' (Kovač, 2013, p. 46). Veny and De Munck (2011, pp. 278-279) distinguish in the case of Belgium between three types of appeal, namely: 'appeal in reconsideration with the organ that made the decision', 'hierarchic appeal with the hierarchic superior of the authority concerned' and 'an appeal can be lodged with the authority exercising administrative supervision'. Dragoș, Swora and Skoczylas (2012, p. 38) conducted a comparative analysis of administrative appeals in Romania and Poland in order to 'highlight that currently the European national systems are fluid and continuously changing' and to 'identify best practices that could be transferred from one system to the other'. Based on the analysis of the legal frameworks of the two procedures, the authors concluded that the 'administrative appeal seems to be regulated in a similar manner in the two jurisdictions assessed, but differences still exist on the degree of formalization of the procedure' (Dragoș, Swora and Skoczylas, 2012, p. 51). Klonowska (2017, pp. 98-99) analyzed the 2016 decisions of the Polish Voivodship Administrative Court and noticed that decisions regarding tax matters represent one third of all matters settled and the courts granted 21% of them, while 'in 2013 voivodship administrative courts granted over 30% of complaints about acts and activities of tax chambers and inspectors of fiscal control offices, while in 2012 only 26%'.

According to Milovanović, Davinić and Cucić (2012, p. 96), in the case of Serbia, the administrative appeal can be described as having the following characteristics 'its use is mandatory prior to access to judicial review; it is, as a rule, allowed against all first instance administrative acts, it has a devolutionary effect; it has, as a rule, suspensory effect; it can be used to challenge all forms of illegality, as well as inopportunity (misuse of discretionary powers) of an administrative act, when submitted by a private party; it has non reformatio in peius effect; it can be used for challenging both the acts and the 'silence' of the administration, if it finds the appeal to be founded, appellate authority can annul or alter the challenged administrative act' (also see Cucić, 2011b, p. 65).

2.3 Internal administrative appeal in Romania

According to Dragoș and Neamțu (2013, pp. 73-74) and Dragoș, Swora and Skoczylas (2012, p. 40) the Romanian law includes all the possible forms of the administrative appeal, referring to:

– objection and hierarchical appeal, as regulated by Law no. 554/2004; and
– quasi or improper hierarchical appeals, as the appeal of the prefect against decisions issued by local governments, the appeal of the Romanian National Agency for Civil Servants against 'public bodies that infringe the legal provisions regarding civil service' (Dragoș and Neamțu, 2013, p. 73), the control of the Romanian Court of Auditors or even actions of the Romanian Ombudsman.

Previous analyses of the Romanian administrative appeal were often limited to theoretical approaches regarding this procedure such as explaining the steps, timeframe, penalties for not respecting deadlines (Tăbârcă, 2009) or the influence/impact of other laws (such as New Civil Procedure Code) on the preliminary procedure (Ursuța, 2012). Ursuța (2012, p. 152) noticed that the internal administrative appeal was partially changed by the New Civil Procedure Code, as 'although the preliminary procedure remains mandatory in the field of the contentious-administrative, the exception of procedure by which this aspect is invoked must be formulated in extremely restrictive conditions'. However, the effectiveness and efficiency of the administrative appeal are often called into question in the case of Romania, as 'The general perception is that administrative appeals are just a nuisance for those who seek access to justice. This opinion is largely endorsed by lawyers, who are not charging for representing parties in administrative procedures, and are eager to get to court as soon as possible. A possible explanation is also the low trust in public administration, lower even than the one in the justice system' (Dragoș and Neamțu, 2013, p. 74-75).

The effectiveness and the efficiency of the internal administrative appeal were seldom researched in Romania; one of the few if not only study on the topic was conducted by Dragoș and Neamțu (2013) and consisted of both a national survey (including all the prefects, municipalities, cities and multiple communes from each of the 41 Romanian counties and the capital city) and a semi-structured interview with representatives of local public authorities. According to their results, in the 2004-2009 period less than 1% of administrative acts were challenged by legal or natural persons in front of the issuing authority (0.07% in the case of urban authorities and 0.04% in the case of rural ones) while the 'percentage of administrative acts revoked/modified by the issuing authority is 34.2% for the urban sub-sample and 48.97% for the rural one from the total number of acts against which an internal administrative appeal was lodged' (Dragoș and Neamțu, 2013, p. 77). Furthermore, the ''success rate' for the internal administrative appeal lodged by legal or natural persons is above 50% (the efficiency threshold

as defined by the authors), namely 64%. This means that only in 36% of the cases a subsequent court action has been filed. No significant difference was discovered between the rural and the urban communities in this respect' (Dragoș and Neamțu, 2013, p. 78).

In the case of the prefect (who has to control for legality all the acts issued by local public authorities), the results showed that, on average, per county per year, 154 acts were requested to be reconsidered by the issuing authorities, while the ''success rate' for the internal administrative appeal in the case of the prefect is quite high, namely 87% […] since only in 13% of the cases the local public authorities uphold their initial decision (considered illegal by the prefect) and decide to go to court' (Dragoș and Neamțu, 2013, p. 78).

3 Methods

Efficiency, in the context of this work, is understood as the capacity of the internal administrative procedure to generate decisions that are in favor of the appellant and thus reduce the ulterior workload of judicial courts. The aforementioned working definition build on the works of Milovanović, Davinić and Cucić (2012, p. 98) arguing that 'The administrative appeal shall be considered efficient if it diverts at least one half of the appellants from seeking judicial review of the administrative acts, i.e. from submitting suits [tuzba] to the Administrative Court'; the previous definition was based on Willemsen, Gøtze and Dragoş (2010, p. 7). Dragoș and Neamțu (2013, p. 75) consider that internal administrative appeals are efficient if they 'significantly reduce (with over 50%) the number of court actions against administrative acts/decisions'. However, we do not fully side with the aforementioned authors and their suggestion to 'mathematically quantify' efficiency by percentages (one half, 50% and so on) as other factors must be taken into account, such as entry barriers, the length of the procedure, delays or its overall respect for both the letter and the spirit of the law. We believe that a 'comparative benchmark' such as the decision of the court following the judicial review would be more appropriate in this case, as they allow for cross-country and cross-time comparisons which are urgently needed in the research field.

On the other hand, as Kovač (2013, p. 40) mentions, an institution or procedure is effective when 'it meets the objective of its regulation in practice' and that 'effective is that which generally contributes to the main purpose of administrative procedures, i.e. to balance the parties' rights and assert the public interest in accordance with the purpose and content of sector-specific regulations'; thus a more fluid and less constrictive approach to the notion of effectiveness might be needed in order to assess the internal administrative appeal. Effectiveness, in the context of this research, will be defined as the overall capacity of the internal administrative procedure to generate outcomes satisfying the needs of the parties. A differentiation between the two concepts is rather a norm in other fields of research such

as economics, management, organizational studies, strategic planning, etc. (McCormick, 1981; Bartuševičienė and Šakalytė, 2013; lo Storto and Goncharuk, 2017;Mandl, Dierx and Ilzkovitz, 2008; Codagnone, 2008), but the two concepts are often used inter-changeably in law (at least regarding the present topic, see for example Dragoș and Neamțu, 2013), with few studies addressing the differences between the two (Cornall, 2008; Ransome, 2008; Voermans, ten Napel and Passchier, 2015; European Union, 2015; OECD, 2010; Trinder and Kellett, 2007).

The current research partially follows the model provided by Kovač (2013) of comparing the internal administrative appeal with court actions and some of the indicators used by the aforementioned author, as well as the more narrower focus on specific domains (fiscal in our case) instead of a general approach (as that adopted/utilized by Dragoș and Neamțu, 2013).

The data regarding fiscal administrative appeals and fiscal judicial review (court action) was collected from the reports published by the Romanian National Agency for Fiscal Administration (NAFA) on the official website of the agency) for the 2013-2017 period. The document analysis allowed us to obtain data regarding the following main indicators of interest:

– the number of fiscal administrative appeals registered each year by NAFA;
– the number of appeals for which a decision was taken, the average time in which the appeal was resolved and the decision was made (i.e. if the fiscal obligation was annulled, maintained or other decisions);
– the financial amounts (value of the fiscal obligations) of the annulled or maintained disputed fiscal administrative acts; and
– the number of court actions which received a judicial ruling and the nature of that ruling, as well as the value of the fiscal obligations maintained or annulled.

Data for the 2013-2017 period was gathered from two types of documents available on the official NAFA website, namely:

– statistical fiscal bulletins from the fourth trimester (NAFA 2014a; NAFA 2015a; NAFA 2016a; NAFA 2017a and NAFA 2018a) which include information for the entire year, and
– annual performance reports (NAFA 2014b; NAFA 2015b; NAFA 2016b; NAFA 2017b and NAFA 2018b).

Similar 'official document analysis' methodologies were used by Kovač (2013) to compare administrative appeals and court actions in Slovenia and Macarie and Moldovan (2018) to analyze the evolution of internal public auditing in Romania.

4 Results and discussion

4.1 The efficiency of administrative appeals and judiciary reviews in Romania

Table 2 includes the main indicators of interest regarding the fiscal administrative appeal procedure obtained from the documents and reports of the National Agency of Fiscal Administration for the 2013-2017 period. The data shows that the number of fiscal administrative appeals registered by NAFA has been rather decreasing steadily (from 11756 in 2013 to 9647 in 2017) similar to the number of settled appeals (from 11489 to 8730), while the number of administrative appeals still pending at the end of the year can be described as having an upward trend (from 2363 files in 2013 to 2998 in 2017). The number of days in which the administrative appeal was settled also increased during the analysed period, from 62 days in 2014 to 97 in 2017 (Table 2).

Table 2: Overview of fiscal administrative appeals

Indicator of interest / year	2013	2014	2015	2016	2017
Number of fiscal administrative appeals registered	11756 files	8814 files	9403[3] files	7793 files	9647[4] files
Number of fiscal administrative appeals still pending at the end of the year (no of files)	2363 files	2868 files	3367 files	2081 files	2998 files
Number of fiscal administrative appeals settled	11489 files	8309 files	8.909 files	9.083 files	8730 files
Medium duration of the procedure	N/A	62 days	56 days	60 days	97 days
Value of the fiscal obligations that were contested and settled by the end of the year (million RON)	5705.5	8086.4	11166.7	8820.6	5468.0
Value of the fiscal obligations that were maintained after the administrative appeals were settled (the value of the obligations in million RON and the percentage of the amounts, from the total value of the fiscal obligations that were contested and settled by the end of the year)	2608.9 45.7%	4271.6 52.8%	4431.7 39.7%	4058.8 46.0%	2310.8 42.3%
Value of the fiscal obligations that were annulled after the administrative appeals were settled (the value of the obligations in million RON and the percentage of the annulled amounts, from the total value of the fiscal obligations that were contested and settled by the end of the year)	238.8 4.2%	552 6.8%	323.9 2.9%	49.1 0.6%	57.3 1.0%
Value of the fiscal obligations that were cancelled for procedural reasons after the administrative appeals were settled (the value of the obligations in million RON and the percentage of the annulled amounts, from the total value of the fiscal obligations that were contested and settled by the end of the year)	843.9 14.8%	364.7 4.5%	389.5 3.5%	760.2 8.6%	395.4 7.2%
Value of the contested fiscal obligations from the files that were settled with other solutions* besides rejection or admitted (the value of the obligations in million RON and the percentage of the annulled amounts, from the total value of the fiscal obligations that were contested and settled by the end of the year)	2013.9 35.3%	2898.1 35.9%	6021.6 53.9%	3952.5 44.8%	2704.5 49.5%

* In this cases the administrative appeals was rejected for procedural reasons as: dismissed as late; was formulated by a person who did not justify his quality, failure to provide specific reasons, res judicata, lack of jurisdiction of the fiscal authorities, renunciation, lack of object, suspension of the administrative appeal).

Source: NAFA statistical fiscal bulletins and annual performance reports

3 The actual number of registered files in 2015 was of 21168, but 11765 of them were directed to the competent authorities, therefore only 9403 files represented administrative appeals that should be settled by the fiscal authorities of NAFA.

4 The actual number of registered files in 2017 was of 10076, but 429 of them were directed to the competent authorities, therefore only 9647 files represented administrative appeals that should be settled by the fiscal authorities of NAFA.

The values of the disputed fiscal obligations which were settled by the end of the year also varied considerably in the analyzed period, from 5705.5 million RON[5] in 2013 to a peak value of 11166.7 million RON in 2015, only to decrease again in 2017 to 5468.0 million RON (Table 2). Over 40% of the fiscal administrative appeals settled during the analyzed period maintained the fiscal obligations initially imposed, while these obligations were annulled in significantly lower ratios (between 0.6% in 2016 and 4.2% in 2013); a more significant share (between 3.5% and 14.8%) of the contested and settled fiscal obligations were cancelled for procedural reasons. Table 2 also presents a rather intriguing development, as between a third and a half of the values of fiscal obligations which were contested and settled received other solutions besides rejection or being admitted, as the administrative appeals were rejected for procedural reasons as: dismissed as late, was formulated by a person who did not justify his quality, failure to provide specific reasons, res judicata, lack of jurisdiction of the fiscal authorities, renunciation, lack of object, suspension of the administrative appeal.

Table 3 shows that, according to their financial value, only between a half and two thirds of the fiscal obligations that were contested and settled were actually verified on grounds of legality and validity, the ratio decreasing over time from 64.7% in 2013 to 50.5% in 2017. The value of the fiscal obligations which were annulled also decreased over time, from 18.94% of the value of the fiscal obligations which were contested and settled (in 2013) to 8.18% in 2017.

Table 3: Contested, verified and annulled fiscal obligations

Indicator of interest / year	2013	2014	2015	2016	2017
Value of the fiscal obligations that were contested and settled	5.7 bill.	8.09 bill.	11.17 bill.	8.8 bill.	5.5 bill.
Value of the fiscal obligations that were actually verified on grounds of legality and validity (the value of the obligations in billion RON and the percentage of the verified amounts, from the total value of the fiscal obligations that were contested and settled by the end of the year)	3.69 bill. 64.7%	5.19 bill. 64.2%	5.14 bill. 46.1%	4.9 bill. 55.2 %	2.8 bill. 50.5 %
Value of the fiscal obligations that were annulled (the value of the obligations in billion RON and the percentage of the annulled amounts, from the total value of the fiscal obligations that were contested and settled)	1.08 bill. 18.94%	0.92 bill. 11.37%	0.71 bill. 6.35%	0.81 bill. 9.20%	0.45 bill. 8.18%

Source: NAFA statistical fiscal bulletins and annual performance reports

5 One Euro had an annual average value of 4.419 Ron in 2013, 4.444 in 2014, 4.445 in 2015, 4.49 in 2016 and 4.468 in 2017.

Table 4 shows a rather peculiar phenomenon, as although at first sight it would seem that NAFA was rather diligent and resolved (settled) the vast majority of the fiscal administrative appeals registered, the story shifts considerably when we take into consideration the values of the fiscal obligations. As such, the value of the fiscal obligations that were contested and not settled by the end of the year seems to be disproportionately larger when compared to their number.

Based on the data presented in Table 4, we might assume that NAFA is mostly prone to settle a larger number of administrative appeals which refer to smaller financial amounts (and less complex issues) and to delay (intentionally or unintentionally, due to understaffing or other reasons) reaching a settlement in the case of a smaller number of fiscal administrative appeals which refer to more consistent financial amounts. However, we must state that this is just a working hypothesis and that further research is necessary in order to confirm or infirm this observation and to scrutinize the potential reasons behind this phenomena. Unfortunately, if we analyze the performance reports made at a regional level, we will not find an analysis / situation regarding the duration of the administrative appeal. For instance, if we refer to the performance reports of the Regional Directorate of General of Public Finance from Cluj-Napoca[6], the activity of the specialized structure for administrative appeals is analyzed only briefly, with no reference to the medium duration of the procedure. However, this indicator of interest (the duration of the administrative appeals) is very important in terms of efficiency and effectiveness of the procedure, if we take into account at least two factors: (i) the solution regarding the administrative appeal is a conditionality which delays the judicial review, and (ii) the contested fiscal decisions is enforceable regardless of the duration of the procedure[7] (thus, the affected individuals or legal persons bare the effects of the administrative decisions, without having the right to challenge it in advance and not even within a reasonable time).

6 A specialized structure for administrative appeals in fiscal matters is established within the Regional Directorate General of Public Finance of Cluj, with competence regarding the tax decisions issued by the fiscal authorities from that region, including 6 counties: Bihor, Bistriţa – Năsăud, Cluj, Maramureş, Satu – Mare and Sălaj.

7 In exceptional and strict conditions and only if a significant bail is deposited, the execution of the tax decision can be granted in a judicial procedure, after the administrative appeal is submitted.

Table 4: Average duration of the fiscal administrative appeal

Indicator of interest / year	2013	2014	2015	2016	2017
Medium duration of the procedure	N/A	62 days	56 days	60 days	97 days
Number of fiscal administrative appeals registered Value of the fiscal obligations that were contested	11756 files 7.45 bill.	8814 files 8.99 bill.	940 files [8] 9.78 bill.	7793 files 7.1 bill.	9647 files [9] 8.4 bill.
Number of fiscal administrative appeals settled by the end of the year	11489 files	8309 files	8909 files	9083 files	8730 files
Value of the fiscal obligations that were contested and settled by the end of the year (billion RON)	5.7 bill.	8.09 bill.	11.17 bill.	8.8 bill.	5.5 bill.
Number of fiscal administrative appeals still pending at the end of the year	2363 files	2873 files	3367 files	2081 files	2998 files
Value of the fiscal obligations that were contested and not settled by the end of the year (billion RON)	3.3 bill.	4.21 bill.	2.82 bill.	1.1 bill.	4.0 bill.

Source: NAFA statistical fiscal bulletins and annual performance reports

The legal framework regarding the maximum duration of the fiscal administrative appeal, although recently reviewed, is still rather favorable to the fiscal authorities. First of all, the legal term for settling the administrative appeal is 45 days, but this term is not truly mandatory for fiscal authorities, since there is no consequence (penalty or sanction) for exceeding this term. The 'non-mandatory' nature of this term has immediate consequences in the administrative appeal procedures, considering that according to the data from Table 4 the medium duration of the procedure exceeds the period of 45 days.

The legislator's intervention in this respect, while essential in this context, is however not sufficient. According to the Romanian Fiscal Procedure Code applicable until December 31st, 2015 (Government Ordinance no. 92/2003), the decisions of the fiscal authorities had to be appealed in the administrative procedure, while the judicial review could target only the solution given in the administrative appeal. Therefore, in all the cases, irrespective of the duration of the administrative appeal, the individual was forced to wait for a solution to the administrative appeal, in order to ask for the judicial review of the tax decision. According to the new Romanian Fiscal Procedure Code (Law no. 207/2015, applicable starting with January 1st 2016), the legal term for settling the administrative appeal is still of 45 day and still there is no sanc-

8 The actual no of registered files in 2015 was of 21168, but 11765 of them were directed to the competent authorities, therefore only 9403 files represented administrative appeals that should be settled by the fiscal authorities of NAFA.

9 The actual no of registered files in 2017 was of 10076, but 429 of them were directed to the competent authorities, therefore only 9647 files represented administrative appeals that should be settled by the fiscal authorities of NAFA.

tion applied to the fiscal authorities for not settling the administrative appeal within 45 days from the registration date. However, considering the significant delays registered, the legislator has, however, regulated a remedy: if the administrative appeal is not settled in a term of 6 months from the registration date, the applicant is entitled to ask for the judicial review of the contested decision, without waiting (longer) for a solution to his administrative appeal. Even if this legislative change somehow acknowledges the inefficiency of the administrative appeals, at least we have, to some extent, a remedy for the abuse often conducted by fiscal authorities regarding the significant delays which are registered on a usual basis in settling the administrative procedure in fiscal matters. One potential explanation for constantly exceeding the 45 days deadline would be that this a conscious behavior of fiscal administrative institutions which purposefully delay settling contested fiscal obligations in an attempt to 'collect' more financial resources in order to offset other revenue mobilization shortcomings (Moldovan, 2016); even if this solution would be just a short term one, it could still alleviate cash flow problems.

Table 5 presents an overview of the decisions taken by the courts regarding NAFA fiscal administrative decisions that reached the judicial review phase following the internal administrative appeal; in essence, the number of files/ actions in which the judicial courts verified the legality and validity of the fiscal obligations decreased steadily, from 3272 in 2013 to 1182 in 2017.

Table 5: Overview of judicial court's results

Indicator of interest / year	2013	2014	2015	2016	2017
Number of files in which the judicial courts verified the legality and validity of the fiscal obligations	3272	1217	1322	1526 2.6 bill.	1182 525.9 mill. RON
Number of files that were rejected and the total amounts of fiscal obligations confirmed by the judicial courts (the amounts were correctly attributed to the taxpayers initially)	756 files 319.6 mill. RON	734 files 395.7 mill. RON	n/a 685.2 mill. RON	943 files 2.1 bill. RON	762 files 407.7 mill. RON
Number of files that were admitted and the total amounts of fiscal obligations annulled by the judicial courts, in favor of the taxpayers In %, amounts of fiscal obligations annulled in favor of the taxpayer from the total amounts disputed in court	2516 judicial claims 91.9 mill. RON 22.3%	483 judicial claims 112.3 mill. RON 22.1%	n/a 201.8 mill. RON 22.8%	583 judicial claims 454.7 mill. RON 17.5%	420 judicial claims 118.2 mill. RON 21.96%

Source: NAFA annual performance reports

Although the number of actions/files decreased between 2013 and 2017, a more detailed analysis of the decisions reached following the judicial review provides a rather unexpected analogy with the decisions reached following

the preliminary administrative procedure. As such, Table 4 showed that the value of the fiscal obligations that were contested and not settled by the end of the year seems to be disproportionately larger when compared to their number. In the case of the judicial review, according to Table 5, it seems that although a vast majority of the actions/files made were admitted, the total amounts of fiscal obligations annulled in favor of the taxpayer by the judicial courts are well below a quarter of the amounts contested in court. For example, in 2013, from the 3272 files in which the judicial courts verified the legality and validity of the fiscal obligations, 2516 were admitted; however, the total amounts of fiscal obligations annulled by these decisions in favor of the taxpayer account for only 22.3% of the amounts contested in court. The same phenomena can be identified in the entire analyzed period; for example, in 2017 there were 1182 judicial claims, 420 were admitted in favor of taxpayers, but they accounted for only 21.96% of the disputed amounts.

In essence, according to Table 5, it seems that although numerically most of the decision reached following the judicial procedure are in favor of taxpayers, when taking into account the amounts disputed, the judicial rulings tend to favor NAFA and maintain the initial fiscal obligations.

4.2 The issue of effectiveness: multiple perspectives

The effectiveness of the preliminary administrative procedure in fiscal matters can be analyzed from multiple perspectives, pertaining to the actors that have a direct or indirect legitimate interest in this procedure. As such, three major categories of actors can be identified: (a) the courts, (b) taxpayers that make administrative appeals and (c) fiscal bodies that issued the fiscal administrative acts or which must offer an answer to the appeal. The fact that this procedure is mandatory (before the judicial one) should be stated from the onset; as such, since it is acting as a preliminary condition rather than an alternative mean of dispute resolution, it becomes harder to present arguments in favor of this procedure.

From the perspective of the courts, the effectiveness of the internal administrative appeal would mean that as a result of the administrative procedure, fewer cases that have as objects fiscal matters would reach the judicial phase. In other words, the more appeals are solved favorably for the claimant by the administrative body that has the competencies to offer a solution, the less reasons claimants would have to address the court (as the issue was decided in a favorable manner for them), thus there will be fewer cases in which the assistance of the court is required. It is also implied that the response given by the administrative body to the appeal is not only favorable to the claimant, but also in accordance with the fiscal legislation and factual status, thus preventing any further action from all the parts involved.

Unfortunately, given the nature of the data presented in Tables 2 to 4 and Table 5 this hypothesis (that more appeals decided in favor of the claimant

at the administrative level decrease the number of court cases with the same object) cannot be tested. First of all, the nature of the indicators differs, thus direct comparisons between the analyzed years/periods are not advised. Secondly, and most important, a temporal causal link/mechanism cannot be established between the two, due to the different lengths of the preliminary administrative and of the judicial review. Although the administrative procedure takes place before the judicial one and has a fixed number of days in which the response must/should be given, this deadline is seldom respected by fiscal administrative bodies (as shown in Table 4), while the length of the judicial procedure varies too much to establish some sort of temporal causality or linkage (i.e. court ruling from 2017 might in fact results from action started in the same year, or in 2016 or even 2014). As such, it is rather impossible to assess the effects of the solutions of administrative appeals on the number of cases that enter the judicial review phase or on the decisions taken at this level. Even if it is obvious that all the cases that were offered a judicial solution had previously undergone trough the internal administrative procedure at some point, we cannot establish exactly when the cases that received a judicial solution exited the administrative procedure.

The same perception of effectiveness (that fewer cases that have as objects fiscal matters would reach the judicial phase following the internal administrative appeal) could be shared, to some extension, by taxpayers. First of all, it should be mentioned that their initial aim would be to avoid altogether having to deal with the administrative appeal or judicial review (if taxpayers would not have any contentions against fiscal administrative acts because these would be either done properly or better explained/justified). If some contentions do appear, it is more than safe to assume that the administrative appeal would be preferable to the judicial review (as the latter requires more financial resources and is more time consuming). Furthermore, the administrative appeal must be done in a written form; as such, taxpayers can either draft it themselves (but given the fact that they might not be accustomed with the procedure and legal requirements this would decrease the chances of a favorable answer) or hire a lawyer to draft it and represent them. If the second alternative is taken, this entails more financial costs for the taxpayer. Given that the answer might still be unfavorable to them and they will have to pursue their interest in the court, the entire procedure will be regarded as inefficient as it entails extra costs. There is another facet which should be discussed: what happens if the object of the appeal (the sum of money that the taxpayer considers that he should not pay) is lower than the costs (fees) of the legal counsel or lawyer which has to help the taxpayer draft the appeal? In this situation, we assume that the taxpayer will either formulate the action himself, thus decreasing his chances for a favorable response, or hire a lawyer (in which case, even if the answer is favorable, the lawyers' fee might not be). As such, the internal administrative appeal would be considered efficient if: (1) the procedure would be shorter and less complex (costly) than the judicial one and (2) if the answer would be favorable to them.

The discussion regarding effectiveness becomes even more complicated when we take into consideration the perspectives of the administrative bodies that issued the fiscal administrative act or which have to deal with the appeal. From the perspective of the body that issued the fiscal administrative act, the appeal would be effective only if it would somehow reduce the probability for further judicial actions, without diminishing the resources of the administration or its image. However, there is a rather important issue that has to be addressed here: the motives of the issuing body. Most judicial/administrative actions originate in the taxpayer's perception that the tax/fee he is required to pay is either illegitimate/illegal or too big. As such, the aim of the fiscal body is to obtain as much money as possible (in the conditions of the law), while the aim of the taxpayer is to pay as little as possible. If the response to the appeal is favorable to the claimant (reducing or eliminating his contribution), the fiscal body that issued the act will regard the appeal as ineffective (or negative) as it reduces the resources/revenues it was supposed to collect. On the other hand, if the response is negative for the claimant (his fiscal duties are not reduced) then the issuing body will/can regard the appeal, at prima facie, as effective (as it did not diminish his resources); however, if the tax payer goes to court then the administrative appeal loses some of its perceived effectiveness as the body that issued the act will also have to be present in court (and consume resources to prepare the trial); even if the case is won or lost by the fiscal body, the judicial process in itself entails additional costs, thus raising the likelihood of a negative perception.

Last but not least, there is an issue that applies both to the body that issued the fiscal administrative act and to the body that has to respond to the appeal: the internal administrative procedure assumes/entails costs: it is another activity for that requires time and resources, without eliminating the possibility of an appearance in front of the court, regarding the same issue (administrative act). As such, it would be reasonable to assume that administrative bodies whose acts are contested have an inherent tendency to look upon the internal administrative procedure in a rather negative way, or to consider it both inefficient and ineffective.

5 Conclusion

The fact that the preliminary fiscal administrative procedure is mandatory (before the judicial review) and not an actual alternative mean of dispute resolution seems to significantly impede its efficiency and effectiveness; as such, acting as a preliminary condition rather than an alternative, few arguments can be presented in favor of this procedure as it does not seem to bring a positive contribution to the status quo.

Unfortunately, fiscal administrative appeals seem to be settled in the detriment of the taxpayer, as around 50% of the value of the fiscal obligations were maintained after the administrative appeals were settled. Furthermore,

between a third and a half of the values of fiscal obligations which were contested and settled received other solutions besides rejection or being admitted, as the administrative appeals was rejected for procedural reasons: dismissed as late, was formulated by a person who did not justify his quality, failure to provide specific reasons, res judicata, lack of jurisdiction of the fiscal authorities, renunciation, lack of object, suspension of the administrative appeal. As such, less than 5% of the value of the fiscal obligations that were settled between 2013 and 2017 were annulled (decided in favor of the tax payer), while in the same period over 20% of the amounts contested/disputed via judicial review were annulled in favor of the taxpayer. Furthermore, this procedure also seems to be time consuming for taxpayers, as although internal administrative appeals should be settled in 45 days, the solution/decision is provided, on average, only after 70 days.

According to the game theory analysis conducted in section 4.2, the internal administrative appeal can be efficient only from the perspectives of the courts (and only if it reduces their workload) and that of taxpayers (only if the answer to the appeal is favorable to them and administrative bodies do not pursue further court actions); the situations in which this type of appeal would be seen as favorable by fiscal institutions are rather limited, as the response to the appeal must not be favorable for the appellant and the appellant must not further engage in a judicial procedure following the negative solution; even so, some costs for the administrative bodies are incurred as part of the procedure.

One potential shortcoming of this research consist in the fact that the internal administrative procedure and judicial review were not further compared with alternatives dispute resolution procedures (conciliation, mediation, settlements, arbitration and so on) in the case of Romania or more generally at the European level; however, although such an approach would have provided a more nuanced and complete image of the issue at hand, this would have been beyond the initial scope of the current research (but it can represent a potentially interesting line of future reseach).

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Promise and Practice of the Principle of Equal Access to Information in the Danish Local Administration

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ABSTRACT

This article presents an empirical based study of the implementation and effectiveness of freedom of information acts (FOIAs) in Danish municipalities. Even though the Nordic Countries are known for transparent public institutions, empirically based studies of access to information are rare. With the help of 33 students of public administration, 146 simple requests were sent covering 74.5% of all Danish municipalities. The primary purpose of the field experiment was to test the legal principle of identity-neutrality and equal treatment, as the profile of the applicants was varied: the first set of requesters represented "simple" identities, while the second set of requesters represented "qualified" identities. Besides, the requesters asked for two different types of information, one more controversial to reveal than the other. Hence, the study looked into variations in casework time, likelihood of rejection, communication form, etc. The results of the study showed that, in general, the municipalities handled the requests for access to information without difficulties and within the set deadlines, and no differential treatment of applicants based on their status and qualifications could be observed. In addition, the data indicates a significantly higher processing time in the requests for potentially controversial information. The study opened up grounds for future field experiments on FOIA(s). In the final part of the article, the general benefits of student involvement in research processes are discussed.

Keywords: *transparency, access to information, equal access, FOIA – Freedom of Information Act, implementation, municipalities, Denmark*

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1 Introduction

Access to information as a universal right, regardless of personal status, is an important element of most democratic states. Denmark has, like the other Nordic countries, a quite long and well-established history of transparency

in public administration and a tradition of involving citizens in political and administrative processes (Knudsen, 2003; Jørgensen, 2014). However, during recent years, the principle of access to Information in Denmark has been under pressure, as a new Access to Information Act has been accomplished, implying more secrecy concerning central political decisions (Koch, Gottrup and Gøtze, 2018; Koch and Gottrup, 2019). In addition to this legal development, these years the Danish public sector experiences cutbacks and especially the municipalities are having difficulties due to increasing expenses and decreasing income. This financial pressure could possibly influence the willingness to prioritize access to information requests. On this background, it seems relevant to examine how the praised principles of transparency in public administration are implemented in practice and how the transparency culture manifests itself in the daily life of the local authorities.

An important supplementary element of this study, however, is the involvement of students in the research process. Hence, public administration students following a course in administrative law were engaged in designing and carrying out the field experiment. The course in administrative law is a traditional theoretical course aiming to teach students about the formal legal framework of public institutions. Even though practical work with fictitious cases is already included in the lectures, the engagement of the students in seeking access to information in actual municipalities in real life could reinforce their understanding of the legal principles in practice.

The study represents findings of a field experiment involving a total amount of 146 requests covering 73 out of 98 Danish municipalities (74.5 pct. of all municipalities). The main purpose of the field experiment is to examine the administration of simple requests for access to information and to test the legal principle of identity neutrality and equal treatment.

Even though access to information regulation is seen as a cornerstone in Danish administrative law, implementation studies are a rare occurrence. Whereas the Danish formal legal framework is rather well described in the literature, the empirical perspective has not attracted much attention. However, in the wake of the recent debates on the new Access to information Act, some statistics and reports have been collected from the state administration showing e.g. number of cases, rates for approval and rejection, casework time etc. (Justitsministeriet, 2017). Nevertheless, research based field experiments are in short supply.

Thus, the aim of the study is to answer the following research questions: 1) How are Danish municipalities handling simple requests for access to information in terms of casework time? 2) Are requesters treated systematically better, if they appear to be more qualified and state a reason for applying for access? 3) Are requests for sensitive political information handled more slowly than requests for non-controversial information?

2 Transparency and field experiments

Transparency and Access to Information are closely linked, as access to information can be seen as a way of institutionalizing transparency in rules and procedures (Berliner, 2014). In the political science literature, the discussions of transparency has primarily been focusing on transparency as an instrument for securing good governance and a well-functioning public sector (Hood & Heald, 2006; Berliner, 2014). Consequently, many studies concern for instance the relationship to public sector corruption (Escaleres et. al., 2010), trust in Government (Grimmelikhuijsen, 2013) or empowering (Meijer, 2012). In law and legal studies, the literature typically presents differing justifications for transparency, for instance effective administration, democratic accountability or human rights (Vaughn, 2011). Hence, the legal discussions draw on several legal disciplines such as constitutional law, administrative law and human rights law (Dragos et. al., 2019).

Although Scandinavia is considered a front-runner of transparency legislation, there is not a strong tradition of empirical based studies of access to information in the public administration as only few and limited field experiments has been conducted. Moving the spotlight outside Scandinavia yields better results. Thus, interesting field experiments have taken place in Countries like Brazil (Michener and Rodrigues, 2015), the United States (Lewis and Woods, 2012), New Zealand (Price, 2006), Mexico (Lagunes and Pocasangre, 2017) and England (Worthy, John and Vannoni, 2017). However, focus of these studies has varied. Some have concentrated on the effects of transparency on the organization by testing e.g. the link between access to information and corruption deterrence, while others have been looking into the effectiveness and appliance of access to information legislation.[1] There are even field experiments focusing more specifically on equal access and the identity of the applicant (Lagunes, 2006, 2017; Michener and Rodrigues, 2015) and/or the wording of the application in order to identify potential bias (Cuillier, 2010).

Lastly, attention can be drawn to the prevalence of a few studies examining the impact of the political sensitiveness of the requested information on the responsiveness of the authorities (Lewis and Woods, 2012; Price, 2006). The conclusions from these last-mentioned studies seem to be that there is a significant variety in response rates and time depending on the extent of sensitiveness and political accountability.

As already mentioned, Scandinavian studies have been scarce. In Denmark, a few experiments have been accomplished by the Danish Journalists Association (Journalisten, 2009) and by one of the nationwide newspapers (Information, 2015) in order to test the effectiveness of access to information rights. Mostly with poor results consisting of delayed answers. Danish academic studies is as far as is known not accomplished apart from a few student projects (as referred in Tim Knudsen, 2003).

1 For a literature review, see Worthy, John & Vannoni (2017), p. 490.

An interesting field experiment has been conducted in Finland, but due to lack of publication of results etc. in English, we have only limited knowledge of the details of the study. However, it appears from a Google-translation of a Finnish newspaper-article that it concerns an experiment from 2010 accomplished by four Political Science students under the guidance of Professor Matti Wiberg from University of Turku (Helsingin Sanomat, 2010). Under fictitious names, the students send out 230 inquiries to different State authorities asking for access to senior executive salaries. The result of the study – though scarcely described in the newspaper article – was discouraging. From the majority of the authorities, the answers were either delayed or completely missing, and the attitude and language of the administration was often arrogant and aggressive. According to the newspaper article, the applicants were often asked for the purpose of the request and sometimes even asked to call or attend the administration in person, even though this was not according to the law.

3 The Danish legal framework

3.1 General principles

Denmark adopted its first law on access to information in 1970, and although the right to access to information on administrative authority does not have a constitutional basis, the FOIA (Access to Public Administration Files Act, 2013) is considered as a cornerstone in Danish administrative law (For a general introduction: Andersen, 2013; Revsbech, 2014, pp. 242-267; Bønsing, 2013, pp. 212-240 and Ahsan, 2014). The Danish FOIA has been revised on a number on occasions (For an overview, see Ministry of Justice, 2009), but the basic principles remained. In this context, it is relevant to mention the reform in 1985, which included the municipalities under the scope of the act. Thus, the Danish FOIA covers all material in the public sector, i.e. in the state administration as well as in the regional administrations and municipalities.

The overall framework of the FOIA is based on openness, and this is its explicit point of departure. Yet although citizens' right to access to documents is the main aim of the Act, almost half of the sections in the Act contain exceptions to this. The catalogue of exceptions can be broadly divided into three main categories, namely: 1) exempted cases pertaining to specific subject matter such as criminal cases and employment cases; 2) exempted documents such as internal documents; and 3) exempted pieces of information such as personal data. All rules on documents excluded from access to information are absolute in the sense that the documents can and will be excluded from public disclosure if the document is covered by one of the three exceptions. No public interest-test is integrated in the Access to Information Act. In other words, the authorities do not have to balance the importance of the requested information against the importance of confidentiality. However, the authorities have a duty to consider extending their openness on their own initiative, and in that connection a potential public interest can come into play.

One of the newcomers in the FOIA from 2013 was an explicit preamble clarifying the aim of the access to information act. Thus, according to the new sec-

tion 1, the purpose of the act is multiple: First, access to information is crucial for the existence of freedom of expression. Second, access to information in public authorities can advance the involvement and participation of citizens in the decision-making processes. Third, FOIA is an important precondition for holding the authorities responsible for their behavior. Fourth, access to information is crucial for the media in their role as informing the public. Last, but not least, transparency is believed to create public trust in the public administration.

3.2 The requirement to be applicant blind

In Denmark, as well as in many other countries (Dragos, 2019), there is neither a nationality condition nor an age requirement, when applying for access to information in the public administration. Moreover, an important feature of Danish transparency legislation is the no-requirement for the applicant to present or justify an interest, a legal interest, in the relevant documents or piece of information. Consequently, the public authorities are not permitted to ask for the identity nor the motives of the applicants.

Even though the requirement to be applicant blind is fundamental in Danish Access to Information regulation, it is also subject to modification. Recently, a new rule has been introduced, implying certain benefits for journalists employed or affiliated mass media, in the sense that a new possibility of denying access to information is not in the same extent applicable on requests from journalists. The new rule permits the public authorities to refrain for accommodating a request for file access, even though nothing substantial in the documents speaks against it, namely if the case handling will necessitate a disproportionate use of resources. In the preparatory work, however, it is emphasized that the exception should not be used if the considerable resources are needed because of inappropriate records management, or if the person seeking access has a special interest in the information/documents. In that connection, it is mentioned that mass media and researchers from research institutes are considered having a special interest.

Thus, the requirement to be applicant blind is deviated in situations with comprehensive requests of access to information covering a wide range of documents and/or including comprehensive filtering out confidential information. Moreover, it is highly probable that the resource-criteria has generated more attention than previously to the identity of the applicant and the motives behind the request for access to information.

3.3 Time limits

The Danish Freedom of Information Act implies quite tight limits, as the current act contains shorter deadlines than the previous regulation. Thus, decisions must be made with no delay as to individual applications for access to documents. There must be a specific reason for a delay – such as the complexity of the case - of more than 7 working days. There are no time limits in the law if the public authority states that the case is complex and cannot meet the

seven-day-rule but according to guidelines from the Ministry of Justice and from the Ombudsman, even the most comprehensive application should be dealt with within 40 working days. If the application is not dealt with within the stipulated time limits, the applicant should be notified of this and given an indication as to when the decision will be made.

The practical usage of the various provisions on time limits is described in the 2017-report from the Ministry of Justice (Justitsministeriet, 2017), and it is interesting that the stipulated deadlines have in practice proved highly difficult to comply with. Most ministerial departments cannot process applications on access to document within 7 days and the main rule in practice is something like 10 to 20 days according to the data collected by the Ministry of Justice in the 2017-report. As to local public administration such as Danish municipalities no exact data has been collected but the municipalities have expressed strong concerns in the 2017-report on the tight time limits and they are considered unrealistic.

4 Methods

As already mentioned, a central aim of the current study is to explore whether the fine ideals behind the principles of FOIA are actually observed in practice, when civil servants are handling request for information in the daily life of the public administration. The original intention was to cover all Danish municipalities, but due to practical circumstances in involving students in collecting data, we ended up in covering 73 municipalities (74.5 % of the total number of municipalities) by sending a total amount of 146 requests, 2 per each municipality.

Two separate field experiments were accomplished with the help of 33 public administration students. In order to test the legal principles of identity-neutrality and equal treatment the 33 public administration students used their personal e-mail addresses to apply for access to two identical pieces of information in the given municipalities. However, the profile of the applicant was varied, so that the first set of requesters (50 % of the applicants) represented "simple" identities (the name of the requester) while the second set of requesters represented "qualified" identities as their institutional affiliation (university students of public administration) and their professional interest in the subject was stated in the application.

The A-requesters were asked - as far as possible – to use an email address, where their status as university students did not appear, e.g. if they had a personal account. Additionally, they were provided with a specific text designed by me for the specific purpose. Thus, the A-requesters made use of identical email-texts when asking for access to information; only the name of the specific municipality (and the name of the nursing home to which the requested information relates) was filled out by the relevant student before sending the request. The wording of the email text was formulated by the teacher in a rather informal way with the purpose of appearing realistic; as something

a standard citizen with no special qualifications would write. Following that line, the request did not include references to articles in the FOIA, neither did the mail use technical terms. Moreover, no specific reasons or motives for the request was stated.

As opposed to this, the B-requesters were urged to use their university-email and state explicitly their status as students of public administration at Roskilde University. These students too were provided with identical texts designed by the teacher in order to ensure comparability in the study. In this case, however, the wording of the e-mail was designed differently. The text was not written in officialese, but it included references to specific legal provisions and therefore appeared qualified as being sent from someone with specific knowledge of rights and duties in public administration. Moreover, a specific purpose of the request was stated in the mail, namely that the information was needed for the purpose of a specific study project on the Bachelor Program in Politics and Administration at Roskilde University.

All the participating students (the requesters) were asked to send two different requests to each municipality. The first application asked for access to a municipal inspection report on a specific nursing home from 2016; a randomly chosen nursing home, which each student has found by searching the Internet for nursing homes in the relevant municipality. According to the law, the authorities are obliged to conduct inspections to all nursing homes once a year. Thus, a high degree of certainty that these reports actually existed, which was important for the research design.

The second application asked for insight in specific information (name, wage level and performance contract) about the top manager of the municipal administration ("kommunaldirektøren"). According to the Danish FOIA, you have a right to access in key information on certain public employees personal matters. Thus, Section 21 explicitly states, that even though you cannot gain access to cases on recruitment, advancement and disciplinary actions concerning personnel in the public administration, there is a central exception gaining access to information about the employees name, position, educational background, working tasks, salary etc. When it comes to top leaders of the administration, you even have access to potential performance contracts with their superior. As in the previous case, every single municipality undoubtedly is in the possession of this information on the salary of the top manager.

The two different requests for insight were not sent simultaneously. The students were asked to send the request for access to the inspection report first, and the other request on the wage level of the highest-ranking civil servant 8-10 days later. The purpose of this time interval was to reduce the risk of giving the impression that these requests were just a part of an experiment, and not genuine requests. The students were instructed in mailing a reminder to the administration, if they did not have an answer within 10 days.

In light of the aforementioned financial difficulties of many Danish municipalities, the ethical aspects were carefully considered of sending a large amount

of requests for access to information for the sole purpose of testing the principle of equal access and the general implementation of transparency regulation. On that background, we carefully chose to ask for insight in material and information we have reason to believe was easily identified and which did not imply much workload for the authority. This was also important due to the earlier mentioned resource-rule, which allowed the municipality to reject requests too time-consuming.

5 Results

As already mentioned, the first research question was how Danish municipalities are handling simple requests for access to information in terms of casework time. In that connection, a crucial question is what the study actually tests and how the research design substantiates to test it. First, it is important to emphasize that the two requests did not involve difficult legal assessments, neither disputable rulings. The law is quite clear: According to the Danish FOIA, everyone has the right to obtain access to material such as a municipal inspection report concerning a nursing home, while such a report does not contain personal or confidential information, which can justify an exception to the principle of openness. The same is true of the other request: According to the Danish FOIA, section 22, everyone has the right to obtain access to the wage level and other central terms of employment of the top leader of the administration. From a legal point of view, there is no room for opinion. Thus, the purpose of the study was not to test varieties in legal discretion.

Hence, the primary measurement criterion is casework time based on the assumption, that quick and effective handling of the request of access to information is of utmost importance. Besides, there is reason to believe that requests that are inconvenient for the authorities probably will result in longer case work time and delayed answers than in the case of non-controversial requests. In addition to the focus on casework time, the study aims to identify other relevant differences in the way the municipalities handle access to information requests. More specifically, this could be the overall approach of the authority, the communication form, the attitude etc.

While the described division of students in A-requesters and B-requesters aimed at answering the second research question on identity-neutrality, the different nature of request 1 and 2 aimed at testing the third research question, namely whether potentially controversial information is handled differently than uncontroversial information. In that connection, it is assumed that information concerning the wage level etc. of the highest-ranking civil servant of the administration in many cases will be seen as inconvenient to hand out to the public and perhaps cause anxiety among the political and administrative top management, as they might fear the issue getting bad press.

As already mentioned, the data set covers 73 municipalities (74.5 pct. of all municipalities) receiving two requests each, e.g. a total amount of 146 applications for access to information. The first applications were send 10. April

2018, and the experiment was officially closed 1st of June 2018. At that time, only one of the applications has been totally ignored by the municipality, and the applicant does – even though a reminder has been send – not have a decision or even an answer. This leaves us with a data set of 145 actual answers about access to information.

Shifting focus to the results on a more general level, especially three conclusions manifests itself from the data set:

First, generally seen, the municipalities handled the applications rather exemplary, as most applicants received the requested information without difficulties and within the set deadlines.

Table 1: Number of days for the response to the request. N=137.

	0-1 days	2-7 days	8-13 days	14 days or more	Total	Average response time
Answers	36	65	24	12	137	5.8 days
In pct.	26.3 %	47.4 %	17.5 %	8.8 %	100 %	-

Thus, as table 1 shows, 73.7 pct. of the applicants received an answer within 7 days, that is, within the standard time limit stated in the law. After 14 days, 91.2 pct. of the applicants have received a decision on the request for access to information. It is noteworthy to bear in mind, that these decisions with only very few exemptions granted the applicant access to the requested information. Moreover, the applicants were generally treated politely and respectfully and in relevant instances guided where to find additional information. Based on these results, the implementation of access to information regulation appears successful, at any rate in the municipalities when it comes to simple access to information applications.

Secondly, a crucial result from the analyzed data is that no differential treatment of applicants based on their status and qualifications can be observed.

Table 2: Number of days for the response to the request compared between qualified and non-qualified applicants.

	0-1 days	2-7 days	8-13 days	14 days or more	Total	Average response time
Qualified	20	30	11	5	66	5.7 days
In pct.	30.3 %	45.5 %	16.7 %	7.6 %	100 %	-
Non-qualified	16	35	13	7	71	5.9 days
In pct.	22.5 %	49.3 %	18.3 %	9.9 %	100 %	-

Thus, there is only a slight difference in the response time for requesters A compared to requesters B, as the average response time for the non-qualified

applicants is 5.9 days, while the average response time for the more qualified applicants is 5.7 days, see table 2. This is not a statistically significant difference; consequently, we cannot from this data set conclude that applicants with a certain status are consistently treated better.

However, third, but not least, we can observe a significantly higher processing time in the requests for potential controversial information than for less controversial cases. Table 3 illustrates this result:

Table 3: Number of days for the response to the request compared between nursing home and wage level.

	0-1 days	2-7 days	8-13 days	14 days or more	Total	Average response time
Nursing home	22	31	9	6	68	4.8 days
In pct.	32.4 %	45.6 %	13.2 %	8.8 %	100 %	-
Wage level	14	34	15	6	69	6.9 days
In pct.	20.3 %	49.3 %	21.7 %	8.7 %	100 %	-

Thus, the average response rate for requests for access to municipal inspection reports on nursing homes is 4.75 days, while the average response time for access to the wage level of the top civil servant of the administration is 6.86 days. Moreover, decisions in 22.1 pct. of the cases concerning nursing homes exceeded the standard time limit on 7 days, while this was the case in 30.4 pct. of the cases concerning wage levels. However, the differences between the intervals of response time are not significant (ChiSquare, p=0.333), see table 3.

An unexpected, yet interesting, finding of the study relates to the question of communication form. Notwithstanding the well-established requirement to be applicant blind, Denmark has not provided special systems ensuring anonymity when applying for information and documents. In that connection, the field experiment shows an interesting and potentially problematic development as some municipalities have established a new procedure for citizen requests of any kind. These municipalities requires routinely citizens to use the so called “sikker e-post” (secure e-mail), which is a digital solution for protecting personal information send by emails.

However, this digitalized communication form implies use of an official website (borger.dk) which is a digital self-service portal implying the use of a digital signature (NemID). NemID is an essential part of the Danish vision of a highly digitalized society including the public sector, but login and use presupposes entering one’s personal identification number and combine it with a code from a personal code card. Thus, this digital arrangement is a rather demanding process (more demanding than just sending an e-mail), and furthermore, the attending case officer gets precise knowledge of the identity

of the applicant via the personal identification number. On that background, prescribed use of this communication form when applying for access to information in public administration files may result in some citizens refraining from seeking access. Moreover, the official identification via the personal identification number may counteract the principle of applicant blindness as the civil servant handling the request may get access to other cases or incidents where the specific applicant has had contact with the authorities.

6 Discussion

The experiment can be seen as a pilot project characterized by trial-and-error in designing empirical based studies of access to information regulation, consequently, this affects the conclusions to be drawn. Thus, the field study contributes with perspectives and results that need to be taken in to account in future studies.

Thus, a basic methodological challenge is how to avoid that the public authorities got the suspicion of participating in a research experiment rather that handling an ordinary request for access to information. This was an almost unsolvable dilemma, as we at the same time strived to send identical emails to all municipalities in order to ensure comparability. In retrospect, it was a fault that the same person sent two rather different requests to the authorities within a rather short timeframe, as this could arouse suspicion.

Undoubtedly, these challenges need to be more thoroughly dealt with in future research designs in order to avoid the risk of biased and unreliable results because authorities are expected to behave better when they believe to be tested or inspected. Even though traces of such a suspicion could not be observed from the municipality's part, and even though the risk of arousing suspicion was reduced because the two requests was handled by two very different divisions of the municipality, the social desirability risk can't be excluded in the current study.

Even with these reservations, the study still seems to substantiate interesting assumptions. Hence, even though the principle of access to information has been under pressure in Denmark recent years, the preliminary results from this field experiment indicate that there is no cause for serious concern with regard to simple case processing in the municipalities. Generally seen, the applications were processed without difficulties and in most cases within reasonable time.

Moreover, there is no indication of systematically better treatment of and approach to applicants who officially present themselves as students of public administration and through that having a qualified background and professional interest in the requested information. Other potentially interesting grounds for differential treatment is yet to be analyzed.

However, the equal treatment does not manifest itself in relation to the nature of the specific information seeking access to. Thus, a more reluctant and

sometimes delayed processing of applications asking for wage levels of leading civil servants was observed; information which easily can cause debate and controversies in the media. This result is interesting, though not surprising, and asks for further consideration and analysis in future studies.

This pilot-study, however, need to be supplemented with further research before solid conclusions on these issues can be drawn.

A supplementary interesting observation is the fact that the offensive Danish digitalization strategy in the public sector combined with a growing attention on privacy protection risk at hindering an easy and informal contact between the citizens and the public administration. This has also consequences for access to information and the principle of applicant-blindness, as some applicants possibly refrain from seeking access if it is too complicated or if they do not wish to be registered or recognized by 'the system'.

7 Concluding remarks

The results of the study showed, rather surprisingly, a fine implementation of the principles of easy access to information in Danish local authorities, as applications were processed without difficulties and in most cases within reasonable time. Besides, requesters were not treated systematically better, even though they appeared to be more qualified and stated a reason for applying for access. Certainly, requests for sensitive political information were handled more slowly than requests for non-controversial information, but the difference in case work time was not remarkably high.

As a final point, some concluding remarks on the question of student involvement. As indicated earlier, there were several good reasons for engagement of students in the research processes.

Firstly, it is worth mentioning the special history and characteristic of Roskilde University where the research initiative took place. Roskilde University was originally established in 1972 in the wake of the student uprisings of the 1960's in order to challenge academic traditions and to experiment with new ways to create and acquire knowledge. Wanting a different approach to education and science, Roskilde University implemented new ideas in teaching and research. Most of these ideas remain central to the way that the university functions today. Thus, Roskilde University is known for its strong emphasis on group work and interdisciplinary teaching. Overall, Roskilde University continues to be the alternative university choice for students who want to have a greater say in how their time at the university is spent.

On that background, it seems obvious to involve students in research processes in order to increase their commitment to their education and the courses, strengthen the learning situation and creating synergy between the researcher and the students.

Secondly, the activities of the students implied real applications to and communication with administrative authorities in order to receive actual infor-

mation on public matters. These activities will assumingly provide a better understanding of public administration and how the legal principles of administrative law is applied in practice.

Last, but not least, the field experiment would not have been possible without the help of my students. Collecting large amounts of data often requires a lot of manpower, which can be hard to provide for busy university professors and research staff. Hence, student involvement can often turn into a win-win situation; an initiative that benefits both parties.

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Local Self-Governments in Hungary: Recent Changes through Central European Lenses

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ABSTRACT

This article provides an overview of the regulatory environment of the Hungarian system of local self-government based on the methods of legal dynamics and economic analyses in a historical perspective tracing events back to the aftermath of World War II. The starting point of the analysis is 1947, the launching of soviet type command economy in Hungary. Next is a detailed study of the regulation and evolution of local self-government since its beginnings in the early 1990s following the change of regime, with a brief international outlook on the post-soviet countries surrounding Hungary. In our economic analysis, emphasis is placed on the period following Hungary's accession to the European Union, a period that held out considerable opportunities for Hungarian local self-governments, but ultimately evolved into bankruptcy. The article presents detailed reasons for the atypical nature of Hungarian local self-government indebtedness and the factors underlying this unfavourable process. Further on, the procedure of debt consolidation and the essential elements of the new regulatory environment created after 2011 are described. In a brief international comparison, debt portfolio developments are analysed through the examples of Slovenia, Poland, Slovakia and the Czech Republic as analogue Central European countries, in order to provide further proof of the atypical financial management of Hungarian local self-governments, i.e. non-compliance with the rules and the not always solid budgetary discipline. The focus of the research underlying this paper is the impact the Hungarian regulation of self-governments had on the financial sustainability of local self-governments' financial management.

The study confirmed the initial hypothesis that the business management rules set out with insufficient prudence, deficiencies in the control system, and excessive borrowing in foreign exchange led to bankruptcy of a number of local self-governments and consequently jeopardised the proper provision of public services.

Keywords: comparative analysis, local self-government, indebtedness, public finances, Hungary, Central European economies

JEL: H70, H71, H72

1 Introduction

As local self-government systems provide the local dimension of performing public service tasks, they have a powerful impact on the living standards of the population, and consequently, the stable operation of local self-governments is of macro-economic interest. This paper gives an overview of the history of local self-government in Hungary from the socialist era to date, with special focus on the main events after the change of regime, in the context of other Central European countries that have undergone a similar development. The purpose of this paper is to highlight Hungary among the countries of similar history and similar modernisation efforts, and to direct the attention to a peculiar local self-government financing practice.

In the period of command economy and during transition to a market economy, the Hungarian practice of local self-government adjusted to the operational principles of the Soviet Union, which had a profound impact on the region, and then after 1990, to those of the European Union. Similarly to other countries of the Central European region, after in Hungary transformation of the local self-government system after the change of regime was based on the European Charter of Local Self-Government, and these principles were also enforced during the 2011 reform. Since the change of regime, there have been two statutes in effect with both similarities and differences in regulatory content. Based on all these, the hectic changes in the financial situation of Hungarian local self-governments promise an exciting research topic this paper undertakes to present.

2 Literature review and methods

2.1 Literature review

The maintenance of operability for the public finances of the central government and of local self-governments was in the limelight for political decision-makers in the initial years that followed the 2007-2008 crisis.

According to the classical literature tenet, a fiscal crisis takes place when for certain reasons the state loses the opportunity of financing from the market, or when deficit financing runs into costs that paralise its fundamental opera-

tion. This is characteristically caused by the unreliability of the government (Cordes et al. 2015). In the past decades this crisis has also become permanent in the case of local self-governments given substantial economic autonomy, as they have increasingly been raising the required funds from the banking, and more specifically from the bond market.

The government units, regions and local self-governments below the central level are characteristically less likely to go bankrupt than sovereign states, although local self-governments' mass bankruptcy may trigger problems on a national level. The reasons for fiscal crises in local and regional units can be divided into two major groups: central and local factors.

The central factors include deregulation, insufficient transparency conditions, transfer of the fiscal crisis situation and an overall macro-economic crisis. During deregulation local self-governments are given the opportunity to finance their operative and investment activities from the financial markets. This is restricted by the application of fiscal rules and by the market's disciplinary power. Kornai (2004) and Beck et al. (2016) think that if subnational institutions cannot expect help from the central government, their budgetary limit remains hard, and this contributes to the disciplinary force of the market. However, it should be added that the inoperability of local self-governments jeopardise the security of the people living in the community and the supply of public services, and thus it is in the fundamental interest of both the central and the local authorities to consolidate such a situation, and instead of enforcing the disciplinary power of the market, which may lead to the escalation of social conflicts, to use the opportunity of rescue by the government.

The absence of transparency, which develops over a period of many years, may primarily arise from differences in the accounting rules and the possibility or impossibility of their consolidation. Compliance with the budgetary regulations have accounting aspects that may gloss over any fiscal crisis situation (de Vicente Lama, 2017). This can be offset by a consistent application of accrual-basis accounting, by the consistent enforcement of supervisory powers, and by efficient business management, which may hardly leave any "skeletons" in the business system.

A vertical imbalance evolves when the expenses exceed the tax revenues of the central budget, while the local self-governments make surpluses from their local tax revenues. In this case the central budget reduces the imbalance by cutting back on support. This phenomenon took place, for instance in Hungary as a result of the convergence trajectory adjustment package announced in the autumn of 2006, and in Italy in the early 1970s, when the central government reduced the share in tax revenues was reduced (Hagen et al. 2000) to the detriment of the local self-governments.

Local crisis factors include the following: a crisis situation in the structure of the local economy, effects of local politics, indebtedness by the local self-government's institutions or their unsecured business management, and financ-

ing their mostly unproductive investment projects from risky loans (foreign exchange loans, short-term credits).

The taxes collected by local self-governments heavily depend on the performance of the local economy, and thus the industrial structures may cause high exposure in the local budget. As a characteristic cause, a given region's economy may be insufficiently resilient to shocks, as it is typically specialised in one particular industry. A characteristic example includes Detroit, the city that built its economy on the automotive industry,and went bankrupt when the latter deteriorated (Jacoby, 2016).

The local political élite "inherently" endeavours to maximise the number of votes in order to get re-elected, and this may influence the level of indebtedness either by excessive current expenses or by the implementation of showcase investments without internal resources. This may also be determined by the ideological background. De Vicente Lama (2017) established a statistical correlation between the party affiliations of local self-governments and the extent of their indebtedness.

If the business management of an organisation operating with the participation of a local self-government is insufficiently transparent, the owner can influence the debt portfolio of the local self-government or subnational organisation (Hagen et al. 2000). The relevant international research also apply to the atypical business management performed by Hungarian local self-governments after the change of regime.

2.2 Material and methods

In this paper the financial regulation of Hungarian local self-governments and its evolution are analysed in an interdisciplinary approach. The numerical data used in this paper have been obtained from the databases of OECD and the National Bank of Hungary. The debt portfolio was studied using the time-line analysis in a breakdown by foreign exchange. The effect of exchange rated on debt was also taken into consideration on the basis of the official mean rate quoted by the National Bank of Hungary.

The other methodological approach applied in this study included a comparison of statutory regulations. The financial regulation applicable to Hungarian local self-governments, including financing and debt rules, has been analysed. In addition, analyses were also conducted in legal dynamics for this study, in order to evaluate changes in the statutory environment.

3 The Hungarian local self-government system between 1949 and 2011

3.1 The Hungarian local self-government system in the period of socialist planned economy

In 1947 Hungary was included among the countries of the socialist bloc, and its public administration and public law regime was adjusted to the soviet pattern. Following the soviet model, local self-governments were called "councils". In the period of the council system, the soviet-style constitution [1]only recognized municipalities' right to self-government to a limited extent, and local self-government autonomy was essentially eliminated. In the centralised state organisation, municipalities were considered as decentralised local units of the central government authority and exercised its power similarly to the soviet model. Thus the entry into force of Act I of 1950 practically eliminated local self-government. One of the preconditions of self-government is the independent income generation opportunity of municipalities, and this was terminated by the entry into force of Act I of 1950 (Gergely, 2005).

As to the structure of the municipal system, the first council act divided these units into county councils, district councils, city councils and village councils. Similarly to the National Assembly, the autonomy of county councils was terminated, as they were practically brought under the control of the Hungarian Socialist Party, however, it exercised compliance supervision and had supervisory functions over district, city and village councils. County councils had a role in the planning, implementation and coordination of local projects and public investments. However, they were unable to influence central plans, and could not adequately support economic and social developments as the system was heavily centralised on a national level. Pursuant to the act, the tasks and competences of district councils included the coordination of villages and cities. The system was hierarchically built just as in the Soviet Union.

The new council act that entered into force in 1971 identified local self-governments as public administration organisations, stressing the representation of people, however, the latter was merely formal. The structure was characterised by the termination of subordination between councils, and district councils were liquidated, so the formerly three-tier system became two-tier.

Local self-government was also limited financially at every level, as they did not have any income of their own. In another perspective, local self-governments were not authorised to perform asset management, as councils were only entitled to act as trustees.

1 See: Act XX of 1949 on the Constitution of the People's Republic of Hungary, Articles 29-35 on the local organisations of the government authority.

3.2 The Hungarian local self-government system after the change of regime

After the regime change, the legislators endeavoured to establish a modern, operable and autonomous system of local self-governments. To this end, the principles laid down in the European Charter of Local Self-Government (hereinafter: Charter) were taken into account. The Charter professes and recognises the principles of fiscal decentralisation and gives guidance to the countries in them. [2] The central element regulating transposition was Act LXV of 1990, which regulated local self-government operation. The most important criterion of the statute containing a total of 118 articles is that it regulates the legal and economic foundations of local self-governments, namely the right to self-government. Its provisions were repealed gradually between 1st January 2012 and 2nd October 2014.

The first act on local self-governments and the sectoral laws established the mandatory duties and competence of local self-governments. After articulating local self-governments' mandatory tasks and powers, the National Assembly ensured the financial conditions required for their performance, decided on the amount and disbursement method of budgetary support and included all these in Chapter IX of the budget act at any time.

In addition to the Charter, in line with the spirit of the times, the principles of the New Public Management were also taken into consideration, as manifest in the freedom of organisation and service solicitation. This opportunity frequently resulted in the outsourcing of mandatory tasks previously falling within the competence of local self-governments to companies operating on a market basis (e.g. holding and operation of municipal assets and the provision of public utility services). All this meant that local self-governments were given carte blanche in the elaboration of their service organisation solutions, as they were only responsible for the organisation and not the actual performance of the duties. Law granted municipalities the right to independently develop their organisational structure and operational procedures, to freely dispose of the local self-government's assets, to manage their income independently, and to provide for the performance of voluntarily undertaken and mandatory municipal tasks. The regulation also allowed them to undertake business activities.[3] This created additional opportunity for the local self-government system to freely associate with other local self-governments, to form with regional and national interest representation organisations to represent and protect their interests, to cooperate with foreign local self-governments within the scope of their tasks and competences, and to join international associations of local self-governments.

2 Fiscal decentralisation depends on numerous variables. One of the empirical research approach to this matter was examined by Benčina, J. and Mrdža Kovačič, A. (2013). The statistical correlations between the quality of governance and decentralisation was studied by Umek (2014).

3 In practice, instead of this organisational form, they were implemented as business associations, primarily due to the difficulty of accounting reconciliation.

The first act on local self-governments ensured independence in earning and using incomes, and also regulated the incomes of local self-governments. They covered the costs of performing their mandatory and voluntary tasks from their own incomes, assigned central taxes, granted revenues, central budgetary contributions and aids. Their own incomes included local taxes[4], revenues for capital formation and liquid assets received.

The specific part of the income tax collected by the central tax authority from the public administration section of the local self-governments could be termed assigned central tax, however, the part returned to local self-governments gradually decreased. Personal income tax, which was first imposed in 1988, was still completely a council income, but later on, after the change of regime 80, and then 50 per cent of it was transferred to the central budget. By 2013 the ratio returned to local self-governments in the second tax year preceding the budget year had already dropped to a mere 8 per cent, and further 32 per cent was allocated to local self-governments depending on their level of development.[5] Of all property taxes, only vehicle tax was paid to the central budget but 100 per cent of it was collected by the local organisations.

The contributions financed by the central budget included conditional and statutory subsidies. The role of the latter in local self-government financing further increased over the years. In addition, in the budget act the National Assembly laid down priority social objectives. The funds allocated for them were called "priority appropriations" and the local self-governments had a share in them in different forms year after year. In order to facilitate community convergence projects, a system of allocations and targeted financial support was set up. To avoid operational difficulties, the local self-governments that were disadvantaged for reasons beyond their control could request supplementary aid at tenders, and later on this was completed by support to inoperable local self-governments from the special budget of the Ministry of the Interior, up to 2011.

Concerning their financial management, local self-governments were allowed to take loans, with the condition that neither the core assets, nor the statutory state contribution, any other state aid, personal income tax and the funds received from the central budget for operation could not be used as collateral. Liquid loans, e.g. current account overdrafts, used for overcoming temporary liquidity shortages, were an exception to this. As a regulatory element, the debt service cap was 70 per cent of the annual appropriation for their own current income less the short-term liabilities (principal repayment and interest payment, lease fee) for the given year, in other words, the adjusted current revenues of their own [Article 88 (2) of the Act on Local self-governments]. The local self-governments were required to report the relevant data, but no effective penalty followed overspending, thus there was no supervisory organization that would have punished its violation. Only the State Audit Office was authorized to act, but typically, they did not take any action.

4 Based on Act C of 1990 on Local Taxes, still in effect.

5 The system of divided taxes also works in Slovenia: corporate income taxes are shared by the central and the local level, see Klun and Stambuk (2015) and Klun (2012).

Important amendments after 1996 included codification of the debt management procedure (Act XXV of 1996 on the management of local self-government debts), and the specification of responsibilities, which provided that the municipal council must guarantee the safety of management and made the mayor accountable for compliance. As the purpose of the procedure was to restore the solvency of communities, it was a kind of a bankruptcy proceeding which was not allowed to result in the termination of the local self-government. The number of procedures barely exceeded a hundred between 1990 and 2010.

In addition to the creation of revenues and economic self-reliance, another means of restoring local self-governments' independence was the transfer of assets. Act XXXIII of 1991 assigned the assets previously owned by the state, including residential and non-residential property, listed historical buildings, protected natural areas, lands, public utilities, waters, public purpose water facilities, water utilities and other assets, into local self-government ownership.[6]

Thus the financial fundamentals provided the background for the creation of a public service organisation. The first act on local self-governments devolved the operation of the human infrastructure, with focus on public education and healthcare, to the competence of local self-governments among mandatory duties. The Hungarian system of local self-governments has been characterised by the fact that in addition to the said act, other statutes may also delegate tasks to and set quality requirements for local self-governments. This was called "task decentralisation" and at a later phase it led to problems as the delegation of tasks by the central organisations were not followed by the allocation of funds, neither in nominal nor in real terms, thus the budget deficit was shifted from the central government to the local and municipal system, and this is how the phenomenon of decentralised budget deficit evolved.

During elaboration of the system of tasks, numerous questions were left unanswered, e.g. the intermediate level regional governments remained weightless, and the public duties were not differentiated according to community size. The establishment of development regions, each comprising several county governments, was a preponderant event in the Hungary of the 2000s, but in the past decade they disappeared without trace.

Concerning its characteristic features, the Hungarian local self-government system simultaneously had the hallmarks of the Northern European and Southern European self-government models, as it imposed substantial duties on a fragmented system of local self-governments. Although encountering an increasing number of problems, this system proved to be sustainable up to Hungary's accession to the European Union, however, the period of abundant funds after the accession, or more specifically, the shortage or absence of funds required to pay their contribution as a precondition to drawing down EU funds brought them, somewhat paradoxically, to the brink of inoperability.

6 Act XXXIII of 1991 on the transfer of ownership of certain state-owned assets to local self-governments

4 The Hungarian local self-government system after hungary's accession to the European Union

4.1 The impact of accession to the European Union on the financial management of local self-governments

After 2004, due to Hungary's accession to the European Union, the quality requirements set for the public duties of local self-governments tightened in order to improve the standard of public services used by the population and adjust them to that of the European Union. To this end, the quality parameters of human public services were stepped up, and the sectoral ministries required municipalities to implement increasingly large-scale plans. However, the problem was triggered by the fact that the budget acts ensured very little, if at all, of the funds required for the implementation of the more costly duties. This resulted in the rapid accumulation of an operating deficit the local self-governments found difficult to absorb.

The Convergence Plan, adopted in 2006 for the reorganisation of public finances that were out of balance, had a powerful impact on local self-governments' financial management, as it gave a greater role to municipalities in the provision of public services, merely to save money for the central budget.[7] The reason for this was that prior to Hungary's accession to the European Union, the financial positions of the local self-government system had been relatively more favourable (than those of the central budget), however, there was an imbalance between the various local self-governments, as the positive balances were made primarily in bigger, well-industrialised cities, mainly those with county rights, while minor communities with hardly any revenues of their own and county governments made a loss. Thus, local self-governments' financial strength was erratic, but the duties were assigned indiscriminately, disregarding this fact. Local self-governments increasingly frequently used development funds and project loans to finance their operating expenses. As a result of the implemented task decentralisation and the failure to centralise funds, the decentralised government deficit and debt continued to increase, in other words, the potential deficit of the central budget was shifted to the orbit of local self-governments.

As a positive factor, with accession to the European Union access to development funds opened up. The resources available in the Cohesion and Structural Funds offered the prospect of considerable development potentials for municipalities. From the year 2004, local self-governments were granted significant amounts of development aids from the European Union and from domestic sources to provide the infrastructure background required for attendance to their responsibilities. With access to European aids, the regime of support to domestic development projects changed. In the first complete programming period, which began in 2007, the absorption of development

7 After 2002, Hungary's central budget underwent a drastic indebtedness process. By 2010, the government debt to GDP increased from 55 to 85 per cent. The budget deficit increment became permanent, and in 2006, prior to the adoption of the Convergence Plan, it exceeded 10 per cent. For further details see: Lentner, 2018.

funds in an amount up to several orders of magnitude higher than the targeted subsidies financed from the Hungarian budget for capital formation in the previous 17 years.

However, the operational programmes of the 2007-2013 programming period frequently supported development projects that generated little or no additional revenue, and moreover, in many cases they triggered a sharp rise in operating expenses local self-governments often could not afford. Nevertheless, the main problem is that the local self-governments do not have sufficient resources for making the contribution required for access to the EU aids in order to support the implementation of their development tasks. As the EU funds encouraged important municipal investment projects, the local self-governments obtained the funds for the contribution required for access to them through loans and bond issuance, which led to the indebtedness of the local self-government system. For the most part, they used the EU aids and the loans they had taken for infrastructure improvement and other non-productive projects, thus no production or other coverage in real terms was created to subsequently finance debt service. In addition, local self-governments did not have any income in foreign currency to repay the loans, and thus they were grossly exposed to the foreign exchange rate and later on caused exchange rate losses.

4.2 The impact of the economic crisis on Hungarian local self-governments – heading towards bankruptcy

The 2007-2008 economic crisis and the increasing instability of the local self-government system had a major impact on the complete system of public finances.[8] Hungarian local self-governments' indebtedness accelerated after 2006, mainly due to the issue of foreign currency bonds, with the account managing banks typically acting as subscribers to the municipal bonds. This instrument was popular because it was not subject to any public procurement and the issuer local self-government could set the conditions in agreement with the account managing banks. As bond use was not limited by any target, and the requirements were very slight under weak state or EU control, most of the funds collected were used to repay previous debts or to finance operation, but a considerable part of the funds were not used at all, as they were time deposits for a specific purpose. Obviously, the predominant part of the revenues earned on the issuance of foreign exchange bonds, especially EU aids, was used for the specified purposes, however, these projects were frequently exaggerated and, more importantly, non-productive. With the escalation of the international financial crisis, the foreign exchange bonds issued for the implementation of non-productive projects imposed a significant debt service on local self-governments, which did not have any income in foreign currency, and thus in order to be able to repay they purchased foreign ex-

8 The 2011-2012 central budget balance, which was "working out all right", was deteriorated and the general government deficit was pushed above 3 per cent by the unfavourable developments in local self-government finances. Subsequently, however, the State Audit Office's audits regularly revealed the deficiencies in local self-government management, and various government decisions were taken as a result.

change and consequently suffered grave losses, considerably deteriorating their liquidity, as despite its economic independence ensured since the 1990s, the Hungarian system of local self-governments had continuously struggled with liquidity problems. These problems were compounded by the fact that the local self-governments did not have sufficient operating income to continue the operation of most of the non-productive projects implemented from EU aids and foreign exchange denominated contribution (typically swimming pools, leisure centres and the renovation of public buildings).[9] These items made the indebtedness of Hungarian local self-governments atypical.

In 2011 the audits performed by the State Audit Office revealed that the subsystem of local self-governments was financially unstable, and the collapse of self-governments may considerably the local provision of public services, and moreover, may even seriously undermine the complete system of public finances. As the local self-governments had no funds to repay the loans they had previously taken and to settle their bond-related debts, in 2011 the State Audit Office performed most of its audits in the system of local self-governments, as the latter had a grave impact on the complete regime of national public finances. Based on the State Audit Office's investigations it turned out that local self-governments' liquidity had considerably deteriorated between 2007 and 2010 because the system suffered a shortage of funds simultaneously for capital formation and for operation. The local self-governments' payment liabilities to banks increased and the liquidity loan agreements had to be regularly renewed with increasing credit lines. One of the reasons why this increasing debt portfolio grew into an enormous problem was that local self-governments failed to accumulate the reserves required for repayment, and they assumed a risk by offering local self-government core assets as coverage for loans. The State Audit Office shed light on the fact that in the case of the issued bonds, the potential unfavourable development in exchange rates was not the only problem, as their early redemption or conversion to Hungarian forints may lead to unexpected costs.

The local self-governments' exposure was further increased by rising accounts receivable outstanding and the growing financing gap, in other words, the absence of funds to finance the projects after their implementation using EU funds and to cover their operating costs. Due to the capital investments in progress, in late 2010, local self-governments' debt portfolio amounted to HUF 1154 billion (4.3 per cent of GDP produced in 2010), and external capital had to be raised in the amount of HUF 217 billion (0.8 per cent of GDP). Nevertheless, the projects had to be completed, as the local self-governments' infrastructure background was obsolete, and these projects increased the GDP output of the country, which was in crisis, and could ensure some employment. As an additional problem, the businesses in local self-government ownership also had a huge amount of debt, and thus the quality of the services they provided also "changeable", but in the absence of a statutory authorisation, the State Audit Office was not allowed to verify it before 2011, and consequently, no central action could be taken to return their business management to nor-

9 For details of the evaluation of local self-government project, see Vasvári (2013).

mal. After 2011, the consolidation procedure was implemented on the basis of the State Audit Office's fact-finding investigation and recommendations targeted at putting local self-governments back on the right track. The State Audit Office's role increased both in the renewal of state management and in legislation (Domokos et al, 2016), which became a system-specific element in the Hungarian model of public finances, as it made the State Audit Office an active (supply) participant in good governance.

In the previous decades, the cause of the difficulty was the unsuitability of the regulatory and control environment for preventing and effectively keeping local self-governments' external fund raising under control. Although there was a limit set to debt in the system, it could not fulfil its purpose, as there had not been any authority to punish violation of the rules. Previously, the State Audit Office reported infringements, but it did not have the power to open a penal proceeding. As a result, the pressure of an increasing shortage of funds required for operation and capital formation and a spike in the foreign exchange rate brought the system on the verge of inoperability. This unfavourable process was ended by the action taken by the Hungarian public finance system and its institutions (including the State Audit Office), with statutory support and methodological confirmation. The macro-economic developments were also favourable: the government debt dropped by 30 per cent relative to GDP, the budget deficit has been below 3 per cent since 2013, the inflation rate is very slight and can be moderated, and all these are accompanied by the continuous increase in the gross domestic product (GDP).[10]

5 The second act on local self-governments and the new regulatory environment

The second act on local self-governments came into force in 2011 in several stages. During the elaboration of the legislation, efforts were made at the increased enforcement of the Charter and at preventing the curbing of the independence of local self-governments. The complete financing regime and the responsibilities were re-regulated.

The second Act on Local self-governments chopped tasks to reasonable sizes, and gradually re-centralised human public services (education and healthcare), leaving only a very slight amount of mandatory duties to be performed by local self-governments. Local self-governments' emphatic responsibilities include community operation and regional economy development, and the financing regime was adjusted accordingly. As less and minor duties were required of them, the role of central taxes given up in favour of local self-governments changed, and state aids were granted in the form of financing specific tasks, but this actually falls within the scope of statutory financing. Personal income tax was removed from among shared central taxes, in other words, its total amount is collected centrally, and the local self-governments'

10 2019. In Q1 it increased by 5.3 per cent, the highest rate in Europe. In the previous period, which followed 2013, the gross domestic product increased by 3 to 5 per cent; and between 2010 and 2019, additional 750 000 people have been involved in employment in a Hungary of 10 million, reducing the unemployment rate from 12.3 to 3.6 per cent in a decade.

share in vehicle taxes was reduced to 40 per cent. In relation to local taxes, local self-governments' right to levy taxes was increased in addition to maintaining the previous framework regulation. The local self-governments were authorized to impose communal taxes on any object not yet locally or centrally levied.[11] The responsibilities and competences of county governments were further reduced, which suggests continued reshaping in the Hungarian system of local self-governments.

According to Act XV of 1997, promulgating the European Charter of Local Self-Government, where public duties cannot be fulfilled in the given community, they must be performed by the public administrative organisation located closest to the citizens, the population. The second Act on Local self-governments allowed the establishment of shared local self-government offices, and after 2013, the communities with a headcount of 2000 or less and located in the same district were mandatorily required to set up joint municipal offices. The main purposes of establishing joint local self-government offices are the improvement of public duties and public services and to cut costs. On 1 January 2012, public county institutions and the healthcare institutions maintained by the Local self-government of Budapest were transferred to central maintenance, and on 1 May in the same year, the hospitals maintained by local self-governments were also taken over by the state. However, the reasonable streamlining and centralisation of local self-government responsibilities were not the only features that characterised the period that followed 2010, as the local self-governments' debts, which had turned to be unmanageable, also needed consolidation and centralisation.

5.1 Debt consolidation

After the entry into force of the new self-government rules, the economic policy regime made efforts at creating a stable environment for local self-governments. As the various local self-government segments encountered different problems, differentiated solutions were elaborated for them in regular consultation with the local self-governments. The reason for this is that similarly to the other countries of the European Union; in Hungary small-size communities have reduced financial capacities (de Vries-Sobis, 2019).

In the first round of consolidation, the total debts owed by county governments were consolidated. This is explained by the fact that in the absence of incomes of their own, they barely had appropriate coverage for repayment, and therefore county government debts and institutions were completely taken over by the state in 2012. This was followed by the transfer of debts owed by communities with headcounts above and below 5000 in two staged, in 2013 and 2014, respectively, and thus the total amount of debts outstanding on 31 December 2013 were assumed (Lentner, 2014). Financial consolidation is an unusual method in managing local self-government debt (which may well be termed the last resort), but it did also happen in Italy and Ger-

11 This considerably increased municipal independence in taxation, and taxes can be used for targeted taxes, social purposes or community development.

many. The total consolidated amount was EUR 4.54 billion, representing 4.45 percent of GDP based on the 2014 data.

Table 1: The debt consolidation procedure

Types of local self-government	Year	Affected local self-governments	Consolidated amount, EUR billion
County governments	2012	20	0.69
Communities with a headcount below 5000	2013	1730	0.28
Communities with a headcount exceeding 5000	2013	279	2.05
Consolidation of the remaining portfolio	2014	511	1.52
Total	-	2078	4.54

Source: The authors' compilation based on the specific data reported by the Hungarian State Treasury

Note: The data provided in Table 1 are calculated at the mean foreign exchange rate quoted by the National Bank of Hungary (at the end of the given year).

In order to prevent local self-governments from accumulating significant amounts of debt, numerous limiting factors and rules were introduced with the rules-based budget practice.

5.2 Means to prevent repeated indebtedness

In order to improve municipal management, which had been insufficiently regulated and controlled for decades, and to prevent the repeated evolution of the debt consolidation pressure, several limitations were imposed on local self-governments' financial independence, including their rights to establish companies and obtain participation in business organisations.[12] Municipal self-governments may only participate in business organisations if the assets they contribute exceed their accountability (such include limited liability companies and company limited by shares). The fulfilment of their voluntarily undertaken duties and business activities may not prevent local self-governments from the performance of their mandatory duties.

12 Thus by placing independence in a reasonable frame, the new regulation intends to operate an economic policy and regulatory environment that can nip undisciplined, debt-generating management in the bud. Thus we hope to avoid the application of the pressure to consolidate debts. As described above, the consolidation pressure or the rescue, is already the outcome of a process. But in order to avoid using the central budget for a (repeated) rescue of organisations, poor management should be prevented by consistent regulation (for more details see: Lentner, 2015).

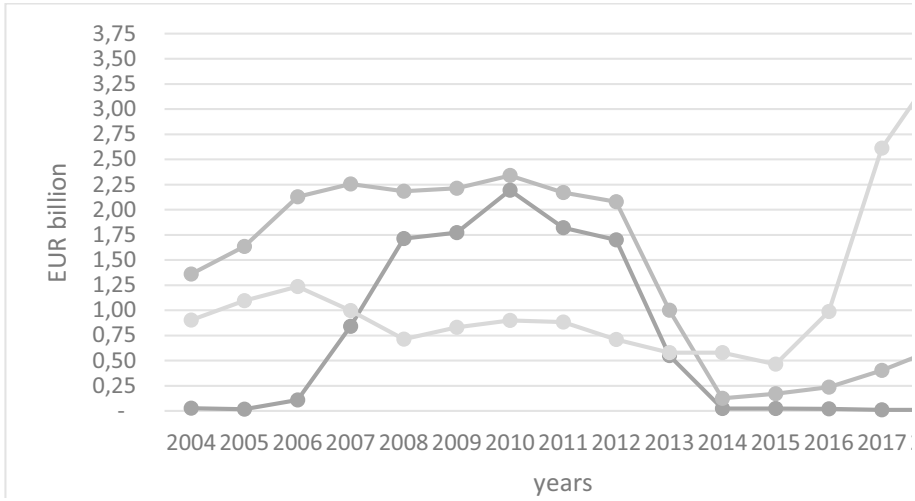
Act on economic stability.[13] As from 1 January 2012, the transactions that increase local self-government debts were limited at numerous points. Local self-governments are only allowed to take liquid loans for the purposes of ensuring their operation, i.e. they can only finance their deficit on operation from internal resources, and may not use external ones. Based on the statutory requirements that came into force in 2013, local self-governments are no longer allowed to schedule operating deficit at all. In addition, the Stability Act also stipulated that the payment liabilities due in the reporting year and arising from debt-generating municipal transactions may not exceed 50 per cent of their own revenues realised in the reporting year in any year up to the end of the term. This rule was intended to prevent local self-governments' running into insolvency. In addition, it was required that local self-governments may only perform debt-generating development and operation-related activities with the government's preliminary consent. Some of the loan transactions are, however, not subject to authorisation. These include loans to finance the contribution required for access to European Union development aids, and operating loans maturing within one year, as for the most part they leave the government debt measured against the Maastricht criteria unaffected. Furthermore, the transactions generating a debt below HUF 10 million, or in the case of Budapest and the cities with county rights, HUF 100 million, and the reorganisation loans used for the conclusion of agreements with creditors during debt consolidation.

After the settlement of responsibilities, the expenditures of Hungarian local self-governments dropped from 20 to 11-12 per cent within the total expenses of the general state budget (Sivák, 2005). Repeated municipal indebtedness is also prevented by a strict system of control, which includes regular central reviews, an internal audit system, [14]and regular audits by the State Audit Office. After debt consolidation, local self-governments were required, with high priority, to prevent the increase of their debts, and to create their own operating balance to ensure the fulfilment of public duties. Although the foreign exchange loans taken by local self-governments have been assumed, the high debt owed by businesses in local self-government ownership continue to pose a risk for the municipal sector of public finances and indirectly, the complete general government. For this reason, the application of modern controlling instruments has an important role in ensuring stability (Zéman, 2017).

13 Act CXCIV of 2011

14 The audits of local self-governments' internal control systems, performed by the State Audit Office, are described in a 2014 study by Benedek et al.

Figure 1: Distribution of Hungarian local self-government debts

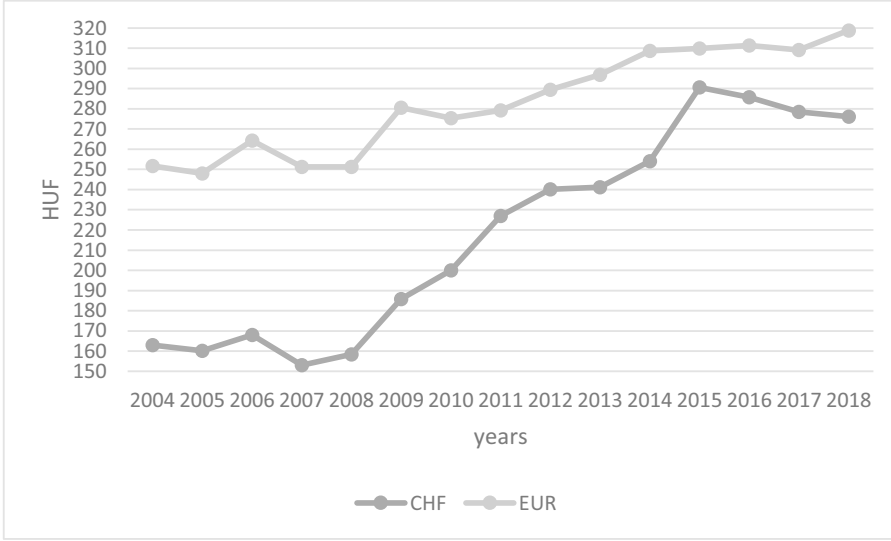


Source: National Bank of Hungary, 2019

After the debt consolidation, debts had slightly increased by 2018 according to the statistics of the National Bank of Hungary, mainly in the accounts receivable. However, the viability of the regulation is confirmed by the termination of financing via foreign exchange bonds, and thus the exposure to exchange rates no longer complicates management. Between 2017 and 2018, the ratio of long-term loans increased by approx. 75 per cent (to EUR 550 million), but this hardly represents 10 per cent of liabilities, considerably below the 2013 peak (preceding consolidation).

In contrast to the previous indebtedness, a significant ratio of the new loans finances projects that will generate additional tax revenues. Local self-governments frequently assume financing for terrain correction required for the resettlement of automotive factories, and later on these will provide coverage for repayment (from taxes levied and collected by the local self-government). The majority of other liabilities are accounts receivable, operative items related to capital investments, covered by current revenues, and thus not causing any liquidity problem.

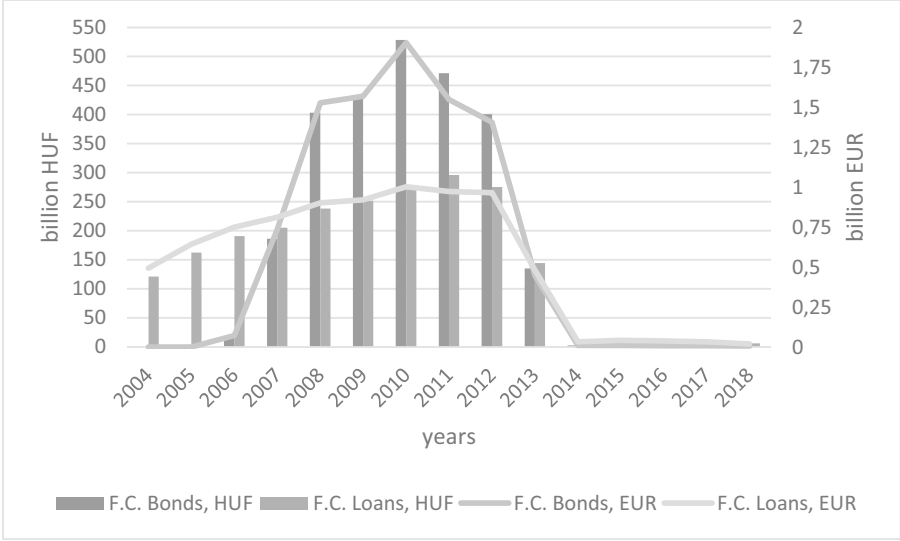
Figure 2: The official price of EUR and CHF to HUF



Source: National Bank of Hungary, 2019

One of the specific features of indebtedness by Hungarian local self-governments is that they issued bonds in foreign exchange, and thus they undertook long-term liabilities. As illustrated in Figure 2, this was a risky decision for local self-governments, as after the 2006-2008 wave of bond issues, the HUF exchange rate gradually weakened, and so they suffered a considerable exchange rate loss, representing an increase in the debt portfolio in the national currency (HUF). Changes in the exchange rates and their debt generating effects allow the conclusion that the consolidation of local self-governments' debt was justified, as the HUF rate to both CHF and EUR continued to weaken considerably during and after the consolidation. Local self-governments would have been incapable of absorbing these burdens as they did not have any incomes in foreign exchange, and the overwhelming majority of the capital investments implemented from bond revenues was unproductive, in other words, they did not have the capacity to generate yields.

Figure 3: Distribution of Hungarian local self-government debts in foreign exchange



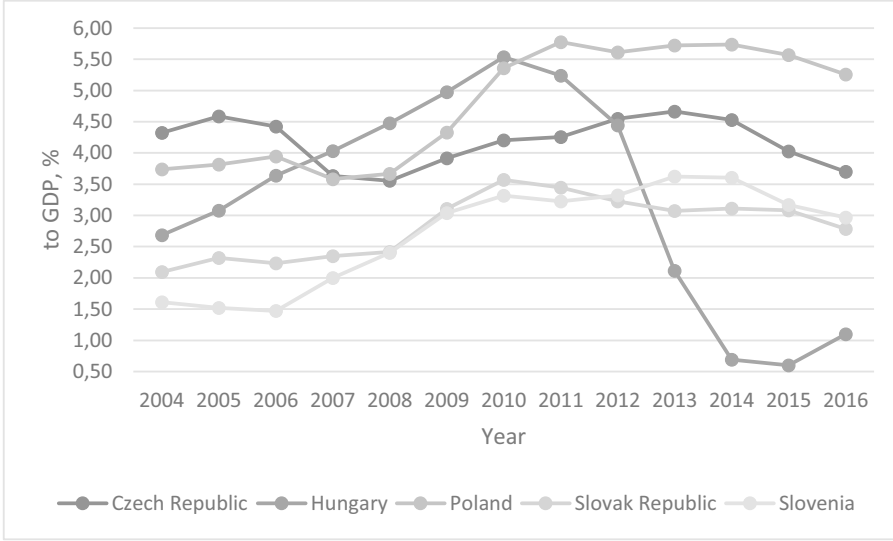
Source: National Bank of Hungary, 2019

Figure 3 clearly confirms that the instruments denominated in foreign exchange had a major role in the indebtedness of Hungarian local self-governments. The FX bond portfolio peaked in 2010 (recognised in HUF), while the FX loan portfolio reached its maximum in 2011. Presuming an unchanged portfolio, the exchange rate losses resulting from changes in the issue price had an impact of 12 per cent on the bond portfolio and of 8 per cent on loans, according to the authors' calculations.

6 Hungarian local self-governments' indebtedness in an international comparison

The grave indebtedness of Hungarian local self-governments and the central consolidation of their debts is an atypical phenomenon of the Central and Eastern European Region. No similar situation evolved in the surrounding countries. It should be emphasised that the countries participating in the Visegrád cooperation (V4) and Slovenia have similar histories, geographical sizes and development levels, and that Slovenia and Slovakia are members in the monetary union, thus they are protected against exchange rate fluctuations, and as an essential element, all the five countries reorganised their local self-governments in the spirit of the European Charter of Local Self-Government, but in Hungary, control was rather lenient in the two decades following the change of regime (Lentner et al. 2018).

Figure 4: Distribution of long-term debts in a few countries of the post-soviet region



Source: OECD Fiscal Database, 2018

Figure 2 gives a comparison of local self-government debts to GDP in the Visegrád countries and Slovenia. Ever country is characterised by similar budgetary regulations applicable to local self-government operation in the period reviewed (Kotia and Lledó, 2016). The figure clearly shows that only Hungary is characterised by a sharp increase after the accession to the EU, while in the other countries the debt portfolio primarily increased in the period after the economic crisis. In the case of Slovenia, debts have been increasing since 2006, but were mitigated in the past few years.[15] Debt to GDP started to fall in Hungary in the years of the crisis, from 2011. Next in the line was Slovakia, and then from 2014 local self-government debts began to decrease in the two other countries studied. Despite the fact that a new programming period of the EU started in 2014, this development continued till the end of the period. Hungary is the only exception, but this is due the fact that it started from a very low baseline after the debt consolidation, and to the perceptible and, more importantly, to a rise in short-term liabilities (cf. Figure 1 and Figure 2).

As a result of the global economic crisis, local self-government debt increased in every country of the world but the pace of growth in Hungary was unparalleled. Based on the trends the conclusion can be drawn that both local self-governments and the economic policy management were in favour of a stable and predictable debt portfolio, which is characteristic in every reviewed country in the post-soviet region after the crisis. As in the case of solvency the high-standard provision of public services is more likely, chances are better

15 About the implementation of duties by the Hungarian and Slovenian local self-governments, see Nagy et al. 2019.

for compliance with the Charter if the economic fundamentals are stable and regulated.

7 Conclusions

Following Hungary's accession to the EU, its local self-governments encountered irreversible financial difficulties for a number of reasons. On the one hand, the sectoral policies raised the quality requirements of public services, and on the other, the restriction on central budget financing set out in the Convergence Plan adversely affected local self-governments. Following the evolution of an exchange rate boom during the crisis, the foreign exchange loans taken and the foreign exchange bonds issued for the contribution to the development funds that became accessible after accession to the European Union greatly increased the Hungarian local self-governments' burdens, however, they still needed the projects, as they had underdeveloped infrastructure.

The situation that had evolved by 2010 showed that the municipalities were incapable of paying their debt service, and so the economic policy leadership saw the re-regulation of responsibilities justified. This was accomplished by the renewal of the complete statutory regulation applicable to the field and by debt consolidation to solve atypical indebtedness; and simultaneously, a considerable part of the public duties assigned to local self-governments were decentralised. These factors were necessary for the safe operation of the economic fundamental that are indispensable for the provision of public services. After 2011 the political will gave green light to the required reforms, which were accomplished by changing the complex legislative environment.

Financial regulation tightened and the previous lenient regulation was replaced by more stringent calls to account and control, as is manifest in the legislative background and in the increasing control authorisations. The control functions of the State Audit Office and the government offices were enhanced: the former was authorised to check fulfilment of the economic requirements, while the latter verified compliance with the statutory regulations. In addition, the Hungarian State Treasury's supervisory powers have also increased: it is now authorised to impose sanctions. In the new system of public finance controls, the State Audit Office was assigned a particularly important role due to its prohibitive and guiding regulation and its proactive participation in legislation with the right to make proposals.

In the Visegrád countries and Slovenia, which have a past similar to Hungary, local self-government debt also decreased after the crisis, and this confirms the strengthening of predictable public finance regulation in the Central European region. In this process, Hungary was the first to make efforts at reducing municipal debts, however, after recovery from the crisis, every studied country followed a similar course, and this may contribute to the improvement of public services used in local communities, and thus serves the most effective possible enforcement of the European identity and of the Charter.

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Intensity of Judicial Review of the European Central Banks's Supervisory Decisions[1]

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ABSTRACT

A few years after the establishment of the Single Supervisory Mechanism, the General Court of the European Union, in its new supervisory role, annulled for the first time the decisions adopted by the European Central Bank (ECB). These judgments are of particular interest because they allow a preliminary investigation of the intensity of judicial review of the ECB's discretionary choices in the field of banking supervision. This article claims that the first case law of the General Court points to several interesting developments and indicates the resolve to carry out a judicial review which, although adhering strictly to the "limited review" standard, does not shy away from developing judicial techniques to ensure a more incisive scrutiny of the discretion enjoyed by the ECB. Despite the novelty of the issues brought to the attention of the EU judges, it seems possible as a result of this study to envisage, on the one hand, a gradual alignment of the scrutiny of supervisory decisions with those emerged in relation to the Commission's decisions on competition matters. On the other hand, a differentiation from the "light touch" approach adopted in the field of monetary policy can be observed.

Keywords: *complex economic assessment, Court of Justice of the EU, European Central Bank, supervisory decisions, intensity of judicial review, leverage ratio, margin of discretion*

JEL: K23

1 Introduction

A few years after the establishment of the Single Supervisory Mechanism (SSM), the General Court of the European Union annulled for the first time decisions adopted by the European Central Bank (ECB) within its new super-

1 The author wishes to thank Prof. Anna Simonati and the two anonymous referees for their helpful comments and constructive suggestions. Errors and omissions remain solely mine.

visory role[2]. These judgments are of particular interest because they allow a preliminary investigation of the intensity of the judicial review of the ECB's discretion in the field of banking supervision.

As is well known, the SSM was introduced by Regulation (EU) no. 1024/2013 (the "SSM Regulation") as a response to the financial crisis of the Eurozone within the scope of the European Banking Union project (Chiti M.P. and Santoro, 2019; Lo Schiavo, 2019; Chiti E. and Vesperini, 2015). The SSM comprises a complex administrative system of banking supervision including the ECB as the responsible authority for ensuring the effective and consistent functioning of the Mechanism and the national supervisory authorities of the participating Member States. Notably, the ECB is endowed with a wide set of supervisory tasks and powers with a view to contributing to the safety and soundness of credit institutions in the Eurozone, as well as to the stability of the financial system within the Union.

In the performance of these tasks, the ECB is empowered to adopt legal measures directly addressed to private parties and capable of impacting their fundamental rights (Zilioli, 2017; Lamandini, Ramos Muñoz and Solana Álvarez, 2015). It becomes therefore essential to ensure that full and effective judicial protection is guaranteed to individuals in respect of such supervisory decisions. Among the various issues related to the judicial protection of the addressees of the ECB banking supervision (Chiti M.P., 2019; Cassese et al., 2018; Brescia Morra, 2016; Arons, 2015; Annunziata, 2019), little attention has so far been paid to the question of the intensity of judicial scrutiny on ECB supervisory decisions. Building upon the analysis of the first judgments of the General Court, the present article aims to contribute to the academic debate on the standards of judicial control of discretionary measures in the field of EU banking supervision.

2 The issue of the intensity of judicial review in banking supervision: questions and methods

The question of the intensity of the judicial scrutiny on the power of appraisal and on the complex technical assessments falling within the remit of EU administrative bodies has been widely debated by EU legal scholars (in particular, Craig, 2018, ch. 15; Schwarze, 2006; Baran, 2017; Fritzsche, 2010), especially with regard to the Court of Justice's review of European Commission decisions in matters of competition and state aid (da Cruz Vilaça, 2018; Derenne and Merola, 2012; Bailey, 2004; Kalintiri, 2016).

In this respect, it is well known that when EU bodies and institutions enjoy a wide margin of discretion, the Courts carry out a "marginal" rather than a "comprehensive" judicial review, in the sense that the latter is limited to verifying the observance of the procedural rules, the obligation to state reasons,

2 General Court of the European Union, section II (extended), 13 July 2018, Case T-733/16, *La Banque postale v ECB*; T-745/16, *BPCE v ECB*; T-757/16, *Société générale v. ECB*; T-751/16, *Confédération nationale du Crédit mutuel v ECB*; T-758/16, *Crédit agricole SA v ECB*; T-768/16, *BNP Paribas v ECB*.

the material accuracy of the facts, and the absence of errors in law or manifest errors of assessment or misuse of powers (Prek and Lefèvre, 2019). Over the years, however, the EU judiciary has gradually refined its judicial review techniques, becoming less deferent to the margin of discretion conferred on the administration, albeit remaining formally anchored to a scrutiny that makes no attempt to substitute the Court's assessment for that of the public authority according to the formula of the "marginal" standard of review (Meij, 2009)[3].

As noted above, the assignment of important executive tasks to the ECB in the field of banking supervision raises interesting questions that, given the absolute novelty of the SSM, have not yet been satisfactorily answered. A key question is whether the EU judges will apply the same standard of control to supervisory decisions as it has done to ECB's monetary policy measures, or whether the Court's review of eminently individual decisions addressed to single credit institutions or single persons will emulate the approach developed over time in the field of antitrust law. One may, in fact, wonder whether the EU judges will be ready to handle new and complex subject matters such as banking supervision and financial law, and whether they will gain the necessary expertise to carry out a thorough judicial review. Ultimately, it might well be asked whether – and on the basis of what itinerary – the EU judges will apply a judicial control that ensures in-depth appraisal of the discretionary choices made by the banking supervisory authority. These questions are of particular relevance since banking supervision involves both complex technical assessments and policy considerations: the former underpins the substantive rules applied by the supervisor; the latter is embedded in the need to balance divergent interests (public and private, national and supranational) throughout the decision-making process. Indeed, one may argue that the ECB's power of appraisal is not limited to conducting a purely objective – and as such neutral – assessment of technical and legal prerequisites, as it also encompasses a wider lato sensu political dimension, as expressly recognised by Article 127(6) TFEU, which lays down that the ECB may be assigned "specific tasks […] concerning policies relating to the prudential supervision of credit institutions".

As is known, EU law does not clearly distinguish between "administrative discretion" (or discretion proper) and "technical discretion". While such distinction is well established in some Member States, like Germany and Italy[4] (Bachof, 1955; de Pretis, 1995), in the EU the two dimensions are commonly understood as part of the general phenomenon of the freedom of choice/appraisal left to decision-makers in the enforcement of EU law by a higher-ranking legal source. Both types of discretion are indeed treated as a homogenous concept and made subject to the same "marginal" standard of judicial review (Schwarze, 2006). In fact, although EU Courts make use of different ex-

3 A more incisive judicial review of decisions on concentrations was initially tackled by the Court of First Instance in the well-known Cases T-342/99, *Airtours v Commission*; T-310/01, *Schneider Electric v Commission* and T-5/02, *Tetra Laval v Commission*, this latter decision subsequently confirmed by the Court of Justice, C-12/03 P, *Tetra Laval*, 15 February 2005.

4 This distinction is a feature of German law, which makes a distinction between "*Ermessen*" and "*unbestimmter Rechtsbegriff*", as well as of Italian law, distinguishing between "*discrezionalità amministrativa*" and "*discrezionalità tecnica*".

pressions, such as "margin of appraisal", "power of appraisal" and "margin of discretion", one may argue that they do not attach any distinct consequence to each of them. Even in EU legal scholarship, there seems to be no consensus on such distinction (Prek and Lefèvre, 2019; Mendes, 2017; Bouveresse, 2010; Caranta, 2008; Schwarze, 2006). However, it is argued that the EU judicature should make the effort to develop a more analytical approach to the subject, by acknowledging different forms and intensities of "discretion" and, based on this, deriving different strategies of judicial review.

It is certainly beyond the scope of this article to elaborate a general theory on discretion in EU law. It is submitted, however, that the case law stemming from the new ECB supervisory tasks, given the particular intertwining of technical elements and policy evaluations, could actually contribute to the elaboration of a more structured judicial review of discretionary choices of EU bodies and institutions.

Against this background, the present article argues that the first General Court case law points to several interesting developments, as it indicates the Court's resolve to carry out a judicial review which, while adhering to the "limited review" standard, does not shy away from developing judicial techniques to ensure a more incisive scrutiny of the discretion enjoyed by the ECB, especially when it comes to checking its technical assessments.

3 The leverage ratio and the French "livret a" judgments: preliminary results from the first case law

A brief summary of the case which led to the annulment of the ECB decisions is useful for a better understanding of the General Court's reasoning, as well as for providing evidence of the complex interweaving of technical assessments and policy considerations.

In the years preceding the financial crisis, many credit institutions funded a substantial percentage of their investments through loans. With the advent of the crisis, however, severe losses and funding difficulties led to excessive exposures compared to equity, with the result that many credit institutions were forced to make hasty sales of some of their assets in order to reduce their exposures.

It was within this framework that Regulation no. 575/2013[5] (the Capital Requirements Regulation, or CRR) introduced a new prudential regulatory tool, the leverage ratio, as a further measure to add to the requirements established by the Basel II rules[6]. More specifically, Art. 429(2) CRR provides that "the leverage ratio shall be calculated as an institution's capital measure di-

5 Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms.

6 The "leverage" is defined in Art. 4(1)(93) CRR as "the relative size of an institution's assets, off-balance sheet obligations and contingent obligations to pay or to deliver or to provide collateral, including obligations from received funding, made commitments, derivates or repurchase agreements, but excluding obligations which can only be enforced during the liquidation of an institution, compared to that institution's own funds".

vided by the institution's total exposure". A notable feature of this tool is that the leverage ratio is not calculated according to the riskiness of the institution's investments, but rather aims to give a "snapshot" of its leveraged investments (i.e. exposures)[7]. By way of derogation, Commission Delegated Regulation 2015/62 on leverage ratio[8] introduced the possibility of waiving this method of calculating the leverage ratio; paragraph 14 of Art. 429 CRR establishes that the competent authority may authorise the credit institution to exclude certain exposures to public bodies from its ratio calculation under certain circumstances.

In the case in question, six French credit institutions coming under the direct supervision of the ECB had applied to benefit from the exemption under Art. 429 CRR and exclude from the calculation certain exposures connected to savings accounts, such as the Livret A (savings account A)[9], underwritten by investors at their premises, on the grounds that the French Code monétaire et financier required a certain percentage of these deposits to be transferred to the Caisse des dépôts et consignations (CDC), a French public financial institution.

The ECB rejected the six applications with six separate decisions stating that, although the exposures met the conditions mentioned in Art. 429(14) CRR, the supervisor was empowered with a margin of discretion that allowed it to refuse exemption on grounds of the risk regarding the safe and sound management of the supervised entity. In particular, the ECB considered that the mechanism by which assets were transferred by the CDC to the credit institutions was imperfect and raised prudential concerns as to the credit institutions' capital adequacy such as to justify the inclusion of the Livret A exposures in the calculation of the leverage ratio.

The six French credit institutions sought annulment of the ECB decisions before the General Court under Art. 263 TFEU. The applicants claimed that, firstly, the ECB had erroneously interpreted the relevant legislation, since Art. 429(14) CRR grants the supervisory authority power to ascertain the existence of the prerequisites established by the Regulation, but not the power to make discretionary decisions thereto, and, secondly, that the ECB had committed both an error of law and a manifest error of assessment in the interpretation and application of its power of waiver.

On the first claim, the Court confirmed the interpretation favoured by the ECB. In the view of the Court, the supervisory authority's power to exercise discretion in its decisions derives not only from the wording of the provision but also from its systematic and teleological interpretation. As already evidenced in Crédit mutuel Arkéa v ECB[10], the CRR Regulation sets out three dif-

7 Recitals no. 90 et seq. of the CRR.

8 Commission Delegated Regulation (EU) 2015/62 of 10 October 2014 amending (EU) Regulation no. 575/2013 of the European Parliament and Council with regard to the leverage ratio.

9 The matter concerned especially Livret A, regulated by Arts. L.221-1 to L.221-9 of the *Code monétaire et financier* (CMF), *livret d'épargne populaire* (LEP), regulated by Arts. L.221-13 to L.221-17-2 of the CMF, and *livret de développement durable et solidaire* (LDD), as per Arts. L.221-27 of the CMF.

10 EU General Court, judgment of 13 December 2017, Case T-712/15, *Crédit mutuel Arkéa v ECB*, paras. 67 et seq. regarding application of Art. 10(1) CRR.

ferent scenarios in which an exemption provision can be implemented: in the first, the waiver is automatic as it descends directly from the law, without the intervention of the administration; in the second, before granting a waiver the supervisor must ascertain the existence of a series of prerequisites in a situation of "circumscribed powers"; and in the third, the derogation is subject not only to the existence of specific prerequisites but also to the discretionary judgement of the supervisory authority.

The Court ruled that the controversial provision must be traced to the last scheme and interpreted as granting the prudential authority discretionary power to choose and weigh up the different aims underpinning the substantive rule governing the leverage ratio.

It was therefore the task of the supervisor to identify the right balance between two diverging interests: on the one hand, the need to have a comprehensive overview of the indebtedness of each credit institution and, on the other, the opportunity to take into account effectively low-risk exposures, such as specialised lending to public sector entities, that are not the result of independent investment decisions by the credit institution.

Against this background, the Court proceeded to examine the second group of complaints by conducting an in-depth scrutiny of the reasons stated by the ECB[11]. First, the ECB had considered the accounting treatment of the regulated savings, noting that credit institution's exposures to that public financial institution were booked as liabilities in the institution's accounts whereas the amounts transferred to the CDC were registered in the assets. As a result, the ECB had concluded that the credit institutions bore the operational risk linked to the savings in question. In addition, the supervisor held that the credit institutions remained under a contractual obligation to reimburse customers of any sums deposited, regardless of the amounts transferred to the CDC, even in the event of default of the French state.

The Court held that the ECB refusal was based on considerations which were inherent in the exposures concerned by the exemption provision, and that the ECB's interpretation had the effect of rendering such derogation de facto inapplicable. Moreover, the Court underlined that the likelihood of the French State defaulting did not seem to have been either assessed or even taken into adequate consideration by the ECB. As a result, the decision to deny the benefit of Art. 429(14) amounted to an error of law since it was based on an

11 One may argue that the ECB could have raised an exception of illegality pursuant to Art. 277 TFEU regarding Art. 429(14) CRR, as introduced by the above-mentioned Delegated Regulation 2015/62. Indeed, some concern might be raised as to the legitimacy of this provision in terms of its compliance with Art. 290 TFEU, which states that delegated acts "supplement or amend certain non-essential elements of the legislative act". It may in fact be asked whether, by introducing a derogation to the CRR with regard to the comprehensive rationale underpinning the leverage ratio, the exemption in question impacts an essential element of Art. 429 CRR. Furthermore, the CRR does not seem to contain any provision attributing power of waiver to the delegated act.

interpretation of the provision that disregarded the aims underpinning the introduction of the waiver, thereby depriving it of any practical effect[12].

Finally, the ECB had ruled that the period for the adjustment of the credit institution's positions with those of a public financial institution risked generating higher leverage ratios that might oblige the banks to sell off assets to cover the interim deficit before the transfer of funds by the CDC. The appropriateness of this reasoning was closely scrutinised by the General Court. First, the Court noted that leverage ratio risks occur when a credit institution possesses insufficient liquidity. In such circumstances, a credit institution might be obliged to take measures not contemplated in its business plan, including the forced sales of its assets, in order to ensure higher liquidity. The Court noted, however, that the ECB decisions regarding the applicants' liquidity ratio, adopted only a short time before the contested decisions, acknowledged that the adjustment period did not constitute a liquidity risk, owing to the existence of a guarantee by the central government of a Member State and the short duration of the period between the outflows and inflows. The Court therefore concluded that the ECB's arguments stood in contrast to previous assessments of the ECB and, thus, based merely on a *petitio principii*.

In its conclusions, the Court also noted that the adjustment period might impact the leverage ratio only in the event of a "bank run", a situation typical of circumstances of extreme stress. However, the ECB had failed to carry out an in-depth examination of the characteristics of the regulated savings and had not assessed the likelihood of the bank run event ever taking place. As a result, the supervisory authority had failed in its duty to make a thorough and impartial examination of all the elements of the case and had adopted a manifestly erroneous decision.

4 Discussion: the intensity of the judicial review of ECB supervisory decisions

The General Court annulled the contested decisions because the ECB made an erroneous use of its discretion. According to the General Court, the ECB had erroneously interpreted the exemption provided for by Art. 429(14) CRR and, subsequently, unreasonably excluded its application on grounds incompatible with the underlying aim of the provision. The Court's reasoning can be broken down into two parts.

First, the Court assessed the correctness of the interpretation of the legal provisions governing leverage ratio, with regard to their rationale and scope of application. In that respect it is well known that, under Article 19 TEU, EU judges must ensure that, in the interpretation and application of the Treaties, EU law is observed. Accordingly, the administration does not enjoy a margin of discretion when interpreting EU law. The ECJ has the duty to carry out a

12 See also Case C-256/15, *Nemec*, paras. 48 and 49; C-407/07, *Stichting Centraal Begeleidingsorgaan*, para. 30; C-8/01, *Taksatorringen*, para. 62, where the Court of Justice made it clear that a provision containing an exemption may not be interpreted in such a restrictive manner as to deprive it of any practical effect, namely render it inapplicable.

full review of the interpretation favoured by the administration and, if it disagrees, the Court can substitute its interpretation for that of the administration (P. Craig, 2010, p. 400).

These judgments confirm that the ECB, just like the other EU institutions, does not enjoy an autonomous margin of appreciation in matters of law interpretation. The interpretation of the relevant legislation by an administrative authority cannot bind the EU courts, which have exclusive jurisdiction to interpret EU law even vis-à-vis discretionary powers[13]. This holds true even if the decision under scrutiny involves the interpretation of complex economic elements and their legal qualification. According to the EU settled case law, factual elements might also come under the comprehensive review of the Courts in so far as their assessment is functional to the interpretation of a legal provision (Vesterdorf, 2005; Kalintiri, 2016)[14]. As the Court stated "whilst, in areas giving rise to complex economic assessments, the Commission has a margin of discretion with regard to economic matters, that does not mean that the Courts of the European Union must refrain from reviewing the Commission's interpretation of information of an economic nature"[15].

A closer look at the Court's reasoning reveals that a similar test was applied in the case under examination. The Court, while scrutinising the ECB's interpretation of the waiver set out in the CRR, also assessed the factual elements and the economic evaluations underpinning such interpretation, concluding that the reasons stated by the ECB had the effect of rendering the legal provision de facto inapplicable.

The second step of the Court's reasoning involved judicial review of the discretion exercised by the ECB in the application of the substantive legal provisions. On this point, the Court referred to the usual "limited standard of review" formula. It is settled case law that when a contested decision has been adopted in the exercise of a power of appraisal implying a wide margin of discretion, the Court's review cannot substitute assessments coming within the remit of the administration, but rather must confine itself to ascertaining that the contested decision is not based on materially incorrect facts or vitiated by an error of law, manifest error of appraisal or misuse of power[16].

Accordingly, the Court did not rule on the prevalence of one interest (rectius: prudential objective) over another and limited itself to identifying the existence of elements revealing the incorrect exercise of the ECB's power of appraisal starting from a careful examination of the reasons stated. In other words, the Court did not interfere with the "discretion proper" of the ECB,

13 See, most recently, *Crédit mutuel Arkéa v ECB*, para. 75.

14 See, in particular, Case C-42/84, *Remia*, para. 34; Case C-382/12 P, *MasterCard and Others v Commission*, para. 155; Case C-386/10 P, *Chalkor v Commission*, para. 62; Case T-286/09, *Intel v Commission*.

15 See Case C-272/09 P, *KME Germany and Others v Commission*, para. 94; Case C-389/10 P *KME Germany and Others v Commission*, paragraph 121; Case C-386/10 P *Chalkor v Commission*, para. 54.

16 See, *ex multis*, Case 42/84, *Remia*; Case T-115/99, *SEP v Commission*, para. 34; Case T-427/08, *CEAHR v Commission*; Case T-342/11, *CEEES et Asociación de Gestores de Estaciones de Servicio v Commission*.

i.e. "its capacity to take policy decisions linked to the weighing of conflicting private and public interest" (Caranta, 2008, p. 195).

Instead, the manifestly erroneous nature of the contested decision has been inferred from the way the ECB assessed the relevant circumstances within the exercise of a technical appraisal. Such control has been conducted on the ground of compliance with the general principles and procedural guarantees of EU administrative law. It is well established in the EU case law that general principles count among the most powerful grounds for scrutinising EU discretionary decisions (Tridimas, 2006). It is no surprise, therefore, that scrutinising the reasons stated by the authority allowed investigation of the logical and legal correctness of the final decision, as well as an in-depth appraisal of the discretionary content of the contested measure (Hofmann and Rowe and Türk, 2011; Simonati, 2009).

The Court indeed recalled the well-known Technische Universität München jurisprudence (Court of Justice, 21 November 1991, Case 269/90, para. 14), according to which: "where a Community institution has a wide discretion, the review of observance of certain procedural guarantees is of fundamental importance"[17]. Moreover, reference has been made to the principle of sound administration according to which the competent institution has the duty to examine carefully and impartially all the relevant aspects of the individual case (Nehl, 2009; Azoulai and Clement-Wilz, 2014). The EU judicature did not confine itself to reviewing the formal and procedural legality of the challenged decision, according to the "process-oriented review" approach (Lenaerts, 2012), but also examined whether all the pertinent elements had been accurately and impartially considered, and whether the decision contradicted previous decisions.

Even though the Livret A judgments do not seem to follow the usual "light touch" approach, it is submitted that the General Court did not go so far as to step over the ECB's margin of appraisal. In other words, the CJEU did not substitute the ECB's findings with its own independent assessment of the factual circumstances, for example, by pointing out the unlikelihood of France defaulting or the imminent "run on the bank".

In sum, the annulment of the contested decisions was posited, on the one hand, on the wrong interpretation of the relevant legal provisions and, on the other, on the manifestly erroneous nature of the ECB's assessments. While in the scrutiny of the former the Court stuck with the "full review" standard, the manifest error of assessment was subject to the "limited review" test. The General Court indeed did not encroach on the ECB's discretion either by conducting an autonomous and alternative balancing of interest test, or by venturing into the re-assessment of the complex economic appraisals underpinning the contested decisions.

17 Similarly, *ex multis*, Case C-525/04 P, *Spain v Lenzig*, para. 58; Joined Cases C-258/90 and C-259/90 *Pesquerias De Bermeo* and *Naviera Laida v Commission*, para. 26.

A closer look at the judicial reasoning reveals, however, the General Court's willingness to carry out an in-depth control of the discretionary choices of the ECB. This is particularly true vis-à-vis technical appraisals (or "technical discretion") as the Court tends to blur the (not always clear) distinction between control over the interpretation of law on the one hand, and control over the application of the legal rules to the facts of the case on the other. In a highly regulated matter such as banking law, this allows a particularly thorough scrutiny over individual supervisory decisions, but at the same time may soften the distinction between "full" and "limited" judicial review[18].

Another recent judgment of the General Court provides interesting indications about the intensity of judicial review on discretionary choices of the ECB, notably on the scrutiny of complex economic and technical assessments. In Crédit mutuel Arkéa v ECB, the ECB ordered a French credit institution to hold additional capital as a result of the Supervisory Review and Evaluation Process (SREP) pursuant to Art. 97 of Directive (EU) 2013/36 (the so-called CRD IV). The issue at stake was the assessment of the existence of prudential risks such that the sound management and the risk coverage by the credit institution could not be ensured[19]. The risk derived, in particular, from the likelihood of the credit institution leaving the Crédit mutuel group, a possibility surmised on account of an ongoing internal conflict within the group.

On examining the claim that the ECB had committed an error of assessment, the Court recalled the traditional formula of "limited" or "marginal standard of review", whereby "in the case of complex assessments, the EU authorities enjoy, in some areas of EU law, a broad discretion, so that review by the EU judicature of those assessments must necessarily be confined to verifying whether the rules on procedure and on the statement of reasons have been complied with, whether the facts have been accurately stated and whether there has been any manifest error of assessment or misuse of powers"[20].

Nonetheless, the Court's decision was made on the basis of the stricter test developed in the competition and antitrust sector, starting from the well-known Tetra Laval ruling. In other words, the Court deemed that "not only must the EU Courts establish whether the evidence relied on is factually accurate, reliable and consistent but also whether that evidence contains all the information which must be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn from it"[21].

18 See the Opinion of A.G. Mengozzi in Case C-382/12 P, *MasterCard*, para. 119, claiming that this approach "has in itself the potential to neutralize de facto the very principle of the recognition of a margin of economic assessment to the Commission".

19 These measures were adopted pursuant to Art. 16(1) letter c), and Art. 16(2), letter a) of the SSM Regulation.

20 *Arkéa*, cit., para. 178.

21 *Arkéa*, cit. para. 179. Similarly, *ex multis*, Case C-295/12 P, *Telefónica v Commission*, para. 54; Case C-386/10 P, *Chalkor v Commission*; Case C-326/05 P *Industrias Químicas del Vallés v Commission*, para. 76; Case C-525/04 P, *Spain v Lenzig*, para. 57; Case C-12/03 P, *Commission v Tetra Laval BV*, para. 39.

Although not substituting the ECB's evaluation of the bank's risk profile, the Court did in fact proceed to assess individual facts and circumstances that revealed the existence of a conflict between the institution and the group, concluding that any split from the group did not appear so improbable as to vitiate the supervisor's decision on the grounds of a manifest error of assessment.

In conclusion, in this case, too, the Court did not substitute the ECB's assessment, nor did it go so far as to express a view independent from that of the administration. However, this judgment further confirms our first impression that, at least in principle, the EU judges seem ready to conduct an in-depth appraisal of the ECB's discretionary choices, examining the reliability of the factual elements underpinning supervisory decisions, even vis-à-vis complex economic assessments.

5 Conclusions

The Court rulings examined above allow us to draw a few preliminary conclusions regarding the intensity of judicial review of ECB supervisory decisions. The first case law seems to indicate that the EU courts intend to adopt an approach that goes beyond mere verification of the formal and procedural legality of a decision and to scrutinise more closely the administration's discretion, understood both as "discretion proper" and as "technical discretion" (on this unclear distinction in EU law, Prek and Lefèvre, 2019; Caranta, 2008; Schwarze, 2006).

Notably, the Court has not failed to conduct a full judicial review on questions of law, substituting its own interpretation for that made by the administration. This is of fundamental importance in a highly regulated sector like banking law, where the discretionary powers of the supervisory authority are often subject to prior assessment of several technical prerequisites precisely defined by the legislator. At the same time, this leads to the risk that the Courts will also apply a full judicial review with regard to the technical assessments carried out by the supervisor, thereby encroaching on its margin of (technical) discretion.

The judgments reviewed also confirm the propensity of EU judges to set great store by respect for procedural principles and guarantees as a means of ascertaining the correct exercise of administrative discretion. Even when considering the administration's power of appraisal in technical sectors, the Court seems to be adopting a more incisive attitude when assessing whether the evidence brought by the administration is reliable, plausible and consistent.

In these terms, despite the new subject matter coming before the EU Courts, the judicial review of ECB decisions appears to be aligning with the more consolidated approach adopted to examine Commission decisions in competition law and state aid. Not only does this approach meet the fundamental requirement to provide effective safeguards to individuals whose fundamental rights may be infringed upon by supervisory decisions, it also meets the need to "coun-

ter-balance the far-reaching discretionary powers of the executive" (Schwarze, 2004) and to support the legitimation and accountability of the supervisor.

These observations allow us to make a more general assumption as to the intensity of judicial review the EU Courts will apply vis-à-vis the acts adopted by the ECB. The EU Courts are known to pursue a "flexible judicial review strategy" (Schwarze, 2004), calibrated to the features of each single case and the nature of the power exercised. It would therefore not be unreasonable to assume that, in principle, the intensity of judicial review of ECB acts will vary depending on whether the subject matter falls within the sphere of monetary policy or banking supervision (Zilioli, 2017; Lehmann 2017). The EU Courts might be expected to continue to adopt a deferent "light touch" approach to monetary policy matters, in line with the Gauweiler Case[22] and, more recently, the Weiss Case[23] (Tridimas and Xanthoulis, 2016; Goldmann, 2014). There are several reasons for this: the wide institutional mandate enjoyed by the ECB in pursuing the objective of price stability; the exquisitely lato sensu political nature of monetary measures, requiring a careful balancing of different interests; the fundamental need to preserve the stability and reliability of monetary decisions; and finally, the infungible nature of the macroeconomic assessments carried out by the monetary authority.

Conversely, judicial review of supervisory decisions is likely to be more intense, especially when these decisions are addressed to individuals and do not have regulatory effects. In these cases, the ECB acts as a purely administrative authority and the Court of justice functions as an administrative judge (Bertrand, 2015) in charge of protecting individuals' fundamental rights, such as the right to property or the freedom to conduct a business, rather than a constitutional court. Its activity does not always involve value judgments or policy decisions, as it is often bound by a detailed set of procedural and substantive rules.

In that respect, a differentiated scrutiny involving varying standards of review for different kinds of actions should be adopted. Accordingly, a further differentiation could be made between, on the one hand, supervisory measures having a general scope (such as regulations, general instructions and guidelines) or decisions involving a discretionary weighing up exercise of different interests (discretion proper) and, on the other, decisions in mere application of legal provisions (circumscribed powers) or, at most, based exclusively on highly technical assessments (technical discretion). In the latter two cases, the need to preserve the supervisory authority's margin of appraisal appears less pressing, while of utmost importance is ensuring individuals full and effective judicial protection.

22 Court of Justice, Case C-62/14, *Gauweiler and other*, otherwise known as OMT Case.
23 Court of Justice, Case C-493/17, *Weiss and others.*

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PART II

Special Section

"From Traditional to New Governance Models in Public Administration: General Principles, Regional Practices and Trends"

Guest Editors: Prof. Michiel S. de Vries, PhD,
Assoc. Prof. Aleksander Aristovnik, PhD

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Public Sector Reform from the Post-New Public Management Perspective: Review and Bibliometric Analysis[1]

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ABSTRACT

The aim of this article is to evaluate the impact of public sector reform on academic literature from the post-NPM perspective. There have been several investigations into post-NPM public governance models and their impact on public sector reform. Yet, the research problem faced when analysing post-NPM literature is the lack of studies examining the multitude of possible public governance models (PGM) with sufficient comprehensiveness, especially in Central and Eastern European (CEE) states. In order to effectively address the research problem, a bibliometric analysis was performed, following three objectives: (i) an investigation into the evolution of PGM literature, (ii) identification of the core publications and authors based on publication frequency, and (iii) a citation network analysis (a historiograph), indicating the relations among the most-cited publications. It involved the identification of 16,374 publications in the Web of Science database, narrowed down to the 100 most cited between 1994 and 2017, and the application of the HistCite bibliometric analysis software, covering descriptive statistics, bibliometric indicators, and historiographic citation analysis. The research results reveal a growing research interest in the topic, as supported by bibliometric indicators. In addition, important differences as regards coverage and diffusion of individual post-NPM models are indicated. Namely, most publications focus on the 'governance' paradigm and subsequent critical rethinking, as indicated by several post-NPM modernisation proposals. Furthermore, we have shown that such evaluation of governance and related doctrines may be biased in favour of subjective, pluralistic Western ideas about governance, presumably limiting their impact within the CEE and several other regions. Hence, the regions' particularities in terms of governance (post-socialism, *Rechtsstaat* culture, EU membership, small states, etc.) must be further taken into account in the post-NPM literature.

1 This article is a revised version of the paper entitled *Consolidating the state of the art of post-NPM literature: a bibliometric approach* presented at the 27th NISPAcee Annual Conference 2019, Prague, Czech Republic, 24–26 May 2019.

Keywords: public administration, public governance models, bibliometrics, historiography, Web of Science, Central and Eastern Europe

JEL: D73, H83

1 Introduction

In order to tackle today's dynamic societal environment, the public administration constantly needs to look for opportunities to improve its productivity, process efficiency, increase collaboration and focus on innovation (Drechsler, 2014; Hammerschmid et al., 2016; Pollitt and Bouckaert, 2011). Socio-economic changes have induced new highly important challenges for public administration, which require a more efficient response. The emergence of the global financial crisis, digitalization, migration issues, the rise of extremist right-wing parties, populism, ecological issues and several others reveal the insufficiency of current public governance models (PGM) to efficiently and effectively support the needs of modern society (Ropret et al., 2018; Segarra-Blasco et al., 2008). In countries on the path from a developing to a developed economy, the situation proves even more acute due to several additional post-transition issues (Aristovnik et al., 2016; Koprić, 2012; Bouckaert, Nakrošis and Nemec, 2011; Ropret et al., 2018). Consequently, public administration reforms are determined as a highly important priority within the UN's 2030 Agenda for Sustainable Development, the post EU 2020 strategy, and EU member states' national strategies (European Commission, 2010; Hammerschmid et al., Millard, 2017; 2016, Aristovnik et al., 2016; Tomaževič et al., 2017; Ropret et al., 2018). The ability to significantly improve authoritative decision-making and public services for individuals, businesses and non-governmental organizations is consequently of strategic importance for the public administration at the European and member state (MS) levels (Hintea et al., 2015; Millard, 2017; OECD, 2016; Ropret et al., 2018). On this foundation, we identify the requirement to thoroughly evaluate the impact of public sector reform from the post-NPM perspective on academic literature. In the continuation, we present the theoretical background (Section 2), providing an overview of public governance models (Subsection 2.1). Then, a detailed presentation of the main research problem (Subsection 2.2) of the study follows. We continue with the research aim and the research questions (Subsection 2.3). The next section is dedicated to a presentation of the research methodology (Section 3). A presentation of the study's main results follows (Section 4). In continuation, the main results are discussed (Section 5) and a conclusion provided (Section 6). Finally, acknowledgements, and references are shown.

2 Theoretical background

2.1 An overview of public governance models

In today's ever more complex and fast-changing environment, public officials increasingly face situations where they are not in possession of all the informa-

tion needed to make a decision in the public interest; nor do they always possess the time or the know-how to evaluate the information they already have (Ropret et al., 2018). As the political scientist and Nobel laureate Elinor Ostrom (2007) warns, one should beware of constructing governance frameworks that are overly specified and burdened with long lists of elements and exacting conditions. We approached this dilemma by focusing on the main dimensions of governance, as covered by the umbrella term 'public governance models'. The latter represent the basic elements for specific research with regard to the institutional capacity of public organizations to provide public services demanded by a country's citizens or the representatives thereof in an effective manner (Emerson and Nabatchi, 2015; Katsamunska, 2016; Ostrom, 2005). A presentation of the main elements of different models follows in the continuation.

Many elements of the classic model of the public administration's operation based on Weber's theoretical starting points (the Weberian model) are becoming obsolete given the challenges facing modern society (Dunleavy and Margetts, 2015; Hammerschmid et al., 2016; Ropret et al., 2018). While some elements, such as hierarchy, professionalism and political neutrality of the public administration that operates through legislation, remain indispensable today in many public administrations (Hood and Dixon; 2016; Pollitt and Bouckaert, 2011), one must take into account that the model's focus is on the routine division of labour, depersonalization of employees and formalized communication (Pollitt and Bouckaert, 2011). A particular limitation is isolated governance, in which taking account of the needs of the citizens and business as a counterpart of the PA seems to be secondarily important. On the contrary, the contemporary 'governance' concept draws strength from its claim to represent a wider, more holistic concept than 'government' alone, encompassing a move away from traditional hierarchical forms of organisation towards network forms (Hammerschmid, et al. 2016; Malito and Umbach, 2015; Ropret et al., 2018). In the early 2000s, hardly any organisation or territorial entity did not subscribe to the virtues of greater civic engagement, at least verbally. In Western democracies, citizen participation is already recognised as a potential cure against the acute "crisis" of democratic representation (Torcal and Montero, 2006).

Consequently, alternative governance models have been proposed in recent decades aiming to enable better utilisation of public administration employees' potential and a better response to the challenges of modern society (Bach and Bordogna, 2011; Mathis, 2014). Great Britain and New Zealand were pioneers of this movement called New Public Management (NPM), which later spread to many other countries. It is a new form of public sector governance that implements managerial methods from the private sector and market mechanisms (Bach and Bordogna, 2011; Bovaird and Löffler, 2003; Pollitt and Bouckaert, 2011), which is an outcome of the requirements to cut public expenditure as a share of gross domestic product and to better integrate the voice of those addressed by the PA (recipients of public services) and civil servants. New Public Management was used in reforms of various public administrations, most effectively in New Zealand, Great Britain and the United

States of America. In other countries, reservations about NPM started appearing after a decade of trial implementation. They were chiefly based on the lack of integration of citizens and business as a PA counterpart, who were considered to have the role of 'final customers', and the fear that economic-financial interests (as an element from the private sector) would prevail over the public interest (Bovaird and Löffler, 2003). Thus, countries in continental Europe (e.g. the Netherlands, France, Belgium, Italy and Germany) decided on incremental changes to the Weberian model that included new (neo) elements for more contemporary governance, especially on moving from a focus on respecting the internal bureaucratic rules to a focus on rules for externally meeting the needs and desires of citizens through a culture of professionalism. The Neo-Weberian model of governance also complements the role of representative democracy with a series of mechanisms for the executive and legislative authority to consult directly with citizens (Drechsler, 2014; Pollitt and Bouckaert, 2011).

The other alternative for comprehensive contemporary governance is so-called New Public Governance (NPG). It is a modern governance model based on the theoretical assumptions of modern politics and society, especially the democratic sharing of the public administration's formal power with all relevant stakeholders (Osborne, 2010). It originates from Network Theory and presumes a plurality of co-dependent stakeholders who contribute to the quality formation of public services as well as a plurality of administrative processes that contribute information to the system of public policies. Starting from the interpretation that the frequently specialised and fragmentary reforms of PAs have unintentionally produced difficulties for policymakers, who were then no longer able to control all the autonomous 'bits' as they wished, the 'Digital-Era Governance' model has emerged (Pollitt and Bouckaert, 2011). This model stresses the significance of changes in relationships within government, and between governments and their citizens, which are facilitated by contemporary ICTs and is termed "Digital-Era Governance" by its originators Dunleavy et al. (2006). Two of the key themes of this new model are said to be 'reintegration' (putting back together what NPM had pulled apart) and 'needs-based holism' (simplifying the entire relationship between the citizen and the state so that the former only has to go to one website or place to get all their requirements dealt with) (Dunleavy et al., 2006). It is noted that the above models should mainly be understood as theoretical frameworks, which can only have a significant effect in practice if properly adapted to the socio-economic preconditions of a given environment (Pollitt and Bouckaert, 2011). Unsurprisingly, an increasing body of literature is focussing on the analysis of methodological incongruences (Bovaird and Löffler, 2003; Kaufmann, Kraay, and Mastruzzi, 2011; Malito and Umbach, 2015; Singh et al., 2009). At the same time, quantitative evidence concerning the measurement of digital governance (models) is still inadequate (Ropret et al., 2018). Moreover, even the use of quantitative approaches for complex societal problems is inadequate for holistically addressing this complexity. The interdisciplinary nature of public administration also requires that individuals with diverse methodological interests and approaches be included (Ropret et

al., 2018). Finally, there is more insight to be gained from combining qualitative and quantitative research than from either form individually. In researching complex societal phenomena, more than one method should be used in the validation process to ensure the variance reflected is that of the trait and not of the method (Creswell, 2009).

2.2 The research problem

While it is clear that closed, hierarchical governance models will become increasingly untenable (Alford, 2009; Edelmann et al., 2012; Bryson et al., 2014; Malito and Umbach, 2015; Ropret et al., 2018), the research problem faced when analysing the post-NPM literature is the lack of studies examining the multitude of possible public governance models (PGM) with sufficient comprehensiveness, especially in Central and Eastern European (CEE) states. This leads to limitations on the application of concrete governance models in managing/governing the public administration system. Although different works often mention the system of public administration there is in fact no such system: there are only many systems present (Hammerschmid, et al. 2016; Bevir, 2011; Ongaro, 2010; Osborne, 2010; Painter & Peters, 2010; Peters, 2009; Ropret et al., 2018). The public governance models we know of today remain overly idealistic and too general or partial, or do not give details concerning why, how and when any of them will be effective/successful (Kovač and Bileišis, 2017; Pollitt and Bouckaert, 2011). For example, one-size-fits-all solutions neither take account of regional administrative traditions and cultures nor specific national circumstances (De Vries and Nemec, 2013; Drechsler, 2014; Hupe and van der Krogt, 2013). Regarding the legal determination of public administration in Central Europe, and at the same time to resolve interdisciplinary problems, reforms must be managed not only by regulation or management but holistically (Kovač and Jukić, 2016; Ropret et al., 2018). Accordingly, a deficiency of every governance model, such as (Neo) Weberian theory, (post) NPM, good or digital governance, is that the individual model is only useful for particular challenges or areas encountered by politicians and officials (Kovač and Bileišis, 2017). Based on this literature review, the need for a critical evaluation of public governance model (PGM) literature proves as vital in providing the scientific foundations for overcoming complex contemporary public governance issues, related to multi-level governance, delegation of powers and decentralization, business globalization, digitalization, the 4th industrial revolution, migrations, nationalism and interstate conflicts, environmental change and several others. With the regulatory approaches of the 19th and 20th century, we are simply unable to respond any faster to the complexities of the 21st century.

2.3 The aim of the research

The aim of this paper is to perform a bibliometric analysis in order to evaluate the impact of public sector reform from the post-NPM perspective on academic literature. Bibliometrics encompasses statistical analysis of written publications (De Bellis, 2009; OECD, 2013). The method has great value, es-

pecially when using citation analysis to quantitatively assess the core journal titles and watershed publications in particular disciplines; interrelationships between authors from different institutions and schools of thought; and related data about the sociology of academia. This may be achieved through three main groups of bibliometric methods (Archambault and Gagne, 2004; Olczyk, 2016). The first method involves counting numbers of publications in journals during a specific time frame. This may be used for the evaluation and comparison of the research performance of individual researchers, and research institutions (Garfield et al., 1978; Adam 2002; Bornmann et al., 2008). Second, citation analysis is a search for the value or impact of a paper, a journal or a research group (Garfield, 2007; Koskinen et al., 2008). Third, co-citation analysis, co-word analysis and bibliographic coupling are used to study the development of fields in a scientific discipline and to determine linkages among them (Teixeira and Sequeira. 2009).

Consequently, it will be possible for the study to systematically tackle the research problem, related to identification of most influential studies and the lack of studies examining the multitude of possible public governance models (PGM) with sufficient comprehensiveness, especially in Central and Eastern European (CEE) states. Moreover, a critical evaluation of post-NPM literature proves vital in order to provide the scientific foundations for overcoming complex policy issues, related to multi-level governance, delegation of powers and decentralization, business globalization, digitalization, the 4th industrial revolution, migrations, nationalism and interstate conflicts, environmental change and several others. We recognize that modernization of PA is a challenging process due to the several interrelated aspects (Kovač and Jukić, 2016; Ropret et al., 2018). Not surprisingly, this leads to very diverse (partly also conflicting) definitions and methodologies used by scholars (Vitezić et al., 2016). Governance measures have been as diverse as the processes (governance as a tool); structures (governance as a form); inputs (governance as both structure and process, bureaucratic and administrative capacity); and as outputs/outcomes (governance as policies, consequences and results; for more, see Bevir et al., 2011; Pollitt and Bouckaert, 2011; Hammerschmid et al., 2016 etc.). As a consequence of these diverse approaches, the reality of measuring governance remains difficult and is still contested (Vitezić et al., 2016). In addition, the monitoring of efficiency and effectiveness in CEE remains complex also because the objectives and interests of stakeholders are multifaceted. Consequently, when dealing with measures of governance, effectiveness, efficiency, and democracy, policymakers, practitioners and researchers alike are confronted with the need to assess highly different aspects and parts of over-conceptualised and incoherently defined phenomena (Malito and Umbach, 2015).Consequently, practitioners and researchers alike are confronted with assessing quite different interests and challenges (Malito and Umbach, 2015) and, even more importantly, a vast amount of resources is needed to effectively address these challenging phenomena.

In order to address the aforementioned research challenges, three research questions are going to guide our study and, finally, lead to the realization of

the research aim. First (RQ1), the question how the PGM field evolved over time in relation to the number of publications identified is to be addressed. This mainly encompasses the investigation of the growth patterns within PGM literature and gives us insight into the indicated relative importance of the studied field. Going more into detail (RQ2), the study tackles the question who are the core journals and authors as indicated by number of citations. Finally (RQ3), the question of the relations between the most frequently cited documents is going to be addressed. Consequently, we are going to present the main academic trajectory, highlighting the structural backbone (Nooy et al., 2005; Lucio-Arias and Leydesdorff, 2008; Olczyk, 2016) in the development of the PGM field. Moreover, based on addressing these questions, it will be possible to provide specific guidelines for further PGM research, taking into consideration the national legacies of respective countries.

3 Methods

The research methodology followed a systematic approach, encompassing multiple phases. The first phase consisted of identifying all relevant papers within Web of Science database, representing globally one of the most respected sources of research literature. Based on 32 keywords, all possibly relevant scientific papers in relation to public governance models within the fields of public administration, political science and law were downloaded from the WoS database. This resulted in 16,374 publications within a timespan from 1994 to 2017 being identified. In the second phase, these papers were thoroughly evaluated with a view to narrowing the broad set of papers down to 100 most relevant ones. This was done by means of two complementary indicators: based on the total citation count (global citation score – GCS) and the citations per year (GCS/year), 100 highest overall ranking WoS papers with a focus on public governance models could easily be identified, downloaded and separated from less relevant ones.

The third phase encompassed application of bibliometric analysis. This was aided by HistCite 12.03.17, a software package used for bibliometric analysis and information visualization, developed by Eugene Garfield, also the inventor of the Science Citation Index (Apriliyanti and Alon, 2017). Specifically, two bibliometric methods were applied:

1. First, a descriptive analysis of the basic bibliometric indicators (number of publications and citations) to indicate how the PGM field evolved over time in relation to the number of publications (RQ1) and to identify the most-cited publications and authors (RQ2).
2. Second, we apply a bibliometric method called citation network analysis, based on cited references, to discover the relations between the most-cited publications (Small, 1973). Based on the recommendation of Griffith et al. (1974), we selected the 100 most-cited publications and aimed towards the visual presentation of the relations among these publications associated with the development of the PGM field. This was achieved with a historiograph (Figure 3), where the vertical axis represents time, the hori-

zontal axis shows citation network nodes and arrows show the relationship between the cited publications (Olczyk, 2016).

This allowed for a comprehensive numerical and graphical presentation of the evolution of the PGM literature, as reflected by the identified main authors, journals, publications, and relations among the latter. Moreover, based on the identified bibliometric patterns within the literature, it was be possible to provide guidelines for further (post-NPM) governance model research.

4 Results

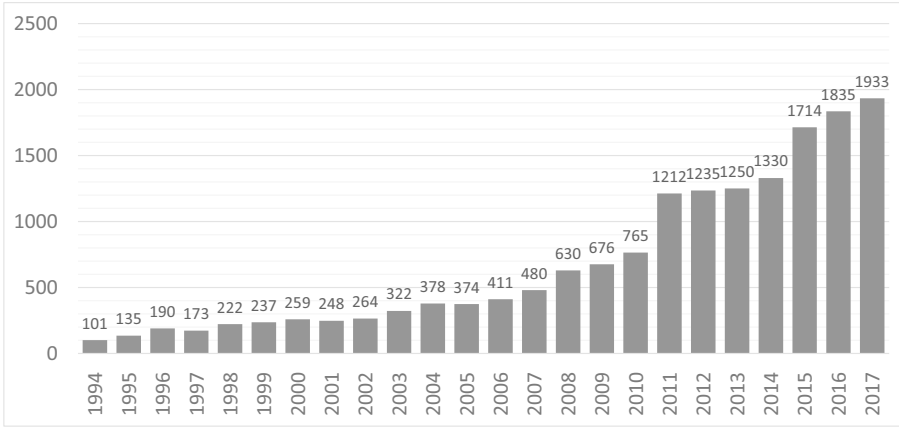
The research results of the bibliometric analysis reveal several interesting insights into public governance model research. Following elements of analysis are presented: (i) an investigation of the evolution of the PGM literature (RQ1) based on publication frequency, (ii) an identification of the core publications and authors (RQ2), (iii) the citation network analysis (a historiograph), indicating the relations among most-cited publications (RQ3).

4.1 Publication frequency

The research results reveal growing research interest in the topic of public governance models (Figure 1): in 1994, slightly over 100 WoS publications a year were relevant, with the number rising to 322 units in 2003 and to even higher values in 2008 and later on. That indicates the growing attention in the quest of finding optimum public governance models after the emergence of the global social & financial crisis in 2008 and subsequent challenges, related to migration issues, the rise of extremist right-wing parties, populism, ecological issues and several others calling for an efficient and effective response of the public administration. Among the most covered sources in terms of publication frequency were highly respected journals in the PA field, underlining the relevance and quality of our methodological approach: International Review of Administrative Sciences, International Journal of Public Sector Management, Public administration, Public Management Review, International Journal of Public Administration, and Public Administration Review.

Moreover, it can be observed within Figure 2 that most of the authors belong to the Anglo-American-Australasian group of countries, followed by Continental European and Nordic countries. Therefore, we must recognize the indication that lacking research within other regions may inhibit more reliable scientific guidelines about PGM implementation and development. This holds true particularly for regions with a comparably low level of administrative and economic development (e.g. several countries in Eastern Europe/CEE, Asia and Africa). The need for further PGM research in these regions is additionally underlined by the fact that, compared to the good foreign practices of reforming public administration and developing new governance models, comprehensive interdisciplinary approaches are often lacking in these countries (Kovač and Jukić, 2016). More insights into the content of the studies will be provided in the next subsection, namely by identifying the individual most influential PGM publications, their authors and corresponding titles.

Figure 1: WoS publications concerning PGM (1994-2017): number of papers per year.



Source: Authors' own calculation based on the database created (N = 16,374).

4.2 Core publications and authors

This analysis begins with identification of the most important publications based on the achieved values of global citations (Table 1). Due to space limitations, the table presents a short summary of the 100 globally most highly-cited publications in the WoS database (10 highest ranked papers, per each of three time periods, based on global citation score (GCS)).

The globally most cited publication in the period 1994-2002 (and also our whole database of research on post-NPM governance) is the paper The new governance: Governing without government by Rhodes (1996) which is focused on the 'governance' paradigm, defining governance as 'self-organizing, interorganizational networks'. Moreover, it argues these networks represent a highly important feature of public service delivery in Britain. This dominant focus on the 'governance' paradigm is also reflected throughout the influential papers within the whole period 1994-2002.

Moving on to the next time interval (2003-2011), the globally most cited publication is Collaborative governance in theory and practice by Ansell and Gash (2008), which is focused on the Collaborative governance paradigm. This mode brings public and private stakeholders together in collective forums with public agencies to engage in consensus-oriented decision making. The paper identifies critical variables that will influence whether or not this mode of governance will produce successful collaboration. Also, it identifies numerous factors that are crucial within the collaborative process itself. These factors include face-to-face dialogue, trust building, and the development of commitment. Different modes of governance and concretization of the concept itself in various forms seems to be the focus of several other papers in this period as well (e.g. Network governance, Digital-era governance, E-government…).

Table 1: Summary of the 100 globally most highly-cited publications in the WoS database (30 highest ranked papers in selected time period presented, based on global citation score (GCS)).

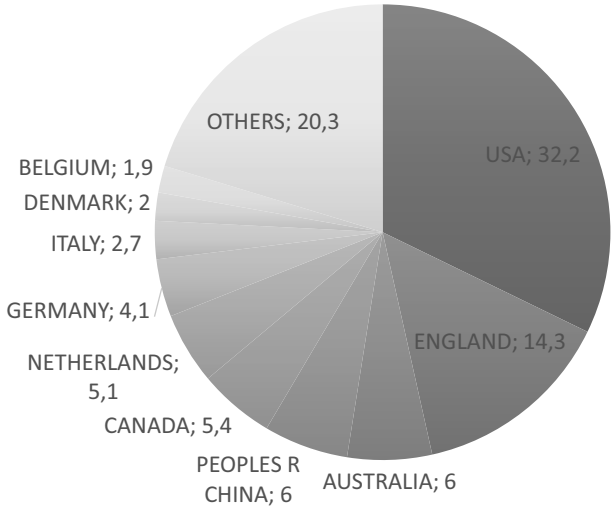
ID	AUTHOR(S)	TITLE	YEAR	SOURCE TITLE	GCS	GCS / YEAR	PERIOD
2	Rhodes, RAW	The new governance: Governing without government	1996	POLITICAL STUDIES	1319	54.96	1994–2002
8	Moon, MJ	The evolution of e-government among municipalities: Rhetoric or reality?	2002	PUBLIC ADMINISTRATION REVIEW	684	38.00	
6	Denhardt, RB; Denhardt, JV	The New Public Service: Serving rather than steering	2000	PUBLIC ADMINISTRATION REVIEW	461	23.05	
10	Ho, ATK	Reinventing local governments and the e-government initiative	2002	PUBLIC ADMINISTRATION REVIEW	433	24.06	
1	Dunleavy, P; Hood, C	FROM OLD PUBLIC-ADMINISTRATION TO NEW PUBLIC MANAGEMENT	1994	PUBLIC MONEY & MANAGEMENT	384	14.77	
9	Sanderson, I	Evaluation, policy learning and evidence-based policy making	2002	PUBLIC ADMINISTRATION	353	19.61	
4	Lowndes, V; Skelcher, C	The dynamics of multi-organizational partnerships: An analysis of changing modes of governance	1998	PUBLIC ADMINISTRATION	343	15.59	
7	Freeman, J	The private role in public governance	2000	NEW YORK UNIVERSITY LAW REVIEW	304	15.20	
5	Williamson, OE	Public and private bureaucracies: A transaction cost economics perspective	1999	JOURNAL OF LAW ECONOMICS & ORGANIZATION	295	14.05	
11	Vigoda, E	From responsiveness to collaboration: Governance, citizens, and the next generation of public administration	2002	PUBLIC ADMINISTRATION REVIEW	274	15.22	

ID	AUTHOR(S)	TITLE	YEAR	SOURCE TITLE	GCS	GCS / YEAR	PERIOD
54	Ansell, C; Gash, A	Collaborative governance in theory and practice	2008	JOURNAL OF PUBLIC ADMINISTRATION RESEARCH AND THEORY	1088	90.67	2003–2011
55	Provan, KG; Kenis, P	Modes of network governance: Structure, management, and effectiveness	2008	JOURNAL OF PUBLIC ADMINISTRATION RESEARCH AND THEORY	941	78.42	
35	Dunleavy, P; Margetts, H; Bastow, S; Tinkler, J	New public management is dead - long live digital-era governance	2006	JOURNAL OF PUBLIC ADMINISTRATION RESEARCH AND THEORY	565	40.36	
14	Irvin, RA; Stansbury, J	Citizen participation in decision making: Is it worth the effort?	2004	PUBLIC ADMINISTRATION REVIEW	550	34.38	
15	West, DM	E-government and the transformation of service delivery and citizen attitudes	2004	PUBLIC ADMINISTRATION REVIEW	529	33.06	
47	Bovaird, T	Beyond engagement and participation: User and community coproduction of public services	2007	PUBLIC ADMINISTRATION REVIEW	498	38.31	
36	Fung, A	Varieties of participation in complex governance	2006	PUBLIC ADMINISTRATION REVIEW	493	35.21	
37	Bevan, G; Hood, C	What's measured is what matters: Targets and gaming in the English public health care system	2006	PUBLIC ADMINISTRATION	487	34.79	
27	Levi-Faur, D	The global diffusion of regulatory capitalism	2005	ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE	432	28.80	
67	Loorbach, D	Transition Management for Sustainable Development: A Prescriptive, Complexity-Based Governance Framework	2010	GOVERNANCE	431	43.10	

ID	AUTHOR(S)	TITLE	YEAR	SOURCE TITLE	GCS	GCS / YEAR	PERIOD
76	Emerson, K; Nabatchi, T; Balogh, S	An Integrative Framework for Collaborative Governance	2012	JOURNAL OF PUBLIC ADMINISTRATION RESEARCH AND THEORY	424	53.00	
77	Bonson, E; Torres, L; Royo, S; Flores, F	Local e-government 2.0: Social media and corporate transparency in municipalities	2012	GOVERNMENT INFORMATION QUARTERLY	286	35.75	
78	Seyfang, G; Haxeltine, A	Growing grassroots innovations: exploring the role of community-based initiatives in governing sustainable energy transitions	2012	ENVIRONMENT AND PLANNING C-GOVERNMENT AND POLICY	275	34.38	
84	Schmidt, VA	Democracy and Legitimacy in the European Union Revisited: Input, Output and 'Throughput'	2013	POLITICAL STUDIES	204	29.14	
79	Bennett, WL	The Personalization of Politics: Political Identity, Social Media, and Changing Patterns of Participation	2012	ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE	203	25.38	2012–2017
85	Fukuyama, F	What Is Governance?	2013	GOVERNANCE	192	27.43	
86	Osborne, SP; Radnor, Z; Nasi, G	A New Theory for Public Service Management? Toward a (Public) Service-Dominant Approach	2013	AMERICAN REVIEW OF PUBLIC ADMINISTRATION	188	26.86	
93	Voorberg, WH; Bekkers, VJJM; Tummers, LG	A Systematic Review of Co-Creation and Co-Production: Embarking on the social innovation journey	2015	PUBLIC MANAGEMENT REVIEW	174	34.80	
94	Head, BW; Alford, J	Wicked Problems: Implications for Public Policy and Management	2015	ADMINISTRATION & SOCIETY	170	34.00	
91	Bryson, JM; Crosby, BC; Bloomberg, L	Public Value Governance: Moving beyond Traditional Public Administration and the New Public Management	2014	PUBLIC ADMINISTRATION REVIEW	152	25.33	

Source: Authors' own calculation based on the database created (N = 100).

Figure 2: WoS publications concerning PGM (1994-2017): geographical coverage in % (based on author affiliation)



Source: Authors' own calculation based on the database created (N = 16,374).

In the period 2012-2017, we can identify the paper of Emerson, Nabatchi and Balogh (2012) An Integrative Framework for Collaborative Governance as most highly cited in terms of the global citation score. The paper synthesizes a suite of conceptual frameworks, and presents an integrative framework for Collaborative governance.

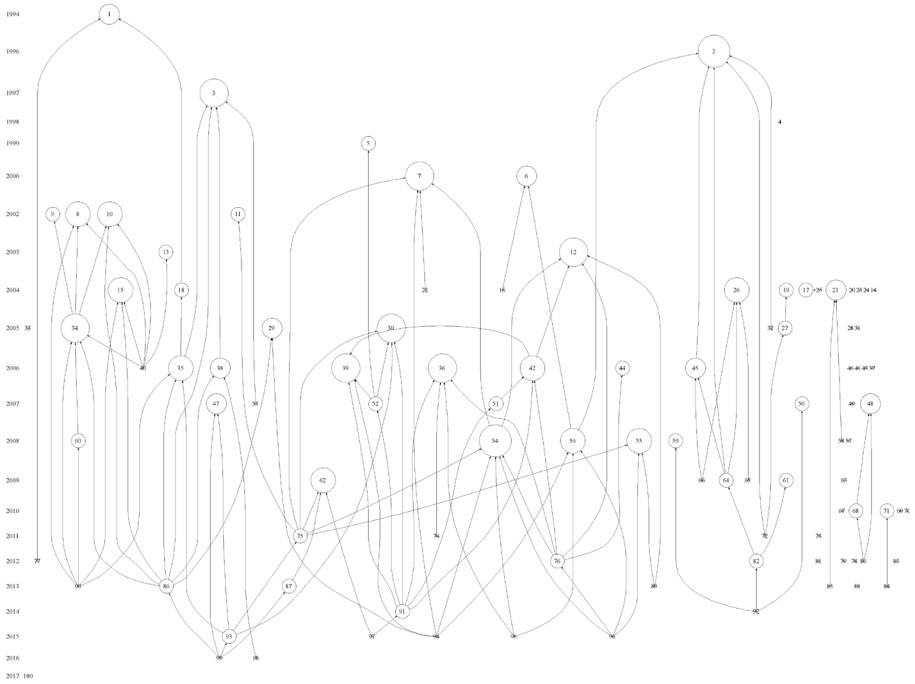
The framework specifies a set of dimensions that encompass a systemic context, a Collaborative governance regime, and its internal collaborative dynamics that can generate impacts across the systems. Related to the performance of the various governance paradigms in practice, papers in this time period are particularly aimed at a critical rethinking of the governance paradigm and related (sub)models, the critical analysis and at presenting highly integrated frameworks for PGM analysis and implementation, aimed at solving 'wicked' administrative problems (e.g. Head and Alford, 2015; Bryson et al., 2014; Voorberg et al., 2015). Also of great interest is the finding that the majority of the most-cited publications (56%) focus entirely on either good governance, Collaborative governance and Network governance. This indicates a possible lack of focus on other possible governance models (NPM, (Neo)-Weberian, Digital-era and others) and, even more importantly, a lack of scientific guidelines for effective and efficient implementation of the latter in appropriate administrative settings.

4.3 Citation network analysis

Next, the relations among most-cited publications are going to be investigated through citation network analysis. The best tool for visualization of such

relationships is a historiograph (Olczyk, 2016). It involves drawing a citation network among highly cited papers, depicting the development of the PGM subject over the selected timeframe of three decades. In HistCite, it is recommended to narrow down the huge population of papers and citations that constitute the sample to the most cited ones, in order to make the citation links manageable and accordingly transparent. Therefore, the 100 most influential publications in the database were selected for the historiograph development (Figure 3). The vertical axis represents time and the horizontal axis shows citation network nodes. Each node (a circle in the diagram) refers to a single publication with a unique identifier (ID; identical to Table 1) in the database. Arrows show the relationship between the cited publications, while the size of the node reflects the number of local citations (LCS) in the sample (bigger size reflects higher number of local citations in the database of 100 units).

Figure 3: Historiograph of the locally most highly-cited publications in the WoS database (N = 100).



Source: Authors' own calculation based on the database created (N = 100) and the local citation score (LCS).

Chronologically, the first amongst the most-cited publications in the database relates to the paper of Dunleavy and Hood (NODE 1) From old public-administration to New public management (1994, LCS = 2), which underlines the importance of the 'New Public Management' paradigm, arguing that NPM has proved a fairly durable agenda. Also, future challenges for NPM are discussed: such as the risk of inappropriate copying; and issues about the core compe-

tencies of public sector agencies. One should take note; however, that this paper was later cited by one of these authors, namely within Hood's (NODE 17) The middle aging of new public management: Into the age of paradox? (2004, LCS = 1), which emphasizes paradoxical effects of NPM reforms and in this light argues that it is particularly the analysis of such paradoxes that can help advance public sector reform. As such, a more critical stance towards NPM is presented and its limitations recognized.

Continuing throughout chronological appearance, one can immediately notice a set of influential papers, related to a different post-NPM paradigm, namely 'governance' (NODES 2, 3, and 7). Starting with (NODE 2) The new governance: Governing without government by Rhodes (1996, LCS = 5), the notion of governance as 'self-organizing, interorganizational networks' is emphasized as most important feature of administrative service delivery in Britain. Moreover, the network elements of trust and mutual adjustment are particularly underlined. Kickert's (NODE 3) Public governance in the Netherlands: An alternative to Anglo-American 'managerialism' (1997, LCS = 4) criticizes the one-sidedness of 'managerialism' in NPM and suggests 'public governance' as it not only possesses theoretical and analytical cogency but also reflects the practice of complex administrative developments. Also, Freeman's (NODE 7) The private role in public governance (2000, LCS = 4) proposes a conception of governance as a set of relationships between public and private actors, based on negotiations over policy making, implementation, and enforcement, consequently decentralizing the decision-making process.

The majority of the aforementioned (mainly theoretical) notions of 'governance' seem to have influenced a range of papers, appearing at the start of the 21st century. One stream of such papers is examining the development trajectories of the e-government paradigm. Moon's (NODE 8) The evolution of e-government among municipalities: Rhetoric or reality? (2002, LCS = 3) examines the current state of municipal e-government implementation, concluding that e-government has been adopted by many governments, but has not delivered many of the expected outcomes (cost savings, downsizing, etc.), as promised. From a similar perspective, Ho's (NODE 10) Reinventing local governments and the e-government initiative (2002, LCS = 3) analyzes the socioeconomic and organizational factors that are related to cities' e-government progressiveness. Based, on a content analysis of best practices, customer-oriented principles, collaboration and networking in the development process rather than technocracy are outlined as highly important success factors. Aside from this, also the challenges in reinventing government through Internet technology are emphasized. The past decade has witnessed a growing interest among scholars of international relations, and global environmental governance in particular, in the role of transnational networks within the international arena. While the existence and potential significance of such networks has been documented, many questions concerning the nature of governance conducted by such networks and their impact remain. We contribute to these debates by examining how such networks are created and maintained and the extent to which they can foster policy learning

and change. We focus on the Cities for Climate Protection (CCP) program, a network of some 550 local governments concerned with promoting local initiatives for the mitigation of climate change. It is frequently asserted that the importance of such networks lies in their ability to exchange knowledge and information, and to forge norms about the nature and terms of particular issues. However, we find that those local governments most effectively engaged with the network are mobilized more by the financial and political resources it offers, and the legitimacy conferred to particular norms about climate protection, than by access to information. Moreover, processes of policy learning within the CCP program take place in discursive struggles as different actors seek legitimacy for their interpretations of what local climate protection policies should mean. In conclusion, we reflect upon the implications of these findings for understanding the role of transnational networks in global environmental governance.Building on the aforementioned papers' propositions, Advancing e-government at the grassroots: Tortoise or hare? (NODE 34) by Norris and Moon (2005, LCS= 4) finds in an empirical study that e-government adoption is progressing rapidly only if measured by web site development. However, holistic approaches towards an integrated and transactional e-government are still lacking. Also, related to advancing e-government towards a more integrated and collaborative "whole of government" solution is the work (NODE 35) New public management is dead - long live digital-era governance by Dunleavy, Margetts, Bastow and Tinkler (2006, LCS = 3). It stresses an emerging post-NPM agenda, which has 'digital era governance' changes at its core, focusing on the reintegration of services, holistic and 'joined-up' approaches to policy-making, and the extensive digitalization of administrative and public service design. Another stream of papers is underlining the need and possibilities of enhancing the collaborative aspect of governance. For example, McGuire's (NODE 42) Collaborative public management: Assessing what we know and how we know it (2006, LCS = 3) addresses the components of emerging collaborative structures, and the types of skills that are required for Collaborative governance. Bovaird's (NODE 47) Beyond engagement and participation: User and community coproduction of public services (2007, LCS = 2) even goes beyond collaboration as it presents a conceptual framework of user and community coproduction and presents several case studies that illustrate the usefulness of the concept itself.

Particularly in the period from 2008 on (presumably due to implications of the socio-economic crisis and related emerging issues), one can notice a more frequent appearance of papers, critically analysing the current 'governance' paradigms' effectiveness in light of new PA challenges and wicked problems. For example, the paper Wicked problems, knowledge challenges, and collaborative capacity builders in network settings (NODE 56) by Weber and Khademian (2008, LCS = 3) underlines the many positive attributes of (network) governance such as the capacity to solve problems, govern shared resources, and address shared goals. Yet, the authors emphasize that in governing complex public, or "wicked," problems, issues, related to the transfer, receipt and integration of knowledge must be addressed. Also, Making governance networks effective and democratic through metagovernance (NODE 59) by

Sorensen and Torfing (2009, LCS = 3), recognizes that governance through networks of public and private actors might help solve wicked problems and enhance democratic participation, while it may also create conflicts and deadlocks and make public governance less transparent and (consequently) accountable. Therefore, careful metagovernance by politicians, public managers and other relevant actors is necessary. Similarly, building on the collaborative governance paradigm, Collaborative governance in theory and practice (NODE 54) by Ansell and Gash (2008, LCS = 5), identifies critical variables for successful collaboration across a range of policy sectors, including the prior history of conflict or cooperation, the incentives for stakeholders to participate, power and resources imbalances, leadership, and institutional design. In Provan's and Kenis's (NODE 55) Modes of network governance: Structure, management, and effectiveness (2008, LCS = 3), the tensions inherent in different forms of governance are discussed, along with conditions for the effectiveness of each form and the role that management may play in addressing these tensions. Also, for example, A Systematic Review of Co-Creation and Co-Production: Embarking on the social innovation journey (NODE 93) by Voorberg, Bekkers and Tummers (2015, LCS = 1) shows that most studies focus on the identification of influential factors, while hardly any attention is paid to the outcomes, implying that future studies should focus on outcomes of co-creation and co-production.

While limited, some recent development in addressing limitations of current collaborative public governance approaches and seemingly introducing new paths for PGM progress, seems to be already underway. Namely, Wicked Problems: Implications for Public Policy and Management (NODE 94) by Head and Alford (2015, LCS = 0), builds on the literatures on systems thinking, collaboration and coordination, and the adaptive leadership roles in order to provide at least some provisional solutions in addressing administrative problem complexity and stakeholder divergence. Also, for example, Meijer's and Bolivar's (NODE 98) Governing the smart city: a review of the literature on smart urban governance (2016, LCS = 0) highlights the importance of new forms of human collaboration through the use of ICTs to obtain better outcomes and more open governance processes, benefiting from previous studies about the limitations of e-government and collaborative governance paradigms. Yet, in terms of excellent scientific literature, providing reliable guidance on governance paradigms, addressing contemporary governance challenges, evidence still seems to be in short supply.

5 Discussion

The aim of our paper was to consolidate the state of the art of academic research on modern post-NPM public governance models (PGM). By means of bibliometric analysis we tried to address three main research objectives (and related research questions): (i) an investigation of the evolution of the PGM literature (RQ1) based on publication frequency, (ii) an identification of the core publications and authors (RQ2), and (iii) the citation network analysis (a historiograph), indicating the relations among most-cited publications (RQ3).

As regards the first research question (RQ1), the results of our study indicate growing research interest in the topic of public governance models. This has to be welcomed, as at a time of highly complex public problems and limited resources, scientific guidelines for efficient and effective public governance models are a key part of effectively and efficiently coping with tomorrow's societal challenges (Edelmann et al., 2012; Hilgers and Ihl, 2010; Malito and Umbach, 2015; Welzel and Alexander, 2008; Aristovnik, 2012). The finding is also in line with previous research (e.g. Alford, 2009; Edelmann et al., 2012; Malito and Umbach, 2015), claiming that closed, hierarchically governed models will be increasingly untenable. Yet, while our paper reveals growing research interest in the topic of public governance models, there are several research gaps, which we think should be overcome in order to build an adequately holistic basis for effective and efficient governance.

Namely a further analysis, concerned with the question (RQ2) of most influential publications and authors, revealed a vibrant development of publications, focusing particularly on the public governance doctrine and the ongoing quest for improvements with regard to administrative challenges. Also, these influential publications, are focusing primarily on the Anglo-American-Australasian and Continental European region (as regards the authorship and consequently also the content), leaving out the CEE region and its particularities (post-socialism, Rechtsstaat culture, EU membership, small states etc.). The unfavorable situation is intensified by the fact that institutional capacity for effective administrative reforms in the CEE regions is limited and consequently, most administrative reforms represents relatively ineffective "trial and error" approaches (Bouckaert et al., 2008; Bouckaert et al., 2011; de Vries and Nemec, 2013). Also, there are other important challenges in the CEE countries, as in the early 1990s many of these had just established a PA framework based on the rule of law, while shortly after this experiencing the challenge of introducing managerial systems and techniques in the PA (Kickert, 2008; Ropret et al., 2018). This duality frequently led to the relatively conservative modifications of the traditional Weberian bureaucratic governance model (the Neo-Weberian model), while modern paradigms of public sector governance are more characteristic of Great Britain and the USA (New Public Management or NPM, New Public Governance, hybrid models), environments characterized by a stronger orientation towards the user and the transfer of competitive elements from the private sector to the public one (Hammerschmid et al., 2016; Pollitt and Bouckaert, 2011).

Next, we visually presented a historiograph, which showed the relations (i.e. citation links) among mostly influential publications (RQ3), where a process of ongoing PGM development was indicated. In particular, a group of influential papers was identified, introducing the 'governance' paradigm in broadest (theoretical) sense (e.g. Rhodes, 1996; Kickert, 1997; Freeman, 2000), entailing a move away from traditional hierarchical forms of organization, the adoption of network forms and a revision of the relationship between the state and civil society in a more participatory direction. These ideas served as a starting point for concretization and advancement into various public

governance (sub)models, particularly the e-government and Digital-era paradigms (e.g. Dunleavy et al., 2006; Ho, 2002, Moon, 2002). Also, especially in the period after the socio-economic crisis (i.e. from 2008 on), we noticed a vibrant development of papers, critically analysing the state of current 'governance' paradigms' in light of new PA challenges and wicked problems. This led to several additional PGM concretization proposals, such as Collaborative governance, Network governance and Smart governance (e.g. Provan and Kenis, 2008; Sorensen and Torfing, 2009; Voorberg, Bekkers and Tummers, 2015). Consequently, some support for the existence of an administrative layering process rather than paradigm substitution is supported, encompassing building blocks of earlier paradigms (where supported by administrative theory and practice), while also proposing additional ones (Iacovino, Barsanti, and Cinquini, 2015). Moreover, few of the highly influential papers were inspired by NPM research and the possibilities of advancing the NPM agenda. Similar applies to the (Neo)-Weberian model. Consequently, the presented paradigms may be relatively well suited for subjective, pluralistic, or Western (post-NPM) governance. Yet, these publications are not directly tackling CEE regions' particularities (post-socialism, Rechtsstaat culture, EU membership, small states etc.), making the proposed PGM implementation within this region questionable.

6 Conclusion

The process of modernizing PA is complex due to several barriers such as contradictory incentives, vertical structures, employee job security rules, citizen-centric services and privacy issues, as to which no easy solutions exist (Fountain, 2004; Janssen and van der Voort, 2016; Hammerschmid, et al. 2016; Ruud, 2017). Moreover, numerous substantive areas, such as the modernization of organizational structures and administrative procedural law, the rationalization and modernization of the civil service system and the improvement of the pay system, the development of e-government and innovation in governance must be taken into account. In Europe, there have been high expectations of significant cost savings through PA modernization (Ruud, 2017). The purpose is to improve performance and provide benefits for the citizens. Yet, according to our research, not enough effort has been made to analyse the impact of modernization in the public sector, especially in Central and Eastern European countries. Namely, while several governance model proposals can be identified, such as Digital-era governance, Collaborative governance, Network governance and Smart governance, the main issue about how to build a consensus around the enduring socio-political values and traditions remains. Also, this leaves open multiple possibilities of how, and towards what ends, power might be exercised (Gisselquist, 2012; Ikeanyibe, Eze Ori and Okoye, 2017). Especially in Central and Eastern European countries, where scientific foundations concerning PA modernization are still fragmentary (Kovač and Jukić, 2016). By their very nature, the study of complex systems, such as the public administration system, requires the observer to incorporate adequate holism (Keating, 2014; Mulej et al., 2008; Whitney

et al., 2015). Consequently, limiting the study to parts rather than the whole system induces a lack of knowledge about the functioning of the system as a whole and, even more importantly from this paper's standpoint, leads to limitations and incorrect decisions in modernizing the PA.

A thorough modernization of the PA requires an integrated approach to technology, processes and people to manage the availability and sustainability of processes (Janssen and van der Voort, 2016; Nograšek and Vintar, 2015; Savoldelli et al., 2014; Yildiz, 2016). In the organizational structure and culture, all elements are interdependent (a change in one element cause changes in another element) both within and between organizational levels (Janssen and van der Voort, 2016; Nograšek and Vintar, 2015; Savoldelli et al., 2014; Yildiz, 2016). Reforms must be managed not only by regulation or management but holistically (Kovač and Jukić, 2016; Ropret et al., 2018), founded on principles of good governance, such as accountability, effectiveness and efficiency, rule of law, transparency, participation, equity and inclusiveness, consensus orientation and responsiveness While there are frequently trade-offs of one principle being prioritized at the expense of another, legalism and neo-liberalism are often among the core causes of PA reforms (Ropret et al., 2018; Kovač and Jukić, 2016). Further, the multi-level governance from the perspective of Central and Eastern European countries is characterized by a largely hierarchical structure, and there is a mismatch of the old hierarchical structures and new institutions that emerged during and after the period of transition, often causing vertical coordination problems (Kluvankova-Oravska and Chobotova, 2010). Similarly, the evaluation from the perspective of small European states also unearths some interesting facts. In small EU countries hardly any involvement of subnational actors in policy-making processes or in networking can be observed and also those countries subnational actors are weak relative to those at the national level (Kull and Tatar, 2015). PGMs, involving a multi-level systemic approach and collaboration between state and civil society policy actors are fundamental for creating an innovative policy environment. Above all, new models of governance can improve the role of a postmodern public administration in the policy process. Moreover, such tailored and at the same time holistic approaches towards PA modernization could in many cases serve as an antagonistic tool and a response to uneven development.

Finally, we recognize the limitations of our study. One vital shortcoming stems from the fact that, due to limited available time and the faced financial constraints, it was not possible to include scientific papers from all relevant databases. Therefore, the foundations for our analysis were built on 16,374 publications from the Web of Science database, representing a globally recognized source of world-class research literature, linked to a rigorously selected core of journals. Moreover, one of the shortcomings stems from the low number of papers available, especially in the CEE states. Related to this limitation, is another one, namely that the availability of more country-specific studies might have given even more insights about the state of PGM development and impacts. We recognize that one-size-fits-all solutions neither

take into account regional administrative traditions and cultures nor specific national circumstances (Bouckaert et al., 2008, de Vries and Nemec, 2013; Hupe and van der Krogt, 2013; Drechsler, 2014; Nemec, 2014; Ropret et al., 2018). Hence, a more thorough PGM and regional specifics representation from the governance perspective must be further taken into account within the post-NPM research. Along with this, the socio-administrative particularities of entities at different governance levels have to be encompassed in literature as well, allowing for an effective diffusion of the public governance models within the literature, and furthermore, in the CEE and other states' administrative practice.

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Impact of the Rule of Law as a Fundamental Public Governance Principle on Administrative Law Interpretation in the Czech Republic[1]

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ABSTRACT

The rule of law is a fundamental principle and the cornerstone of Western democracies and their public governance. Its underlying value is the idea of constraint of governmental power. The rule of law principle acts as an interpretative concept in most contexts of the exercise of public powers in the EU and its Member States, with the courts exercising supervision over the activities of administrative bodies. However, the teleological argumentation through fundamental principles is not inherent to all Central and Eastern European judicial and administrative bodies, given the long tradition of formalistic approach in most of them. The article analyses whether the approach has changed during the past thirty years and to which level the principle of the rule of law is used for interpretation of administrative law provisions by courts in the Czech Republic. Since the case law of the Czech Constitutional Court and the Czech Supreme Administrative Court is based on the arguments of legality and proportionality as the key elements of the rule of law, their cases were analysed using a comparative method. The article identifies a general tendency in legally difficult cases to move from purely linguistic interpretation to interpretation through values, including the rule of law. Most of the analysed cases reveal that the formalistic interpretation was strongly criticised by both the Constitutional and the Supreme Administrative courts. However, slight differences in their perception of the principles of legality and proportionality were discerned, namely in the debate on the intensity of control exercised by administrative courts over factual and discretionary decisions by administrative authorities. Nevertheless, these differences produce beneficial effects, as both principles continue being developed thanks to the exchange of opinions between the courts. Further research could be conducted for similar countries in the region.

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Keywords: rule of law, administrative justice, good governance, legality, proportionality, interpretation, the Czech Republic

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1 Introduction

The rule of law being a guarantee against misuse of power and linked to protection of human rights is an umbrella principle which encompasses a substantial number of other principles, most of them having their own independent existence. Although there has been a vivid academic discussion[2] about its content, universal agreement has not been reached.[3] However, the majority of the scholars agree that the underlying value is the idea of constraint. The principle of legality, division and balance of powers, judicial control and protection of fundamental rights create a shared basis. (Addink, p. 76) The constraint entails that rules created by the state apply not only to citizens but also to the state officials to the same extent. Thus, it comprises such elements as authorization of administrative bodies, correct exercise of their discretionary powers, proportionality, legal certainty and clarity, protection of legal expectations, transparency, legal liability for administrative action, and last but not least right to fair trial before independent court that is empowered to review the contested administrative body's action. This supervision is crucial to ensure public administration bodies' adherence to all other elements of rule of law. "Administrative actors must act within power and only for a proper purpose. Supervisory mechanism must exist to ensure that all actors conduct themselves in conformity with law; supervision gives substance to the rule of law." (Hofmann, Rowe, Turk, p. 150)

The rule of law principle operates as an interpretative concept in most contexts of the exercise of public powers in the EU and its member states. As such, it is applied in administrative authorities decision-making and further by administrative courts when they exercise the supervision mentioned above. This contribution seeks to delineate the understanding of rule of law by the Czech Constitutional Court (hereinafter also the "CCC") and by the Czech Supreme Administrative Court (hereinafter also the "SAC") through analysis of their relevant case law. Subsequently, influence of this case law on the regional administrative courts and administrative authorities practice is evaluated. Mainly, two independent principles contained in the rule of law – the principles of legality and proportionality – were chosen for the analysis. The principle of legality requires that all administrative action has to have a legal ground and that administrative bodies act within the legal framework, contained both in statutory laws and secondary regulations that were created by

2 The Anglo-American Rule of law is connected with the work of Dicey. The doctrine of Rechtstaat usually names Kant and Von Mohl as the first authors. To name only few of the scholars that have contributed to the discussion: Hayek, Waldron, Raz, Fuller, Craig, Hoffman and other authors cited in references.

3 See e.g. Aagaard Tood S.: Agencies, Courts, First principles and the Rule of Law. In: Administrative Law Review 70, 2018, p. 2.

public administration. "Even under a narrow definition, the rule of law clearly and necessarily implies that administrative implementation occurs within the framework established by legislation, that subordinate legislation may be made by the administrative branch only where there is an enabling power in primary… law …, and that such subordinate legislation must be within substantive limits nd conform with procedural requirements of higher law." (Hofmann, Rowe, Turk, p. 150) The principle of proportionality is considered to be a tool to protect from excessive administrative acts and as such it can serve well as ground of judicial review. "Proportionality is a method for determining whether the reasons advanced by the state for limiting a specific fundamental freedom outweigh the values which underlie the constitutional commitment to the protection of that freedom." (Addink, p. 78)

2 The rule of law – key fundamental principle of public Governance

Rule of law represents a fundamental value being the cornerstone of western democracies. The perception of what it exactly means and which principles are most crucial for its preservation depends on philosophical and legal traditions embedded in individual countries as well as on the societal context in which it is developed. There is an ongoing debate (Carlin, Sarsfield, p. 125), with some authors preferring a narrower concept while others insist on broader interpretation. (Berger, Lake, p. 2) Agreement prevails that it is connected to the limitation of statehood on one hand and on the other it contributes to a social equilibrium where the vast majority of people accept to be ruled by legal norms, which then have a high probability of compliance. The state is governed by and has to adhere to the same rules as the citizens and these rules are applied indiscriminately. The state also ensures that the law is enforced.

Both elements that impact on legislative institutions and those which relate directly to administrative functions are contained in rule of law. (Hofmann, Rowe, Turk, p.149) For purposes of this paper, the impact on administrative functions is to be examined. Focusing on the rule of law's requirements on administrative authorities, some principles have greater importance while some must be put aside. (Stack, p. 1991) Those principles that apply predominantly to the legislator or those that pertain to criminal court processes may be disregarded for the purposes of this article. Most importantly, for the administrative authorities under the rule of law, the available forms of administrative acts are solely those contained within the statutory laws or based upon them (principle of authorization). Administrative bodies must exercise their powers solely for the proper purposes (ban on misuse of powers) and administrative discretion is not unlimited. The administrative acts need to be proportionate; proportionality also sets limits to the discretionary powers. Justification, predictability, consistency, transparency, efficiency and accountability are other principles contained in the multi-faceted rule of law. Last but not least, supervision gives substance to the rule of law, as any breach of the principles

should result in invalidity of such acting. Independent and impartial courts should provide for remedy.

The interpretation of rule of law differs according to the historical and cultural tradition of the country which affects its legal system. Common law perception stresses other key elements to be adopted in courts' decisions and in written rules compared to the continental European tradition.[4] The legal thinking in the Czech Republic is traditionally close to the German and Austrian legal systems and their doctrinal interpretation of constitutional and administrative law principles. The German understanding of rule of law (*Rechtstaat*) is much more related to separation of powers than the common law perception. In common law perception the main aim is to limit the power of the government. In *Rechtstaat* "the state has monopoly over power, meaning the state alone exercises coercion and guarantees the safety of its citizens. The law is the source of government's powers. There is also separation of powers, with the executive, legislative, and judicial branches of government limiting each other's power and providing system of checks and balances. Then the judiciary and the executive are themselves bound by the law, and the legislature is bound by constitutional principles." (Berger, Lake, p. 148) *Rechtstaat* implies the elimination of arbitrary authority and is the ideal of a fully democratic state respecting and protecting human rights. (Sever, Rakar, Kovač) The key elements are legality, division of powers, judicial control and protection of human rights. To the *Rechtstaat,* the role of administrative courts contributing to checks and balances and preventing misuse of power by the executive, is of fundamental importance. The principle of legality and principle of proportionality are core principles in limiting the administrative bodies' powers and as such often referred to by the courts when they ground their decisions on arguments related to the rule of law. The principle of legality demands that democratically elected representatives of the people adopt legislation and the government is bound by it when taking any action including secondary legislation. It is a constraint ensuring that the government acts in accordance with the effective hard law rules. The legislator is bound by the Constitution and may limit human rights when the Constitution allows to do so. The legislator may change the Constitution as well, however a larger quorum is required. The Constitutions of democratic states express the principle of legality explicitly. The German Constitution does so in its Art. 20. The Czech Constitution in expresses the principle of legality Art. 2 par. 3 "State authority is to serve all citizens and may be asserted only in cases, within the bounds, and in the manner provided for by law." Both the German and the Czech legal systems understand the rule of law in its substantive meaning, not only in the formal meaning. The formal rule of law purports that the state authorities

4 The German Rechtstaat was developed as a counterpoint to the police state and the system of despotic rule and absolutism and symbolizes state's commitment to the realization of justice (described as the material rechtstaat which evolved after Second World War as a reaction to the formal approach of the Weimar republic). The legislator is the main holder of the sovereignty, however bound by the constitutional principles, and the executive needs empowerment of the legislator for al its actions. The common law's starting point close to the Lockean concept of a state with limited sovereignty where government only moderats individual to the minimum extent needed. For details see Henk Addink Good Governance Concept and Content.

are disciplined to carry out all their activities in line with the hard law rules irrespective of the content of these rules. The substantive understanding of rule of law is broader. The state power has to respect ultimate legal principles and values. The content of the legal rules is important, those have to respect fundamental rights.

Different states reach different levels of rule of law. Carlin links establishment of rule of law to wealth and to the degree and longevity of democracy. The more profound the rule of law is, the wealthier the society gets and the democracy is less struggling and more immune to negative political influences. He suggests five main typologies: Full Rule of Law (countries that adhere to all basic attributes of rule of law; according to Carlin many of the post-socialist states fit to this typology including e.g. Slovenia, the Czech Republic, Latvia, Lithuania), Incomplete Rule of Law (main levels of rule of law on all dimensions except peace are significantly lower, e.g. Poland, Bulgaria, Rumania), Peaceful Unrule of Law (the state is neither constrained horizontally by an independent judiciary, nor constrained vertically to uphold citizens' negative and positive rights, e.g. Mexico, China), Unstable Lawlessness (judiciary lacks power and autonomy, minor armed conflict threatens 1 in 6 cases, few countries spend much time in this type, e.g. Georgia, Kyrgyzstan), and Violent Unrule of Law (open conflict). (Carlin, Sarsfield) It is obvious that the post-communist countries including the Czech Republic started their way up from the one but last category in 1990s and that some of them have not reached the top level yet or due to the democratic backslide have lowered. It is less obvious which country falls within which category. However, more important are the factors that influence the speed of the change and tools supporting rule of law promotion.

2.1 The role of principles in interpretation of legal texts and adjudication

Administrative courts provide remedy when administrative bodies fail to act according the statutory laws. As a corollary of the principle of lawfulness the trial before the courts needs to be fair and the review procedure should be accessible to wide range of applicants seeking protection when claiming that an administrative body breached binding legal provisions and thus infringed their rights.[5] The administrative courts should be bound by hard law rules in their adjudication only. They review the application of abstract legal provisions on specific cases by administrative bodies. Doing so, they need to interpret the legal provisions and control whether the interpretation presented in the contested decision is adequate and reasonable. This interpretation influences back the following decision-making of administrative bodies, as they should follow the relevant case law even though it is binding only in the particular case. Thus, through their decision-making the administrative courts do not only provide protection in individual cases, they also provide valuable

5 More details may be drawn from the Constitutional Court's decision Pl.ÚS 16/99 of 27th June 2001 by which the CCC annuled part 5. of the Code of Civil Procedure - the statutory law governing the whole of administrative justice prcedure before 2003 for being contradictory with the Constitution of the Czech republic.

guidelines for prospective activities of administrative bodies when they need to apply hard law rules which might be potentially interpreted in several ways.

One of the methods of legal interpretation, i.e. ascertaining the meaning of a certain legal provision contained in statutory laws, is the so-called teleological method. This method is used to capture the aim the legislator wanted to achieve by adopting the statutory law, its purpose and function in the whole of the legal order. The arguments that are used are the general principles of law, the values that the law is intended to promote and protect (the final goals of the law), and human rights. Whenever more interpretations of a legal text may be considered, the one which is closest to the values of the society and general principles of law, should be chosen. The rule of law thus serves as a value and principle for interpretation of legal provisions meaning.

Another method is linguistic interpretation. This method is usually the first to be used by administrative bodies. Especially, when there is no reason to doubt what is meant by the text of the legal rule strict adherence to hard law by administrative authorities is expected and consistent with the principle of legality. However, the role of the text must not be overestimated especially in difficult case where several interpretations are possible. Otherwise it may lead to extreme formalism which is characterized by disregard for the purpose and effect of the interpreted legal provision and the values contained in it and the whole legal system. The formal approach to the rule of law and legality principle must retreat and the substantial conception in modern democratic states should prevail.[6]

Interpretation of legal provisions in the communist regimes in most of the CEE countries was almost purely linguistic intentionally disregarding any values such as human rights. Legal science disregarded anything like customary practice, impact of rules and their efficacy; it put an emphasis on written law. Actually, the only source of law[7] were the written rules. Basically, no unwritten principles existed. Therefore, the courts disregarded principles as interpretation tools.

The reasons for such formalistic approach were several. First, not dealing with any principles and rationale of law behind the text is a comfortable and practical way of deciding cases without deeper and time-consuming analysis. (Letnar Černič, Avbelj) Secondly, the communist judges were solving much simpler cases than their western colleagues (almost no administrative cases appeared before the courts, the commercial issues of businesses did not exist, as private businesses were not allowed to exist). (Kühn) Some of the judges protected themselves while hiding behind the legal texts as they refused to serve the regime. Interpreting hard law rules by values of contemporary

6 Formal concept of rule of law and legality focuses on the procedure, how the law was passed and whether it is clear. Substantive conceptions in reaction to the bad experience with laws of the Weimar Republic add another requirement. The hard laws need to respect values such as human rights. For more detail see Paul Craig, Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework. (1997) Public Law, pp. 467–487.

7 The sources of law are the origins of binding legal rules which take a form respected by the state. Thus, they may differ depending on the legal system. The most common are legislation, case law, international treaties, customs, unwritten principles, books of authority.

society would mean interpreting with the help of Marxist doctrine which they did not believe in.

Hand in hand with the change of the regime came the change in legal thinking. However, the ordinary judges progressed rather slowly – in the Czech Republic as well as in other post-communist countries. They continued in their formalist reading of law focusing on the legal text only. Hoff and Stiglitz explain how after the fall of communism in Eastern and Central Europe most observers agreed that were it politically feasible to establish quickly the rule of law to underpin a market economy as or before state enterprises were privatized, it would be desirable to do so. (Hoff, Stiglitz) However, it was argued not to be politically feasible. Advocates of rapid privatization claimed that granting individuals' control of property would create a political constituency for the rule of law, where there is protection for private property rights. But there was no theory to explain how this process of institutional evolution would occur and, in fact, it did not. The Czech Republic belonged to the group of unsuccessful countries. Hoff and Stiglitz argue that the central reason was the weakness of political demand for the rule of law and show that the beneficiaries of privatization may fail to support the rule of law even if it is the Pareto efficient "rule of the game". (Hoff, Stiglitz) Thus, it is obvious that the adherence to the rule of law principle did not come easily only with the change of centrally managed economy to a market one.

However, the situation was different with Constitutional Courts which were newly (re)established in many CEE countries.[8] The CCC exercising review of both constitutionality of statutory laws and constitutionality of individual decisions repeatedly emphasized the necessity of anti-formalist way of interpretation.[9] Although some scholars joined this effort to fight the textual positiv-

8 The history of the constitutional judiciary in the Czech Republic began in 1921 when pursuant to the Constitutional Charter of 1920, a separate Constitutional Court of Czechoslovakia was established. During the Second World War, the Court did not meet, and after the war its work was not resumed. Act on the Czechoslovak Federation not only envisaged the creation of a constitutional court for the federation, but also for each of the two republics in 1968. None of these courts was ever established, however, even though the unimplemented constitutional provision stayed in effect for more than two decades. Constitutional Court of the Czech and Slovak Federal Republic (ČSFR) was established by an act in February 1991. After the dissolution of the Czechoslovak federation, the existence of a constitutional court was also provided for in the Constitution of the independent Czech Republic of 16 December 1992. The newly established Constitutional Court of the Czech Republic began its work on 15 July 1993. The CCC main competences comprise the power to annul statutes or individual provisions thereof if they are in conflict with the constitutional order; to annul other legal enactments or individual provisions thereof if they are in conflict with the constitutional order or a statute; over constitutional complaints by the representative body of a self-governing region against an unlawful encroachment by the state. Other countries such as Slovakia, Hungary, Poland, Lithuania, Latvia, Estonia, Bulgaria, and Romania have established or re-established their constitutional courts. Constitutional Court of Yugoslavia and the constitutional courts of the member republics were introduced by the Yugoslav Constitution already in 1963. The constitutions of the new independent republics at the beginning of 1990s newly stressed division of powers and stressed the position of constitutional courts.

9 See case file No. Pl. ÚS 21/96 where the CCC emphasizes the necessity to abandon the formalist approach by explaining that ordinary courts are not: "…absolutely bound by the literal wording of a legal provision, and they can and must deviate from it if such a deviation is demanded by serious reasons of the law's purpose, the history of its adoption, systematic reasons or any principle deriving from the constitutionally conform legal order … In doing so, it is necessary to avoid arbitrariness; the decision of the court must be based on a rational argumentation."

ism,[10] the legal academia predominantly approached new laws in an utterly textualist way. (Kühn) Kühn explains that "When it was necessary to solve a more difficult case, the judges, poorly supported by their legal academia, often sought a way out by disposing of the case on purely formalist grounds. In this way the simplified version of textual positivism and the ideology of bound judicial decision-making were able to survive. … In post-communist countries, such an approach became untenable, however, as literally overnight the level of societal life became much more complex and the courts were faced with the post-Communist transition – in which they had to solve completely new issues such as commercial cases, privatization and new types of business practices – and to cope with an increased caseload." (Kühn)

2.2 Research question and research methodology

The question this article is trying to find answer to is whether the administrative courts in the Czech Republic use principles of legality and proportionality in their interpretation of hard law rules and whether such interpretation is required from administrative bodies as well. Further, the contribution of the CCC to the move from formalist interpretation by both the administrative courts and authorities is contemplated. The cases discussed before administrative courts are often difficult and not suited to be decided only on the basis of a legal text. Therefore, the presumption is that the formalist approach is retreating and use of teleological arguments should prevail in difficult cases.

In 2003 the Supreme Administrative Court was established. It does not comprise career judges only, as former legal practitioners and legal academics may apply to become a judge with this court. The SAC decisions thus might be influenced by other views similarly to the situation of the CCC. However, Matczak, Bencze and Kűhn in their study of 2010 come to a conclusion, that "…formalistic approach to judicial decision-making seems to be a consistent strategy followed by the administrative judiciaries in CEE, with the Czech Republic judiciary being formalistic with regards to general principles application. This strategy is not in accordance with the approach taken by the legislative branches of government in these countries, which raises question over judicial deference to legislative value choices." (Matczak, Bencze, Kühn, p. 96) However, they also show in a study dedicated to decision-making during the years 1999 - 2004 that compared to other CEE countries due to the influence of the CCC the ordinary Czech courts tend to use for their argumentation standards external to law more often (approximately in 20% cases). (Matczak, Bencze, Kühn, p. 92) Can such tendency be discerned not only in the CCC case law but also in the SAC case law?

10 For example Pelikánová tried to rouse judges: "The aim is not to create new systems and new constructions, the aim is to understand the existing legal principles and solutions, whether they are in our own past or in other countries. In our situation, the idea of arriving at our own and better concepts is usually a perilous one that leads to the prolongation of that transitional stage between totalitarian and democratic law, to the introduction of new legislation by distorted pseudo-constructs, requiring laborious corrections in a number of subsequent amendments." [19]

The main research question is whether and how the rule of law and principles of legality and proportionality are applied as interpretative concepts by the Czech administrative courts when they exercise supervision over administrative bodies' decisions and other activities. The hypothesis grounded on the literature research mentioned above is that mainly in difficult cases there is a tendency to prefer the usage of principles and teleological interpretation to a formalistic interpretation. Also the influence of the CCC case law on the administrative courts adjudication should not be negligible.

As the rule of law principle is rather broad containing other principles which also work separately, the case law analysis restricts the two key principles. Due to the Czech understanding of rule of law being affected by the German legal science and the doctrine of Rechtstaat, two sub-principles, the principle of legality and the principle of proportionality were chosen for the analysis as most relevant. Both principles are mentioned in literature[11] as the principles influencing the German understanding of Rechtstaat. (Bumke, Voßkuhle, p. 76)

For the purposes of this qualitative research, several different methods were applied as relevant. First, a comprehensive overview of the rule of law and the principles of legality and proportionality was made through literature review and normative-analytical method. Using systematic approach, the author analysed relevant case law of both the Czech Constitutional Court and the Czech Supreme Administrative Court focusing on cases where these courts provide guidance to regional (administrative) courts regarding interpretation of hard law rules and legal argumentation using these principles. A sample of 50 decisions of SAC from the years 2003–2019 was studied. Also 25 CCC decisions in the period 1993–2019 were analysed. The most important ones are listed in the references part. The decisions were chosen as a combination of three criteria. First group relating to expressly mentioned formalistic interpretation was chosen using the search tools available at the CCC and SAC web sites.[12] These search tools turned out not to be suitable when it came to searching for decisions related to the principles of legality and proportionality. The breach of legality being the main ground for quashing of an administrative decision was mentioned in a particularly large number of SAC decisions. On the other hand, the CCC decisions contained many related to penal justice. Thus the literature including commentaries on the Code of Administrative Procedure and the Constitution was consulted. Most recent case law of 2018 and 2019 was added with the help of the search tools. The third group contained decisions related to the principle of proportionality. As this principle applies in difficult cases a group of such cases deal with by administrative courts was selected. The SAC developed a mechanism for control of zoning plans con-

11 See e.g. Addin, H. Good Governance Concept and Context p. 76: "The German rule of law, the rechtstaat, consists of following principles: (1) the separation and differentiation of state power, (2) the principle of legality, (3) the principle of legal certainty, (4) the principle of trust, (5) independent judicial control, and (6) the principle of proportionality."

12 The CCC decisions search tool – https://nalus.usoud.cz/Search/Search.aspx. The SAC decisions may be searched at http://www.nssoud.cz/main0Col.aspx?cls=JudikaturaSimpleSearch&pageSource=0&menu=188 .

taining the proportionality test as the last of five steps. Thus, the stress was put onto cases dealing with zoning plans.

The sample of the decisions was studied using analogy, comparative method and inductive reasoning. Their content was compared and interpreted. In the conclusion a synthesis of the findings is carried out.

3 Analyses of the use of the legality and proportionality principles

3.1 Requirement of legality of all administrative authorities' activities and its dimensions

Administrative bodies must always act within the law, irrespective of its source. They have to adhere to statutory rules but also to the rules created by the public administration itself, in government or ministerial ordinances. The hierarchy of legal norms has to be respected. The law (both the substantive and the procedural) may not be violated as the executive branch has a duty to respect the primacy of the legislative power. Thus, the requirement of legality includes a number of overlapping elements. Among them – (a) acting within power (ban on misuse of doctrine of ultra vires acts), (b) correct exercise of administrative discretion, (c) acting in good faith and avoidance of an improper purpose, (d) acting in conformity with legally mandated procedures, e.g. granting a right to hearing of the affected parties and providing reasons for the decisions, and (e) responding to justified individual claims. (Hoffman, Rowe, Turk, p. 153)

The principle of legality is contained in Art. 2 par. 3 of the Czech Constitution which reads: "State authority is to serve all citizens and may be asserted only in cases, within the bounds, and in the manner provided for by law." The Charter of fundamental rights and freedoms contains the principle in Art. 2 par. 2. No state authority may in a democratic state governed by rule of law move outside the limits, ie the competence and authority, which are defined by the constitutional order, or by statutory laws. The provision serves as basic safeguard against arbitrary exercise of public power. "Every person has a right to be protected from unrestrained and therefore unpredictable and erratic state power. The idea of the rule of law, as mentioned above, has two dimensions, formal and material." (Wagnerová, p. 87) The principle of legality binds both the legislator and the administrative authorities. "The government must move *secundum et intra legem*, not out the boundaries set by statutory laws (*praeter legem*). Basically, if the law provides for X, it is for the government to provide that it should be X1, X2, X3 ... not also that it should be Y (see decision file No. Pl. ÚS 45/2000). Therefore, the legislature's will to adjust beyond the statutory law's standard, respectively, must always be obvious. In other words, the limits of further legislation by a sub-legal regulation must be set." (Wagnerová, p. 88)

The Czech Code of Administrative Procedure[13] contains the principle of legality in Section 2 (1) which explicitly states that any administrative authority shall proceed in compliance with the acts and other legal regulations as well as international treaties which form part of the legislation. This provision is applicable to all types of administrative activities, not only to decision-making.

The legality requirement manifests itself in several aspects. First, the administrative bodies must be authorized by hard law rules when they act (their powers stem from the legal provisions). Thus, they may not act ultra vires. They have to use the powers only for the purposes for which they were vested, not for improper purposes. Administrative discretion must be exercised within the limits set by the hard law rules – administrative bodies may choose only from the tools foreseen by the laws and they may not impose sanctions other than within the range. Acting must be within the procedures set by the laws, including the equal treatment of participants, and such participant rights as right to provide evidence, to be represented, to access the file, and to appeal. The administrative body must conduct enquiries, gather necessary evidence in sufficient quantity to be able to ascertain the facts of the case correctly. It has to allow for participation of public, if the law grants for it, and the decisions have to be reasoned.

The principle of legality is intertwined throughout the Code of Administrative Procedure as the administrative authorities are bound by it in all procedures to which the Code of Administrative Procedure applies and, as a result of Sec. 177 (1), also in other activities of public administration. It is also explicitly mentioned in Sec. 89 (2), which regulates the procedure of the appellate administrative authority. The appellate authority examines conformity of the contested decision and the procedure which preceded it with statutory laws.[14] If the challenged decision is contrary to legal regulations, the appellate administrative body shall revoke the decision or part thereof and terminate the proceedings, or return the case for new consideration to the administrative authority which had issued the revoked decision. It may also alter the challenged decision or parts thereof. However, defects of the procedure that may not be reasonably considered to have impacted the compliance of the challenged decision with legal regulations, or its correctness, if applicable, shall be disregarded. The Code of Administrative Procedure prefers material legality to formal legality. (Vedral, p. 82)

The review procedure, being an extraordinary remedy and allowing under certain conditions for revocation or change of terminal decisions, is also grounded on the principle of legality. Solely conformity with legal regulations is reviewed. However, the review procedure is also an excellent example demonstrating potential collisions between general principles. The principle of legality might sometimes conflict with the principle of efficiency or with the principle of protection of rights acquired in good faith. It follows from

13 Act No. 500/2004 Sb., the Code of Administrative Procedure, as amended.
14 It also may review the incorrectness of the decision, when it is contested.

Sec 94 (4) of the Code of Administrative Procedure[15] that protection of rights acquired in good faith may prevail over the requirement of legality. Administrative authorities must act in accordance with the law and are thus obliged to issue decisions that are legal and do not suffer from defects. If a decision is issued which suffers from a defect, it should, in principle, be annulled or amended. Proper remedies (usually an appeal) are used to correct such defective decisions. However, if none of the parties appealed or appealed, but the illegality has not been detected and the decision has been upheld, then it becomes final and should not be interfered with by the administrative authorities. A situation where a final decision shows signs of illegality can be resolved by bringing an action before the administrative court or, under strictly defined conditions, by using an extraordinary appeal in administrative proceedings. This extraordinary remedy is the review procedure in the Czech Republic pursuant to the provisions of Section 94 et seq. of Act No. 500/2004 Coll., the Code of Administrative Procedure, as amended. Interventions in final decisions by administrative authorities should, however, be scarce, as far as possible, as they undermine the legal certainty of the parties and, consequently, their confidence in the activities of the public administration. Addressees of administrative decisions who have acquired rights from final decisions may be convinced that they have acquired the rights legitimately and as such will be able to exercise them in the future. They act accordingly. Every human being should be able to plan his or her behaviour and to predict its consequences with some degree of (legal) certainty. Any subsequent revocation or amendment of the final decision will affect this legal certainty.

It is therefore clear that if an administrative authority finds that a final decision is unlawful, there are conflicting interests. It is in the public interest that the defects of the unlawful decision are remedied and the legality principle observed. Thus the decision should be changed or annulled. However, this public interest competes with the private interest of the party to the administrative proceedings ended by the illegal decision in no interference with his/her rights already acquired from the final decision. In case of conflict of fundamental legal principles, these should be measured according to the principle of proportionality. The administrative authority shall compare the interest on adherence to the principle of legality with individual interests. If the harm caused to the rights acquired in good faith caused by revocation or change of the decision would bring on more negative consequences to the individual, than to public interest, it shall confirm the decision however the principle of legality had been breached by it.

15 According to Sec 94 (4) of the Code of Administrative Procedure: "If, following the commencement of a review procedure, the administrative authority arrives at a conclusion that despite the decision having been issued contrary to a legal regulation, the harm that would arise from its revocation or alteration for any party who has acquired a right by the decision in good faith, would be in apparent disproportion to the harm caused to another party or to the public interest, it shall terminate the procedure. "

3.2 Principle of legality in case law

The principle of legality is mentioned in abounding numbers of SAC decisions as breach of law[16] is the sole reason for quashing of the contested decision. The CCC reflects the principle of legality as one of the most important principles and stresses the necessity to adhere to it by administrative bodies in its case law as well. Although both courts generally approach this principle in concordance, there have appeared recently some slight differences in its perception by the SAC compared to the CCC, as will be shown below.

The case law of both courts stresses interpretation of statutory laws in congruence with the provisions of the Constitution and the Charter of Fundamental Rights when they are to be applied by administrative authorities. In a situation whereby a specific provision might be interpreted in several ways, it is the task of all state bodies to interpret it in the way which is conform to the Constitution.[17] In another decision the CCC concluded that: "Any court is not absolutely bound by exact wording of a legal provision. It may and must deviate from it in situations when it is required for serious reasons by the purpose of the statutory law, history of its creation, systematic context, or any of the principles that are grounded in legal order conform to the Constitution as semantic unit. Arbitrary decision-making needs to be avoided, the decision of the court has to be grounded in rationale argumentation."[18] The findings of the CCC are applicable not only to courts but to administrative bodies as well.

The body interpreting legal provisions should not rely on pure linguistic interpretation. "The linguistic interpretation is only an initial approximation to the applied legal provision. It is merely a starting point for elucidating and clarifying its meaning and purpose (which is also served by a number of other procedures, such as logical and systematic interpretation, *e ratione legis* interpretation, etc.). Mechanical application abstracting from, or unaware of, either intentionally or as a result of ignorance, the meaning and purpose of the legal norm, makes law a tool of alienation and absurdity."[19]

The CCC has stressed in several findings[20] that one of the functions of the Constitution and especially those of its provisions dealing with human rights is to "shine through" the whole legal order. The purpose of the Constitution is not just being source of applicable and supreme legal rules, but also creating duty to all bodies exercising public power (that is also administrative bodies) to interpret ant apply all statutory laws with regard to of human rights protection.[21] Administrative authorities are not bound by exact wording of legal

16 The review searches for error in law, misuse of power (doctrine of *ultra vires* acts), or error in fact which is nothing else than not satisfying procedural requirements by breaching the rule that facts need to be set beyond any reasonable doubt.

17 Decision of the CCC file No. III. ÚS 277/96 of 22 October 1996.

18 Decision of the CCC file No. Pl. ÚS 21/96 of 22 October 1996.

19 Decision of the CCC No. Pl. ÚS 33/97 of 17 December 1997.

20 Mainly decisions of the CCC file No. III. ÚS 4/97 of 19 November 2000, file No. III. ÚS 129/98 of 21 July 1998, file No. III. ÚS 257/98 of 21 January 1999, and file No. III. ÚS 765/02 of 15 May 2003.

21 Decision of the CCC file No. III. ÚS 139/98 of 24 September 1998.

provisions, they need to consider the purpose and the aim of the applicable rule and of the rules being higher in the hierarchy.

The SAC followed the CCC when it started to require from the administrative authorities to argue through the principle of good governance and other principles: "The law, viewed by the applicant's interpretation, becomes an atomized set of laws, from which any values and principles and respect for the human individual are lost. This interpretation is therefore contrary to the basic maxim of the Czech Constitution, according to which state power serves to all citizens (Article 2 (3) of the Constitution), deprives the law of any social purpose, and instead legal norms become self-serving. The view that social reality serves needs law and its formalities, and as such must conform to the natural tendencies of public authorities is however, inherently contrary to the case-law Supreme Administrative Court. … Thus, where administrative authorities only consistently require the fulfilment of obligations by citizens in administrative proceedings, while not caring for the protection of their interests, the expression of this procedure is an overly formalism which results in a sophisticated justification of manifest injustice."[22]

Similarly the SAC found that: "…any administrative authority is authorized and also has a duty to consider the use of an interpretation other than a literal linguistic approach. If, on the basis of different methods of interpretation, different conclusions are reached, it must apply an interpretation which, in addition to the text itself, also takes into account the broader context of its adoption, in particular its purpose." [23]

Regarding the binding nature of principles and necessity of leaving formalistic and purely linguistic interpretation in favour of teleological approach both courts, the CCC and SAC, come to the same conclusions. Nevertheless, formalistic interpretation has not disappeared from all decisions of administrative courts including the SAC. This can be demonstrated on a case concerning thwarted demonstration against the visit of Chinese president. The CCC overruled the previous judgments.[24] Both Prague Municipal Court and the SAC dismissed an action against a decision on closure of roads on rather formalistic grounds. They concluded that the type of administrative action selected by the claimants was incorrect. The CCC ordered the administrative courts to measure the public interest in national security and protection of lives and health of people on one side, with the right to gather and demonstrate on the other.[25]

22 Supreme Administrative Court decision file No. 1 As 30/2008 – 49 of 11 September 2008

23 Decision of the SAC file No. 3 Ads 50/2006 of 9 May 2007.

24 Decision of the SAC file No. III. ÚS 2634/18 of 15th January 2019.

25 The action was filled by applicants who summoned a demonstration near the Prague castle. After they have announced the demonstration in accordance with the Czech statutory laws, the Prague municipality decided on closure of the roads and the Hradčany square. Later, police prevented the coming demonstrators from entering the square. The action was dismissed, as the claimants did not file an appeal against the decision on closure, even though according to previous SAC case law the individuals notifying demonstrations were not in a position of participants in the administrative procedure discussing road closure. However, the case was more complicated as the type of administrative action selected by the claimants was also discussed. The CCC confirmed the opinion of administrative courts, that the claimants may not choose

However, most recently, another case proves that understanding of rule of law by the SAC is when the competence of administrative courts is concerned much broader than the CCC perception. A debate on the intensity of the control exercised by courts over factual and discretionary determinations made by the administrative authorities is according to Craig inherent to all systems of administrative law. "The debate ebbs and flows in and across legal systems, with claims that the courts are trespassing too far beyond their proper remit and intervening on the merits of decisions made by the political branch of government, met by counterclaims that if substantive review becomes too exiguous then it ceases to exist as any form of meaningful judicial oversight." (Craig, p. 477) In its finding file No. Pl. ÚS 39/17 of 2 July 2019 the CCC dealt with a proposal of the SAC to revoke Sec 26 of the Act No. 186/2013 Sb., on Citizenship of the Czech Republic on grounds of non-conformity with the Constitution. This provision excludes court review of administrative decision of the Ministry of Interior not granting Czech citizenship on grounds of the applicant's being a threat to security of the Czech Republic. The decision of the ministry follows the secret information provided by the police or security service. The SAC believed that such exemption is unconstitutional. It argued by its previous case law. Absolute discretion is not sustainable in a democratic state governed by rule of law and discretion must be limited by the principles of proportionality, ban on arbitrary decisions and requirement to decide in similar cases similarly and in same cases in the same manner.[26] Absolutely free discretion may not appear in a state governed by rule of law.[27] Even though there is no human right to obtain citizenship, the ministry may not decide in an arbitrary manner. Thus, the SAC argued, an exemption from the general rule that administrative courts may review any administrative authority decision may not withstand. However, the CCC took a different view. It decided that such exemption is in accordance with the Constitution. Art. 36 (2) of the Charter of human rights and freedoms grants court review of administrative decisions unless a statutory law creates an exemption. Such exemption may not be created by the legislator, if a fundamental human right is interfered with by the administrative authority's decision. In the discussed case there is no fundamental right to obtain citizenship. Maintaining sovereignty and territorial complexity of the Czech Republic, protection of its democratic foundations and protection of lives, health and property values is one of the basic duties of the state. Security interest of the state is also a value protected by the Constitution. "This state interest means existential interest, which legitimises specific restrictions of individuals' sphere of rights; however, it is the state who finally protects the position of individuals. … In order to protect this interest, the state has to dispose of necessary measures. One of them is the area of secret information." The CCC followed by balancing the individual's interest on obtaining the citizenship with the security interest of the state. The court concluded that the legislator incorporated the exemption of courts' review into the law only for the cases when it is in the state's interest

the type of action freely and the courts do not have a duty to inform the claimants which type of action is suitable for their case.

26 Decisions of the SAC file No. 2 As 31/2005-78 and file No. 4 As 75/2006-52.

27 Decisions of the extended chamber of the SAC file No. 6 A 25/2002-42.

not to tell the individual the reasons why his/her request was denied, as making these reasons transparent could jeopardise security of the state or third persons. Thus, incorporating such exemption is not a gesture of arbitrariness of the legislator. Therefore it is not contrary to the rule of law principle.

3.3 Three dimensions of proportionality

The principle of proportionality is based in German legal culture and is closely related to the rule of law. Over time, many continental European constitutional courts have begun to rely on it. It also became one of the fundamental principles of administrative law. It is another legal instrument by which the government is to be forced to comply with the legal rules contained in the statutory laws. State interventions should be minimal and should only be taken if they are necessary in public interest. As such, it is intended primarily to address conflicts of public interests on one side and private ones on the other. At the same time, private interest may also have nature of a fundamental human right which might be affected by acting of administrative authorities.

The principle of proportionality is according to Bumke and Voβkuhle "The most important substantive requirement imposed on a state power which is authorized to interfere with fundamental rights." (Bumke, Voβkuhle, p. 60) They also quote the German Federal Constitutional Court[28] which has described its origin: "It emerges from the principle of the rule of law, from the essence of the fundamental rights themselves, which as expression of the citizen's general claim to freedom as against the state, requires that fundamental rights be limited only to the extent necessary to protect public interests." (Bumke, Voβkuhle, p. 60)

The Czech Code of Administrative Procedure contains the principle of proportionality in Sec. 2 (3) which explicitly states that any administrative authority may intervene only to the extent which is necessary. Together with other principles it applies to the exercise of all administrative activities, not only to their decision-making.

The principle of proportionality consists of three constituent elements - prohibiting abuse of discretion, protection of good faith and legitimate interests, and subsidiarity.[29] All these components stand also as separate principles. Subsidiarity requires administrative authorities to use the least intrusive means which still leads to the objective pursued. Public administration protects public interests which are often contrary to individual interests. Thus, it may not always avoid interference with rights of individuals, however this interference must be the softest possible. Therefore, a reasonable measure, an acceptable compromise, is being sought. The degree of restriction in relation to the purpose of the restriction is assessed.

28 BverGE 19, 342, 348 et eq. - U-Haft [Investigative Custody].

29 Decision of the SAC 1 Ao 1/2005-98 of 27 September 2005 and further decision of the CCC file No. Pl. ÚS 61/04 of 5 October 2006, decision of the CCC file No. Pl. ÚS 83/06 of 12 March 2008, decision of the CCC file No. Pl. ÚS 54/10 of 24 April 2012.

The proportionality test elaborated by courts includes three basic criteria for balancing two interests. These are the criteria of suitability, necessity, and measurement of the relevance (importance) of two conflicting interests. The suitability criterion answers the question of whether a measure used by public administration restricting a certain private interest (or right) makes it possible to achieve the objective pursued. That is, whether the public interest can be achieved at all by using that particular measure. The criterion of necessity consists in comparing the instrument used limiting the private interest with other measures enabling it to achieve the same objective but not affecting that private interest. If another (milder) means could be used, this criterion will not be met. Finally, measuring the relevance of the two competing interests on the imaginary plates of scales is understood to be the proportionality in the strict sense.

If a measure taken by any administrative authority is found not to be proportionate, then it is invalid and should be revoked or changed by appellate administrative body or quashed by administrative court in course of review.

3.4 Principle of proportionality in case law

As already mentioned above, all types of activities of administrative bodies, not restricted to decisions, need to be proportionate. Zoning plans[30] which are issued in the form of a binding general measure,[31] create numerous cases which are solved by administrative courts on regular basis through application of a five-step test where proportionality creates the last step. Owners of property situated in the area covered by the zoning plan may often feel that their individual interest in using their property in a way they prefer is prejudiced by the land utilization prescribed in the zoning plan. On the contrary, municipalities need to set mandatorily the areas in their territory that shall be used for different specific purposes. Thus, conflict of an individual and public interest is inherent to zoning plans. Administrative courts have to review the level of compliance with the principle of proportionality. Permissible might be only such changes in land use interfering with property rights which are necessary in order to reach purposefully the public interest they are meant to promote. Moreover, they may not be excessive.

In its consistent case-law, the SAC concludes that even intensive intervention is not necessarily disproportionate if the principle of subsidiarity and minimi-

30 The zoning plan is regulated in the provisions of Sec. 43 - 60 of Act No 183/2006 Sb. on town and country planning and building code (Building Act). Pursuant to Section 43 (1) of the Building Act, it determines the basic concept of the development of the territory of the municipality, the protection of its values, its areal and spatial arrangement, landscape layout and public infrastructure, development, for restoration or re-use of degraded land, for publicly beneficial buildings, for publicly beneficial measures and for territorial reserves and sets conditions for the use of these areas and corridors.
During the building procedure the compliance of the building with the zoning plan needs to be assessed (Sec. 111 (1) letter a) of the Building Act). It is evaluated by the zoning authority, which issues a binding opinion on the compliance of the building with the zoning plan, by the content of which is bound by the building authority.

31 A measure that is defining specifically the matter (the plots of land concerned) and abstractly the subjects (all current and potential future land owners). The procedure of their issuance is covered by Sections 171 – 174 of the Code of Administrative Procedure.

zation of such intervention are respected.[32] According to the SAC case law, proportionality requirement is met under the following cumulative conditions - the intervention:

– serves a constitutionally legitimate objective which is supported by the aims pursued by statutory laws;
– is implemented to the extent which is necessary;
– is effectuated by the most gentle of the ways still leading to the intended goal;
– is conducted in a non-discriminatory manner;
– is accomplished with the exclusion of arbitrariness.

Administrative courts' decisions balancing the conflicting interests are based on premise that when zoning plans are changed interference with ownership rights appears on ordinary basis; while such interference might not be often eliminated. Invalidity of zoning plans (their changed parts) might be caused essentially only by absolute excess and ignorance of the principle of proportionality. It is not the task of the court to define how to use a territory to actively complete spatial planning, only to correct extremes. The SAC is of the opinion that it is the competent authorities' responsibility to sensitively measure public and private interests; especially with the view of specific historical, economical, demographical a geographical conditions of the municipality. However, in the event of an excess, it will provide protection by revoking the relevant change in the land-use plan.

The case law relating to zoning plans was chosen to demonstrate all the principle of proportionality nuances as it is elaborated in great detail due to the regularity of proportionality control. However, courts use the proportionality test for balancing interests while reviewing administrative decisions and other administrative activities as well, even if not on such regular basis.

Most recent case which appeared before the CCC[33] shows that opinions on what measure might be viewed as proportionate may vary and that the CCC may come to different conclusions than administrative courts. The claimant in the original request posited that he was deprived of his ownership rights to his car by an amendment to the law on registration of vehicles. As there were abundant cases when the evidence did not correspond to the true state of things, which caused difficulties to determine the owner of the car, the leg-

32 The extended chamber of SAC in its leading decision No. 1 Ao 1/2009-120 of 21 July 2009 came to this conclusion: "IV. The condition of the zoning plan's legality, which the court always examines in proceedings under Sec. 101a et seq. s., is that all restrictions on ownership and other substantive rights arising therefrom have constitutionally legitimate objectives and are only done inevitably to the extent necessary and in the most prudent of the ways still leading to the intended objective, in a non-discriminatory manner and excluding arbitrariness (subsidiarity and minimization of intervention). V. Assuming that the principle of subsidiarity and minimization of intervention is respected, a land-use plan (its change) may result in restrictions on the owner or others holders of rights in rem over land or buildings in the territory regulated by this plan, if they do not exceed the righteous peace; such restrictions do not require the consent of the proprietor concerned and the latter is obliged to tolerate them without compensation."

33 Decision of the CCC file No. Pl. ÚS 21/18 of 14 May 2019.

islator created a duty of the owners who were not registered (mainly due to their reluctance and even their intention as they profited from not being registered) to register in additional six months period. If they breached this duty, it resulted in administrative erasure of the car from the evidence. Any car may not be operated on the road, if it is not registered. The claimant argued, that such interference with ownership right is not proportionate with the public interest in keeping the registry faultless. Regional (administrative) court in Hradec Králové agreed with the claimant's arguments and approached the CCC with a request to revoke the respective provision of the law for its being unconstitutional. The CCC applied the three elements test - suitability, necessity and relevance. It concluded that the measure was suitable to reach the aim, as it applied to several hundreds thousands of vehicles and only several tenths of owners complained. [34] It was also necessary, as it is now possible to identify the person operating the vehicle. The law was foreseeable as there was enough time to change the entry in the registry, and the change in law was known to public more than a year before it came into effect. The most questionable is the CCC's finding regarding the relevance. The CCC argued that the owner was not deprived of his ownership right although he may not operate the car on the road or transfer it to anyone else. There is still a theoretical possibility to have the car registered after proving that it is technically fit, i.e. that it meets all the legal requirements applicable to the newly produced cars, or it may be sold for parts. The CCC finally stressed again the requirement of foreseeability of hard law rules which was met. This foreseeability created the "imaginary tongue on scales" when balancing the public interest and individual rights.

This case serves also as good example of the regional court using the principle of proportionality as main interpretative argument.

It may be concluded that the three elements evaluated by SAC when balancing the individual rights and public interest correspond to those applied by the CCC, however rarely the administrative courts may come to a different conclusion. Especially, when balancing of individual and public interests tends to be complicated, subjective opinions may differ. As it was demonstrated by the most recent case law, the CCC sought help in another rule of law principle – the foreseeability of statutory laws.

4 Discussion

In difficult cases when legal provisions cannot be interpreted solely on the ground of text analysis, but teleological argumentation becomes necessary, the rule of law together with other values helps the proper interpretation of statutory laws. However, the post-communist countries with the legacy of extreme legal formalism, find their way to using legal principles on regular ba-

34 The CCC argued by the number of complainants compared to the total number of aggrieved individuals, even though this was not the main argument. Such argument is strange, as the principle of proportionality does not (and may not) associate the balance of two conflicting interests with a requirement of a certain number of interferences or percentage of cases which should bring on proportionality check.

sis in argumentation of ordinary (including administrative) courts and administrative authorities with difficulties. The article shows that both the Czech Constitutional Court and the Czech Supreme Administrative Court case law encourage the (regional) administrative courts to use rule of law and teleological argumentation instead of pure linguistic approach.

The rule of law is a multidimensional legal principle with its elements existing as independent principles applicable to different extent to each of the powers in state – the legislative, executive and judicial powers. Focusing on the rule of law's requirements on administrative authorities, some principles have greater importance while some must be put aside. Due to the Czech understanding of rule of law being affected by the German legal science, two sub-principles, the principle of legality and the principle of proportionality were chosen for the analysis as most important. Judgements of the Czech Constitutional Court and the Czech Supreme Administrative Court dealing with these principles as interpretation guidelines for administrative authorities were analysed.

It was shown through this analysis that principles of legality and proportionality are used by both courts in their argumentation on ordinary basis. They require both - administrative authorities to carry out all administrative activities in conformity with these principles - and regional (administrative) courts to apply these principles as control mechanism for review of such administrative activities. The formalistic approach, literal linguistic interpretation is deprecated. Both the CCC and the SAC promote the view that any court is not absolutely bound by exact wording of a legal provisions. Courts may and must deviate from purely linguistic interpretation in situations when it is required for serious reasons by the purpose of the statutory law or by any of the principles that are grounded in legal order conform to the Constitution as semantic unit.

Regional courts apply these principles commonly when reviewing specific types of administrative activities – as it was demonstrated on the cases dealing with zoning plans which often result in interference of a public interest with individual rights and interests. Therefore the proportionality test is carried out on regular basis.

The CCC and SAC case law on legality and proportionality are mostly mutually supportive and consistent. However, it was shown that the intensity of the control exercised by courts over factual and discretionary determinations made by the administrative authorities may be viewed differently by the SAC and CCC. Therefore, the principles continue to be developed due to exchange of opinions.

However, as the judicial control over administrative authorities is a key element of rule of law, these discussions should only lead to subtle refinement of boundaries of judicial control and should not lover the already achieved level of human rights protection provided by administrative justice. However, much too wide control may cause not only breach of the principle of sepa-

ration of powers but also congestion of courts. Further, prolongation of the proceedings and the time period during which the complainant is awaiting the final court's decision may be another negative consequence. Thus, this exchange of opinions could be a beginning of a discussion regarding a possible means of administrative justice relieve while keeping the top standard of rights protection.

5 Conclusion

It may be concluded that the case law arguing through rule of law and namely principles of legality and proportionality expanded significantly over the past sixteen years of the Supreme Administrative Court's existence. Regarding the binding nature of principles and necessity of leaving formalistic and purely linguistic interpretation in favour of teleological approach both courts, the CCC and SAC, come to the same conclusions. General tendency to move from purely linguistic interpretation to interpretation through values including the rule of law in legally difficult cases is shown in the analysis. Most of the analysed cases prove that the formalistic interpretation has been strongly criticised by both the Constitutional and the Supreme Administrative Court.

Practically, this means that the regional administrative courts together with administrative bodies should pay attention to the reasoning of their decision. Mainly in difficult cases they should not restrict themselves to a purely linguistic interpretation which might grow into formalistic approach. Their interpretation needs to consider using teleological method of reasoning and to take into account the principle of rule of law.

The CCC and SAC case law on legality and proportionality are mostly mutually supportive and consistent. Still, different perception might be distinguished in specific cases. Especially, opinions on the intensity of the control exercised by courts over factual and discretionary determinations made by the administrative authorities might vary and the case law contributes to debate thereon. Therefore, the principles continue to be developed due to exchange of opinions between the Supreme Administrative Court and Constitutional Court. However, the already reach level of human rights protection should not be challenged in these discussions.

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The Principle of Transparency in the Ukrainian Decentralisation Reform[1]

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ABSTRACT

After the Revolution of Dignity (2013–2014), the new Ukrainian government set out a number of reforms, one of which – and a successful one so far – was decentralisation, involving territorial amalgamation and re-allocation of public revenues and outlays in favour of the newly-established amalgamated territorial communities (ATCs). This study aims to analyse whether decentralisation is supported by the realisation of the budget transparency principle. We attempt to fill the gap still existing in the research of public sector transparency in Ukraine, concerning the basic administrative level, hereby being limited to big cities and regions. The authors carried out an assessment of budget transparency in newly-established ATCs in four Ukrainian regions by applying a simplified methodology ('snapshot assessment') involving 11 measures that could be easily located on the ATC websites. In order to understand the reasons for a particular level of transparency, a polling of ATC heads was undertaken. The findings of the study demonstrate that the overall budget transparency in the newly established ATCs is rather low and subject to significant interregional variation. We find that the local officials overstate the existing level of budget transparency in their communities and are not proactive in their efforts to raise it. The importance of this article lies in substantiating the need for making budget transparency a priority for local officials, as well as in detailing the activity of the state and the local community in this field.

Keywords: amalgamated territorial community, decentralisation, fiscal transparency, Ukraine

JEL: H79, H83, O52

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1 Introduction

Fiscal transparency is considered to be one of the core principles of good governance. It refers to making information on how the government raises, spends and administers its financial resources publically available. Fiscal transparency is also considered an important instrument to reach effective public finance management. It plays a significant role in building market confidence and underpinning economic sustainability, fosters government accountability and credibility (Alt, 2019). In this way transparency contributes to making information in the public administration sector less imperfect and (to some extent) solves the principal-agent problem, where the principal is the community (society) and the government is the agent.

In 1998 the IMF adopted The Code of Good Practice on Fiscal Transparency, which delivers the benchmarks in transparency for the national public finance sector. Nowadays its improved version, The Code of Fiscal Transparency as of 2012 (IMF, 2019), presents international standards applied for transparency assessment in the national budget system. 75 countries declared that they adhere to the Open Government Declaration as of 2011 and have developed respective action plans which relate also to local government budget issues.

Budget transparency is especially important for transition countries with no longstanding tradition of public sector administration comparable to that in countries with market economy and efficient democracy. Low transparency could lead to lack of public control over appointed officials and elected politicians, to misuse of public revenues; inefficient money spending may also occur. Thus, effective realization of the transparency principle is one of the most important goals for nations involved in reforming their public administration and public finance in order to reach modern standards of governance.

Transparency has been one of the concerns of the Ukrainian government since the Revolution of Dignity (2013-2014). These events became a societal reflection to non-transparent actions of the previous government, resulting in its dismissal in series of mass protest actions. With regard to public finance transparency, some progress has been observed since that time. According to Open Budget Survey 2017 (IBP, 2018), Ukraine's Openness Index has demonstrated a positive trend with a score reaching 54 points (46 in 2015). With regard to IBP criteria, it could mean that Ukrainian budget transparency is still insufficient as society receives a limited amount of budget information. Ukraine's score is located almost in the middle of the range, where the mean is 43, nevertheless being ahead of many post-socialist and post-soviet nations.

The achieved progress concerning budget transparency could be associated with the reforms initiated in Ukraine since 2014. It is worth pointing out the adoption of the Law of Ukraine "On the Openness in Using Public Means" (2015) which imposed onto main budget means controllers an obligation to upload information on transactions with public moneys to the specially designed governmental website. This law does not contain any specific requirements concerning local budget transparency; it relates to all the public bodies,

disregarding the specifics of local governments in comparison to the national government and its bodies. While information on national government units' budget transactions has really become more open, the same could not be said about local authorities. There are massive differences in amount and quality of information that is posted in the national portal and in the local authority websites: in most cases, a local authority limits the uploaded budget information to the annual budget document approved by a local council and a report on its execution. Consequently, an active citizen faces significant barriers if he/she wants to be knowledgeable on local budget transactions in his/her place of dwelling. Of course, a part of local government budgetary information is posted on the national official website (www.spending.gov.ua). However, receiving access to this information is tricky not only for an average citizen, but also for an expert. E.g. in order to find the relevant information, one must have a local authority public register number, which is not easy to find (as it is usually not posted on the authority's official website), the same concerns the transaction time period.

We assume that fiscal decentralization occurring in Ukraine increases the need for making detailed local budget information publically available, since nowadays local authorities assume more spending responsibilities and dispose of significantly higher amounts of public money. Such development, on the one hand, increases the need for local authorities' accountability; and this is impossible without having transparent budgets. On the other hand, as Katarina Ott put it, "while decentralization can complicate the coordination and monitoring of budgets nationally, it often creates greater opportunities for citizen and local legislature involvement" (Ott, 2006, p. xv). And, not least, being supported by transparency, decentralization could minimize the level of corruption and increase community trust to the local self-government bodies.

Budget transparency is a product of interaction between economic agents demanding and supplying budget information. As concerns demand, to these agents belong members of respective communities, borrowers, investors, and civil society organizations. From a supply side, the stakeholders are local politicians, self-government bodies and utility providers operating with public moneys. Each of the agents mentioned above has a specific motivation concerning claiming disclosure of the budgetary information or hiding it. As the demand side looks here much less organized and the supply side seems to be reluctant to publicize respective information, the national governmental regulations concerning transparency look very important for a more or less sufficient realization of the transparency principle at the local level of governance.

All of the aforementioned makes analysis of transparency trends in Ukrainian local budgets very topical indeed.

This study intends to assess budget transparency in Ukraine on the grassroots level, i.e. within a range of local budgets of newly established amalgamated territorial communities (further referred as ATC). No such assessment was undertaken in Ukraine before.

The paper has the following study goals:

– to perform an assessment of transparency level in ATCs within selected Ukrainian regions by use of a simplified methodology ('snapshot assessment') encompassing 11 indicators merged into a 'transparency index' (further referred as TI);
– to find out factors affecting the budget transparency level;
– to outline policy proposals concerning raising budget transparency in ATCs.

In order to reach these goals, the paper is structured in the following way: firstly, we review the literature concerning budget transparency in local governments and the factors affecting it; secondly, we introduce the research methodology of this study; thirdly, we analyze the progress in decentralization observed in Ukraine since 2014; fourthly, we present the key findings concerning transparency in newly-established ATCs; fifthly, we present the possible factors affecting transparency; finally, we deliver some recommendations stemming from our study concerning what could be done in order to raise budget transparency in ATCs.

2 Literature review

Within the recent years, a range of publications were dedicated to local budget transparency analysis. The possibilities of large-scale presentation of budget information via the Internet were analyzed in a monograph "Evaluating Websites and Web Services" (Yannacopoulos et al, 2014) and by Helen Darbishire (Darbishire, 2010). The authors of these publications conclude that the development of the Internet has contributed to increasing budget transparency by making possible a quick and cheap distribution of information. Local authorities exploit this possibility in order to diminish public pressure and to change their mode of communication with the citizens.

Nowadays we have a few studies dedicated to local budget transparency assessment with regard to institutional environment in the CEE countries: Ott et al (2006, 2018), Andronova et al (2018), Sedmihradska (2015). Recent input to analyzing local fiscal transparency in Ukraine is presented in Demydenko and Nakonechna (2016), Slukhai et al (Слухай et al, 2019).

Since the 2000s economists have been looking for factors affecting local government budget transparency on top of measuring it. Especially we emphasize the pioneering studies by American economists (Alt et al, 2002; 2006), in which some institutional (political competition, political polarization and composition of the state government) and fiscal factors (debt, budget imbalance and size of revenue) as transparency determinants were analyzed. Basing on panel data from 50 US states for the time period of 30 years, they concluded that political competition between the legislative and executive, budget surplus or deficit enhance transparency, while real per capita debt a has negative impact; also the political dominance of a party has an influence on transparency.

The importance of accounting for such factors as size of municipality, number of population, per capita revenues, accounting disclosure was substantiated by Styles and Tennyson (2007) basing on analysis of financial reports from the US municipalities.

In the last decade, with evolving e-governance, transparency studies have relied mostly on information available on the community, district and region websites. On the district level, Bernick et al (2014) showed that such factors as appointed county manager, size of county board, number of full-time employees, requirements to submit an audit report to the federal government, unemployment rate, population age, a share of minority residents, heterogeneity of a territorial unit are important to understand the difference in fiscal information online presentation. Lowatcharin and Menifield (2015) analyzed larger district samples from the US Midwest with regard to a broader range of different factors (geographic, demographic, socioeconomic, and institutional) and found that such factors as district area, population density, percentage of minority population, educational attainment, and the council-manager form of government had a positive effect on Internet-backed fiscal transparency.

Some authors offered a complex technique to define local transparency determinants. E.g. Gandía and Archidona (2008) offered a transparency index calculation methodology basing on 88 measures grouped in five sections; as concerns the factors, the authors included public media visibility, internet access and citizens' education. In Gandía et al (2016) the leverage, municipal wealth, press and Internet visibility were added. There are economists from Spain and Portugal who tried to pinpoint the basic factors affecting transparency by use of municipality panel data (Albalate, 2012; Caba Pérez et al, 2014; Esteller-Moré and Polo Otero, 2012; Guillamon et al, 2011, Tavares and da Cruz, 2014, among the others).

To summarize, the approach applied by modern economists concerning local fiscal transparency is the following: firstly, to define the transparency measure (usually an index); then, secondly, to construct a model involving factors from the demand and supply sides that are of different institutional, economic and financial, social etc. nature; thirdly, to give an interpretation of the achieved results. In our paper we will try to follow this path giving the account for limitations of the Ukrainian data bases concerning local budgets.

3 Methods

Since recently, assessing local budget transparency has become a real concern in Ukraine. Thanks to the activity of international organizations, some work concerning local budget transparency has been undertaken. There exist several ongoing projects using different methodologies. Basically, they produce some transparency ratings for different samples of Ukrainian local budgets.

Since 2014, there has existed a public partnership "For Transparent Budgets" (http://probudget.org.ua/) that provides a Ukrainian city budget transparency rating formed according to a specific methodology and assessing 205 meas-

ures by use of 95 criteria. However, this rating is not comprehensive as it includes only 37 cities out of several hundred existing in Ukraine. According to this methodology, transparency assessment requires constant fieldwork of several dozens of experts.

A resource offered by the International Center of Perspective Studies with support of the Slovak government is called "Regional Budget Transparency in Ukraine" (http://transparency.icps.com.ua/) and contains information on budgets of 50 cities of regional significance and 22 regions.

There is also the Index of Local Self-Governance Publicness in Ukraine, a resource supported by the OPORA civil organization (https://publicityindex.org/). However, it assesses not the total local budget transparency, but openness, transparency and accountability of some persons (city mayor and the council members) by use of a questionnaire containing 210 questions.

At the moment, the Transparent Cities Rating offered by Transparency International Ukraine (https://ti-ukraine.org/research/reitynh-prozorosti-100-mist-ukrainy-2017/) assesses transparency in 100 biggest Ukrainian cities using 91 measures for 13 spheres and applying the questionnaires; unfortunately, the Rating is available only for 2017. This rating does not provide comprehensive information on the city budgets while covering all the spheres of local authority competence.

Disregarding lacking representativeness and biases of the ratings mentioned above, they all give reasons to assume that the overall transparency level in local budgets in Ukraine is quite low.

To sum up, we concede that local budget transparency assessment is making only its first steps; all the ongoing studies are not comprehensive enough so as to assess budgets of all local units, but only a small fraction of them (mostly the biggest cities). Their maintenance and practical application needs resources, efforts and extensive funding, which is a reason why they all operate with international support. We acknowledge that none of them attempted to assess rural community budgets, which comprise an overwhelming share (about 90 per cent) of self-government units in Ukraine.

This study intends to cover the gap in existing transparency studies performed in Ukraine, aiming to assess local budget transparency within a larger range of local budgets, i.e. rural communities. This aim will be reached by applying a simplified methodology of external budget transparency assessment which we call 'snapshot assessment'. This methodology has some advantages in comparison to the ones mentioned above: firstly, there is no need in fieldwork requiring extensive efforts and resources (to fill in questionnaires and directly observe local government activities); the only thing needed is a local government website and the information uploaded there; secondly, the volume of information to assess transparency is limited here to some core data essential for transparency (the selection of 11 measures is justified by domestic experts and heads of local councils); thirdly, the results will be available

immediately, without calculations and different weights applied to certain measures to achieve a rating or index.

We deliberately concentrate our efforts on the newly established amalgamated territorial communities, as (i) most rural communities will be merged into ATCs by the end of 2020; (ii) they have wider possibilities to open their budget information due to their obligation to maintain own websites that must contain budgetary information, (iii) the demand for their budget information being presented publicly is much higher in comparison to ordinary rural communities because they deliver much higher possibilities for implementing investment projects, borrowings and civil society activities.

What presumably permits an adequate assessment of local budget transparency is a presentation on the official local government webpage the following information: a socio-economic development programme of a territory; an annual budget draft and comments thereto; an approved annual budget and comments thereto; a citizens' budget; an annual budget execution report; quarterly reports on budget execution; information on investment projects in progress; a borrowing policy statement; information on borrowings and their clearance; reports on execution of budget programs. This list corresponds to OBP recommendations and is supported by many Ukrainian experts questioned about it in course of this study. Basing on an unweighted sum of these indicators we get an aggregate TI for each separate ATC.

The selection of blocs of information listed above, considered vital for assessing budget transparency at the local level, was carried out basing on an expert opinion survey (about 20 Ukrainian experts in local finance submitted their opinion on possible components of the transparency index). The experts were also asked to submit their estimation of the overall ATCs transparency level and the main factors preconditioning it, as well as what measures should be taken to increase local budget transparency. Their generalized opinion was used while discussing the findings of our study.

Each item from the list of approved TI components that is presented on the official ATC website was awarded one point; an ATC's total score could reach 11 as maximum; these measures for all ATCs are, in turn summed up in order to reach region totals.

Four regions were selected for our analysis: Chernihiv, Ternopil, Odesa, and Zaporizhzhia. They represent different economic, social and cultural patterns and varying success achieved in the decentralization process. The total number of analyzed ATCs reached 175 units, which looked sufficient to make conclusions about the overall local budget transparency situation in Ukraine with regard to this type of territorial units.

The data for local budget transparency analysis was taken from the MRDU official web-resource (https://decentralization.gov.ua/) and the official websites of the ATCs of the respective regions.

In order to interpret the results achieved and to understand what defines the fiscal transparency level, we distributed questionnaires among the ATC heads and received 73 responses which allowed us, basing on the preference vector method, to make reasonable judgments concerning transparency level perception by those who are responsible for local budget transparency; and the main factors affecting an ATC government's propensity to adhere to budget transparency principles.

4 Context

4.1 The decentralization reform and instituting fiscally sustainable territorial communities

In April 2014 the Ukrainian Cabinet of Ministers approved the Concept of Reforming Local Self-Government and Territorial Structure of Power. This Concept aimed to change the country's obsolete administrative-territorial structure inherited from the soviet past. Before the current reform started the number of territorial communities exceeded 12,000, which meant that the average population of a community was far below 5,000 people. Actually, only big cities of regional significance had more or less self-sufficient budgets; the vast majority of territorial units were highly dependent on state support through many types of transfers (mainly unconditional ones). Therefore, in order to achieve more fiscally viable territorial units in the basic public administration level a strategy of amalgamation was chosen.

According to the document mentioned above, the following major steps towards decentralization were planned: (i) reallocation and strict delineation of public functions across governmental levels; (ii) rearranging the administrative and territorial structure of administration (all local communities should be in a position to deliver basic public services to its population); (iii) instituting full-range self-governance at the regional and district levels and limiting the power of territorial state administration bodies of regional and district levels by coordination and supervision over the legal compliance of the subnational governments (further referred to as SNG) activities and quality of public service delivery; (iv) increasing SNGs' competence concerning generation of revenues up to setting rates for local levies. The heart of this reform was community empowerment – making the territorial community a key factor of societal life and a decision-maker with regard to local public good delivery. The amalgamation of rural communities was considered as a key mechanism of reaching these goals[2].

The theory assumes that territorial consolidation has the following reasoning: a) economy of scale in public service delivery; b) decreasing the scale of spillovers; c) execution of a broader range of public functions by the territorial units; d) higher possibility for civil society involvement; e) more intensive local economic development (Swianiewicz, 2002, p. 8-10). We assume that all these considerations played a role when the reform concept was elaborated.

2 The initial stage of this reform was analyzed by Slukhai (2015).

The subsequent Law of Ukraine "On the Voluntary Amalgamation of Territorial Communities" (2015) provided the legal foundations for subnational unit consolidation and enabled the launch of the amalgamation process. As of February 2019, 878 ATCs were established since the beginning of the reform which comprised 4,018 former local councils. Currently about 9 million people reside in the ATCs. The consolidation process was scheduled to be finished by the end of 2020 (see Table 1).

The amalgamation mapping shows a quite uneven process of rural amalgamation: some regions in the country's center (Cherkasy, Kyiv, Poltava, Vinnytsia), in the South (Odesa) and the West (Zakarpattia with regional center in Uzhhorod) demonstrate very weak progress in amalgamation; many rural locations have no plans to amalgamate. All the other regions including those affected by the war with Russia (like non-occupied parts of Donetsk and Luhansk regions) demonstrate almost 100 per cent amalgamation. The reasons for this regional variation is, firstly, the voluntary character of amalgamation – there are no mandatory requirements concerning amalgamation put on local communities, it is supported by fiscal incentives in form of earmarked transfers and technical assistance; secondly, the non-proactive position from the side of some regional and district authorities which could heavily dampen the process (the reason here could be mere unwillingness of administrators at the regional and district levels to shift down authority and revenues); thirdly, the populations of villages inhabited by compactly living national minorities (Gypsies, Hungarians, Romanians, etc., in Zakarpattia; Romanians, Moldovans, Bulgarians, etc., in Odesa) with other villages populated by a different national minority group or with cities that have a mixed population.

Table 1: Rural community amalgamation progress in Ukraine, 2015-2019.

	2015	2016	2017	2018	2019 (est.)
Number of ATCs	159	366	665	806	878
Total population (mln)	1.4	3.2	5.7	8.4	9.0
Total area (1000s, sq. km)	36.9	89.2	166.9	193.0	210.5
Number of communities which formed ATCs	816	1,784	3,181	3,734	4,018
Average ATC population	8,795	8,474	8,464	19,079	9,155

Source: MRDU, 2019.

The Law of Ukraine "On Cooperation of Territorial Communities" established the mechanism for dealing with common problems facing ATCs: waste management and recycling, development of joint infrastructure, etc. By the end of 2018 1,262 communities had taken advantage of this mechanism through signing 325 inter-community cooperation agreements. In order to foster the amalgamation process, the government granted significant financial support for regional development and development of infrastructure in ATCs (UAH

19.37 billion in 2018). In all regions (except for the territories occupied by Russia) the Centers for Local Self-Government Development started their operation with the goal to assist the newly-established local authorities in implementing their development strategies.

The newly-established ATCs became more fiscally viable through receiving additional revenue sources; some additional responsibilities were also vested on them (among others, architectural supervision and administrative services, administration of educational establishments and medical infrastructure), which enable them to more efficiently foster local economic development and cover local public service needs.

Data (see Table 2) demonstrates that subnational governments' role in mobilization of revenues has steadily diminished through the years in Ukraine. Starting from about 46 per cent at the moment of gaining independence (1991), the total subnational share in public revenues (transfers excluded) has actually halved – it had dropped to about 24 per cent by 2013. Simultaneously, the national government gained a much bigger role in subsidizing SNGs and making them more dependent on its decisions concerning the financial support granted. However, once the decentralization reform started, the reverse trend has been observed: since 2015, one could see an increase in the total revenue share of subnational units (from 18.5 up to 22.6 per cent); this upward trend is especially remarkable for rural SNGs where the amalgamation process essentially occurs – their revenue share grew by nearly 50 per cent for the time period 2015-2017. According to MoF data, subnational revenues more than doubled, being increased by UAH billion 298.4 within the period 2013-2018. However, it should be mentioned here that SNG dependence on intergovernmental transfers remains quite high: 55 per cent of total subnational revenues still are state subventions. It is worth mentioning that these results were achieved under very non-favoring circumstances, both political and economical. To these belong, in the first line, the Russian aggression and occupation of a part of Ukrainian territory that caused significant economic losses and put a serious fiscal burden on the Ukrainian nation.

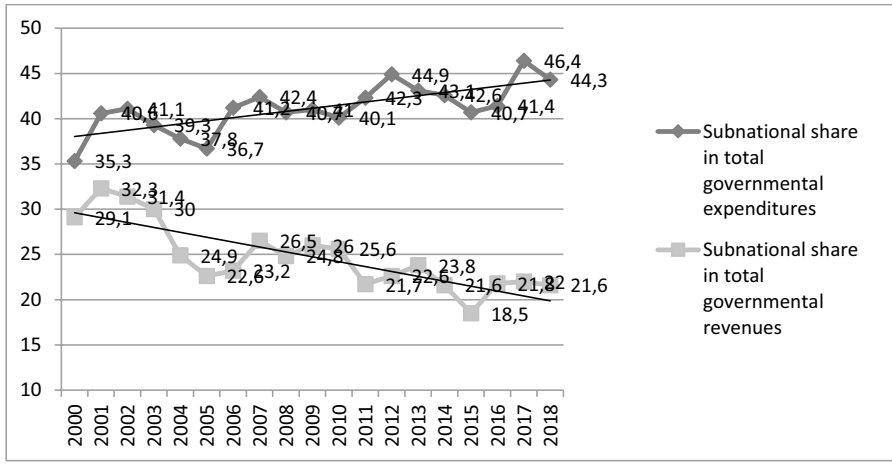
Table 2: Distribution of revenues among Ukrainian governmental levels (intergovernmental transfers excluded), per cent

Governmental levels	2000	2010	2014	2015	2016	2017
National	70.9	74.4	77.8	81.5	78.2	77.4
Total subnational	29.1	25.6	22.2	18.5	21.8	22.6
Regional	12.2	8.9	8.5	6.5	7.3	7.8
Cities of regional significance	10.2	11.8	8.8	7.4	8.7	8.7
Districts	4.8	2.4	2.2	2.3	2.6	2.6
Total SNGs of subdistrict level	1.9	2.5	2.8	2.3	3.3	3.4

Source: Own calculations based on Ukrainian Ministry of Finance (MoF) data.

This revenue sharing trend in favor of SNGs contributed to a change in public sector vertical fiscal gap. A gap between revenue capacity and expenditure liability of governmental levels (vertical fiscal imbalance) remains quite wide in Ukraine, as seen in Figure 1. However, it has demonstrated a downward trend since 2016.

Figure 1. Subnational share in total government revenues and expenditures in Ukraine (direct fiscal transfers excluded), per cent



Source: Authors' calculation based on MoF data.

With regard to recent institutional changes in Ukrainian public administration sector and soaring revenues and expenditures of rural SNGs, a reasonable question arises: to which extent will this development contribute to solving one of the fundamental issues of a nation's public sector – granting budget transparency. In order to answer this question, the data of 175 ATCs from four regions was analyzed.

4.2 Budget transparency in amalgamated territorial communities

While approaching local budget transparency, the first thing to look at is the existing national legislation that provides the normative base for public finance transparency. It is important to mention that there is no special legal act that sets standards concerning requirements and order in publicizing the financial information of ATCs and other territorial units in Ukraine. Some aspects concerning transparency and openness in formation and utilization of local self-government bodies' finance are regulated by the legal acts that are common for the whole sector of public administration: the national, regional and local public administration bodies.

Since 2002, more than 30 legal acts defining the order of access to and opening information on generation, allotment and use of public moneys were

adopted. The Budget Code of Ukraine, Article 7, states that one of the important principles of the Ukrainian budget system is informing the society on the national and local budget policy, on the budget process in all levels of the budget system. To the recent ones belong the Laws of Ukraine "On Access to Public Information", "On the Openness of Using Public Means" (2015), respective regulations of the Cabinet of Ministers of Ukraine, as well as strategic governmental documents. Transparency and openness are listed as basic principles for community amalgamation. However, building a transparent system of local finance is far from easy, but is instead a long-term process that foresees not only adopting legal acts, but also creating political and financial mechanisms toward the respective results. The local authorities and communities must also come to understand that openness and transparency comprise a cornerstone for their effective functioning.

The Law "On the Openness of Using Public Means" provides criteria and standards on information in the budgetary sphere about which society must be informed. Concerning local budgets, here belong: amounts of public means of spending units and beneficiaries of local budgets, loans backed by the local authority guarantee, as well as amounts received by the units belonging to the communal property in the course of their economic activity. E.g., the spending units must publicly present information on: a) budget assignments for the respective budget period (total amount and the budget programme crosscut), amounts of budget expenditures funded and budget loans issued by the respective authority; b) all signed contracts within the reporting period (with details of the contractors, the subject and cost of a contract, amounts of goods or services to be delivered, unit price, ongoing payments towards the contract, terms of contract), information about previously signed contracts with details concerning contract execution and job completion reports; c) total number of employees' business travels with associated costs. Local budget beneficiaries are obliged to present information on execution of their ongoing and previously signed contracts in case the amount exceeds UAH one million.

Local authorities have to promulgate the budget information on a quarterly basis and it must remain in open access within a three-year period; local budget beneficiaries have to promulgate respective information within a reporting year with the same requirements concerning open access duration. All the information on budget transactions has to be uploaded to the single E-data web-portal administered by the MoF.

The local authorities and enterprises operating with local government fiscal support are responsible for making the information mentioned above publicly available and are subjected to penalties otherwise. The penalties could be applied if they did not make information publically available; if they posted non-authoritative, non-complete information or did it not in a timely manner. Officials could be punished with monetary fines which are defined in Article 212.3 of the Code of Ukraine on Administrative Offences.

The Law of Ukraine "On the Voluntarily Amalgamation of Territorial Communities" also refers to transparency and openness as a key principle of com-

munity amalgamation; it specially states that making public information on the amounts of state fiscal support granted to specific ATCs (as our analysis showed, many ATCs limit their budget information by providing the amount of state infrastructure building support received).

It should be mentioned that a part of information on ATC state fiscal support is published in annexes to the annual Budget Law: they provide information on allocation of the medical and basic subventions across ATCs.

From a practical point of view, some steps enhancing local budget transparency have been undertaken. A MoF "E-Data" project was launched in 2015; its main goal was to provide information on public spending of all the public sector units including local budgets. All the spending units and local budget beneficiaries are obliged to submit electronic information for automatic data processing and uploading to this open web-portal. The new requirements concerning tenders for public procurement have also become very important for making local budgets more transparent. ProZorro – the electronic tender system for public bodies – was introduced after the adoption of the Law "On Public Procurement" (2016); from the beginning of 2019 until now the value of contracts made through it exceeded UAH trillion 1.77, with the total economy for public bodies as a result of bidders' competition reaching UAH billion 52.82 (ProZorro, 2019).

Transparency in ATCs' budgets is being monitored by the MoF, Ministry for Economic Development and Trade, and MRDU. The latter institution is responsible for maintaining the process of amalgamation and making public the information (also budgetary) of the newly-established ATCs.

5 Results

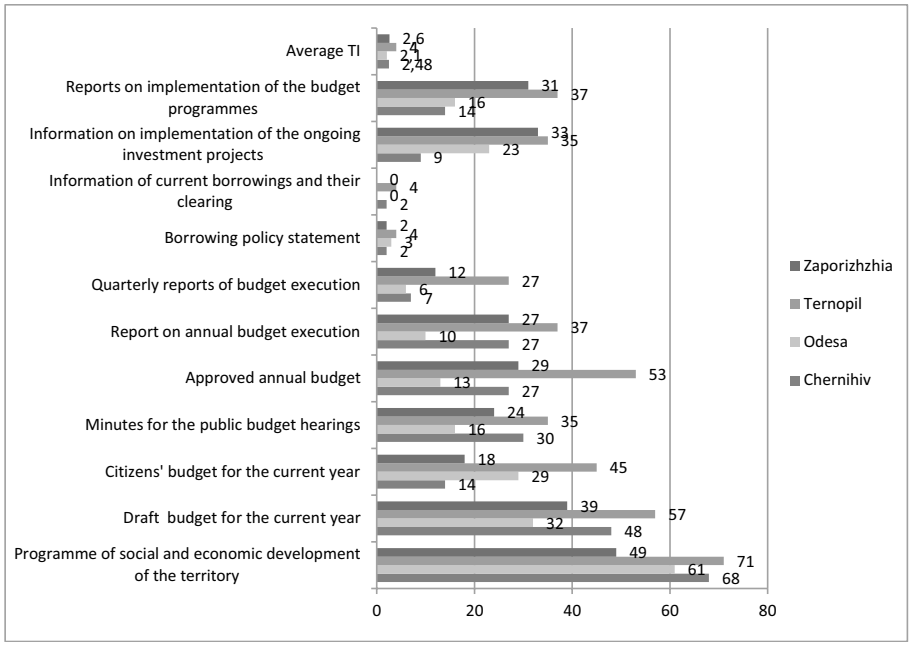
Our analysis has shown that the information concerning regional crosscut with regard to establishing new ATCs is quite complete and is regularly (on a monthly basis) updated; however, the information on the individual ATCs that is posted in their own websites is very fragmented and non-systematic. More than half of ATCs do not upload the full information on their budget revenues and outlays, state subventions, loans and borrowings, not to mention the other important pieces of financial information. It means that financial and budgetary content of their websites is far from complete. That is why it is so important to assess the current situation with ATC budget transparency in order to find the ways to improve it.

As a result of collecting the information on TI components listed above in Section 3, we got a general picture that characterizes the situation with transparency in all the four regions involved in our study (see Figure 2).

Information presented in Figure 2 gives reason to state that ATCs have insufficient financial transparency level in all four regions: the average regional TI value ranges from 2.1 (Odesa) to 4.0 (Ternopil) which seems quite low. This is not the specifics of Ukraine only; as some authors reported, the actual level

in information disclosure provided by the local authorities in some countries is commonly low, only 20 per cent of them demonstrate satisfactory results (Gandia and Archidona, 2008). As one early budget transparency study concluded, there are also significant institutional and legal issues that hamper monitoring and controlling budget activities of local governments for both the central government and the public, making the demand for budget information quite weak (Ott, 2006, p. 21).

Figure 2. Average TIs and values of its components for ATCs in four regions of Ukraine



Note: Each number (except TI) represents percentage of ATCs in a respective region which upload this information to their websites.

It also became obvious that (i) the Ukrainian regions vary greatly as concerns average TI value for an ATC; (ii) there are spheres where the budgetary information posted by the ATCs is absolutely inadequate. Especially scarce is information provided on borrowings and ongoing investment projects. Partly this is due to hardly any borrowings made by ATCs (according to Ukrainian legislation, only big cities are allowed to attract loans in the financial markets; as we deal here with the mostly rural communities, even amalgamated ones are deprived of this right). However, even in rural locations we could observe some (even small) investment projects initiated by the community and funded out of its own resources (like local road construction, building renovations, etc.) for which the local council must be accountable and information about the costs must be made public. It seems that local authorities in some regions are not eager to present information on ongoing progress in budget execu-

tion (quarterly execution reports are typically absent), as well as on discussions concerning the ATC annual budget. Citizens' budget is also very weakly presented throughout ATCs.

In order to understand what defines TI value in an ATC, we asked the ATC heads to fill in a questionnaire that included the following: (a) Your opinion on the transparency level in your ATC; (b) Factors working against the transparency level in your ATC; (c) The budget and financial information to be presented in the ATC's website; (d) Your view of reasonable actions to raise the budget transparency level. The results presented in the next chapter give a possible explanation for why the overall transparency level in Ukrainian ATC is low.

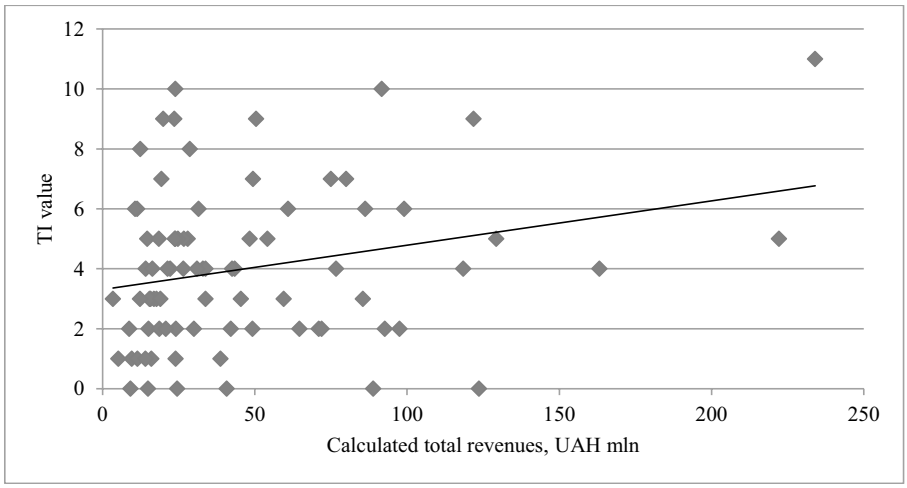
In order to understand what defines a TI level in a specific community, we first tried to follow to apply a correlation analysis with factors belonging to three groups – financial, political and socio-cultural ones. A similar approach with grouping the factors is presented in many recent studies concerning local financial and budgetary transparency (see Guillamón et al, 2011; Stanic, 2018). We found it difficult to allocate the factors according to the information demand and supply (Tavares and Cruz, 2014). As there was no possibility to assess panel data because most ATCs in Ukraine have existed for less than two years, so we could only use data of the last full budget year (2018). We had resulting models in which the explanatory variables expressed about 30 per cent of the variations, which looks quite low[3]. However, it should be mentioned that this is very typical for the models of this type. In many studies of financial and budgetary transparency carried out on data of different countries (even with extensive panel data available), the determination coefficients are even lower than those achieved in our models (Guillamón et al, 2011, p. 400; Ribeira et al, 2017, p. 197; Tavares, 2014). This could be explained by institutional peculiarities of the public sector that could not be easily caught with regard to weak possibility to find the adequate cardinal measures for them. Nevertheless, we consider these results doubtful; so we decided just to state which objective factors are at play while understanding the level of budget transparency. These factors could be derived just from the interregional TI comparison and common wisdom.

An important objective budget transparency factor is the local government size, as many studies cited above suggested. It could be measured differently (population, territorial unit area, etc.), but one of the most important measures here is an absolute amount of local government total revenues. While relating TI value with the total amount of ATC budget revenues we observed a distinct positive relation among the variables.

Figure 3 illustrates this fact (here we used the data of only two regions, Ternopil and Zaprizhzhia, for year 2018).

3 These models are presented in our NISPAcee Conference paper (Slukhai *et al*, 2019).

Figure 3. Relation between TI and calculated total revenues

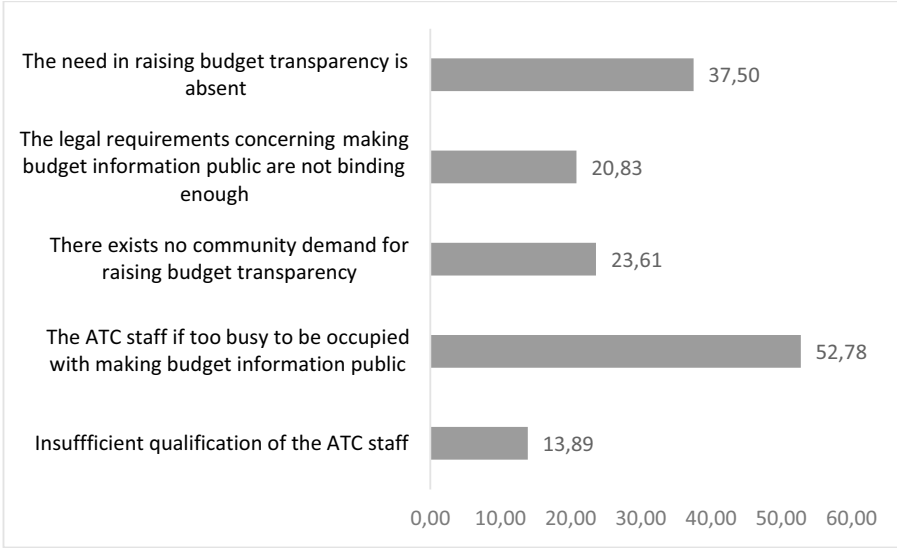


The transparency factors evaluated by us (see in detail Slukhai et al, 2019) basically are objective ones and could not be easily altered by the local or the national government. It could be suggested that a greater local transparency could be achieved in line with the progress in constituting the ATC with the urban administrative center (especially of regional significance); the extending political competition could speed up the process, too; but what is most significant, extension of local revenues in form of own revenues could contribute. However, all these factors could play their role only if legal requirements concerning opening the budget information become much stricter and its availability to the public would be granted.

Of course, the factors mentioned above could not fully explain the level of transparency in ATCs, so we used questionnaires to achieve a subjective opinion of local administrators concerning this issue. It appeared that about 96 per cent of respondents are quite satisfied with the current transparency level assuming that it is quite high, only about five per cent pointed out that transparency level in their community is low or they were not sure about it.

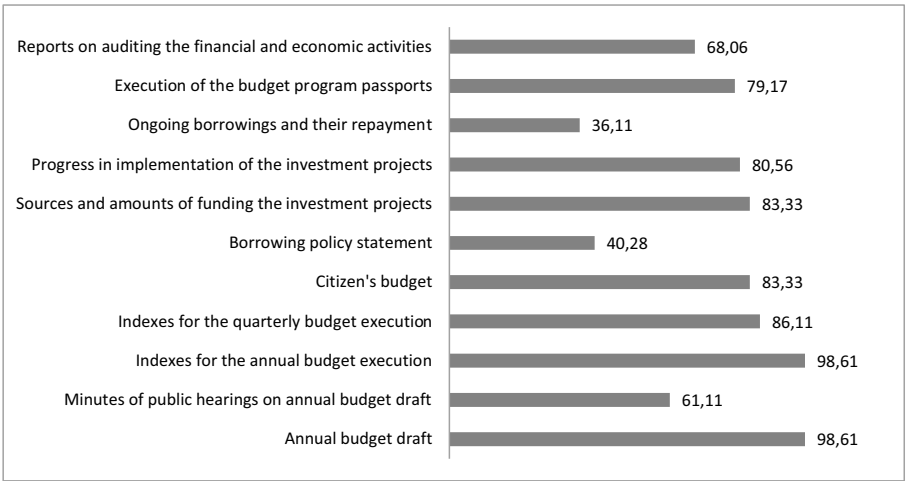
Asked about what hampers transparency, ATC heads indicated possible reasons among which dominated "The ATC stuff is too busy to be occupied with making budget information public"; other reasons like stricter legal requirements and insufficient community demand for transparency looked to be less important (see Figure 4). ATC staff according to their opinion is more or less enough skilled to provide information on budget to community and broader public.

Figure 4. Distribution of answers concerning factors affecting budget transparency (percentage to the total number of answers to the question)



We tried to reveal what kind of financial and budget information they are ready to make open to the public. In order to assess this we asked them to point out which part of the information that we used to calculate TI with the 'snap-shot approach' would be worth presenting publically (see Figure 5).

Figure 5. Percentage of respondents that support uploading specific budget information onto their ATC websites



From this information we could see that almost all the indexes we offer as components of transparency assessment found support from the side of the ATC heads. Almost 100 per cent of them support uploading to the websites

the annual budget draft and reports on its execution. Somewhat less support is given to information on citizen's budget, quarterly budget execution reports, investment projects and outlays on specific local budget programs (around 80 per cent support). Unexpectedly, most ATC heads supported the idea of uploading auditing reports to the ATC websites. In total, we conclude that most ATC heads are ready to submit the most important pieces of budget and financial information to the broad audience and feel justified to do so.

6 Discussion

Our main finding is that ATCs generally are not keen on making budget information publically available. To some extent this finding could be explained by the fact that most ATCs had been established quite recently in the course of the decentralization reform, so they have still not adjusted to their new status by paying more attention to transparency. It should be mentioned that very similar findings were reported by researchers who studied budget transparency in Ukrainian cities. E.g., the Open Society NGO came to conclusion that most important information on budget issues in many Ukrainian cities was not uploaded to their websites. Hardly any city makes publically available information on spending plans of main budget spending units; the quarterly amendments to the annual budget have not been explained to the community and have been approved without holding public hearings (Відкрите суспільство, 2016).

Though studies on ATCs would be more relevant, there are very few such. Thus, the Partnership for Transparent Local Budgets, a Ukrainian NGO, recently carried out a public audit of ATC budget transparency in two Ukrainian regions – Mykolaiv and Kherson (Фонд розвитку міста Миколаїв, 2018). Researchers looked for information much in the way we did; that is why their findings are quite important to validate our findings. After studying the situation in 54 amalgamated communities they concluded: ATCs in both regions demonstrate lower transparency in comparison to other local governments (like urban communities); this conclusion supports our core finding. It was pointed out in the report that ATCs do not systematically present the following budget information: annual budget document (around 25 per cent did not do this), budget programme passports and reports on their execution (only 1/3 of ATCs presented them), budget execution reports (50 per cent of ATCs did not present them). It appeared also that 13 per cent of ATCs do not maintain their own websites (which is a much higher percentage than in our study).

Disregarding the overall pitiful situation with ATC transparency, there are some (however modest) positive trends in the field. The public partnership "For Transparent Budgets" recently pointed out that ATC budget transparency has improved with regard to official information (e.g. about 90 per cent of ATCs publish their annual budgets); however, the level of transparency still remains too low as ATC publish only highly limited slices of information; important information on how the budget is being formed (like budget hearing protocols) is usually omitted (Малиняк, 2019).

A natural question arises: why is the ATC budget transparency level so low? We think that an answer could be found in the linkage between transparency and accountability. This linkage could be ambiguous due to specifics in institutional environment (Zuniga 2018); however, transparency is seen as a precondition of accountability because it provides the principal with the ability (community members in our case) to observe how the agent (ATC government and its head) behaves (Prat 2005). As some researchers argue, transparency may reinforce horizontal accountability (Mabillard and Zumofen 2015) and at the same time enhance the prosecution of corrupt behavior of officials (Murphy et al. 2017), thus diminishing corruption at the local level.

Having in mind this relation between transparency and accountability, we may approach to our case. In Ukraine the local administrators are not accustomed to being accountable, so they have low propensity to disclose budget information. In this way they maintain the information asymmetry concerning ATC revenues and expenditures, and the grounds to make them accountable and to align their activities with popular demands diminish. This situation has emerged historically and is backed by lacking democracy as a fundamental principle of social life. But there are more important factors contributing to such state of affairs. To these belongs insufficient local fiscal autonomy, among others. Disregarding the fact that ATCs are better endowed with revenue sources in comparison to the pre-amalgamation period, they still demonstrate a high dependence on the national government (state monetary and tax transfers); the true local revenues sources (towards which they have some discretion) comprise a low portion (up to 20 per cent to total) of their revenue. Under such circumstances local administrators subjectively do not feel that they bear strong obligations to publicize the budget information for the community because they are accountable mostly to the national government, which gives them most money to spend. If there is no strong demand for accountability, there is no need to be transparent. We assume this also preconditions inconsistency of the answers to our questionnaires delivered by the ATC heads.

Although ATC transparency level is generally quite low, it significantly varies across the nation; what meets the eye is a big difference in TI average value between Ternopil (the West) and other regions involved in our study. We assume that the reason here could be the historical and cultural differentials within the nation. ATCs in the West of Ukraine, among them Ternopil, tend to be more transparent in comparison to the other regions as they had long-standing traditions of democratic governance at the local level inherited from the past (e.g. many urban communities in the West have had Magdeburg rights since the 13th-14th century), whereas those in the other parts of Ukraine did not. These traditions were not fully destroyed in the soviet period when local self-governance was treated as the remnants of capitalism and doomed to be leveled; they revived with the progress in nation-building.

The other point for discussion could be inconsistencies in their perception of ATC transparency and factors that affect it. On the one hand, the overwhelming majority of ATC heads suggested that budget transparency level in their

ATCs is quite high, although our objective measuring of TI demonstrated just the opposite. It could mean that they overstate (and very significantly) the actual level of budget transparency achieved in their communities; barely several per cent of respondents admitted that transparency level in their ATC is low. It looks like most local officials are fully satisfied with the current situation as concerns transparency and would not change it.

On the other hand, when asked about what hampers transparency, only about one third of respondents suggested that there are no problems with budget transparency, which contradicts to their answer to the direct question on transparency self-assessment. ATC heads also indicated a number of possible reasons diminishing transparency level, which implies: they de facto concede to the fact that budget transparency in their ATC is low, but do not want to admit it explicitly. Notably, more than half of respondents, when asked to indicate the most important reasons which hamper transparency, rated as # 1 "staff busyness". Referring to such factor itself could signalize that making budget information public is not considered a priority by the ATC staff. The same ambiguity is registered by us with regard to assessing legal requirements concerning budget transparency: ATC heads consider they are sufficient, which contradicts the objective situation with local budget transparency legislation, as we showed in our recent study (Слухай et al, 2019).

ATC heads perceive the community demand for transparency as high enough. However, taking this subjective opinion in earnest could be misleading. It but signalizes that ATC heads do not feel enough pressure from community members regarding opening budget information, and are comfortable with such a state of affairs.

It is worth discussing why local officials approve publicizing budget information that is being used in course of this study while calculating TI, simultaneously doing just the opposite in the real life. The information obtained by us directly from the ATCs' websites is much more scarce in comparison to what the officials think is reasonable to make publically available. This contradiction could be explained in the following way: disregarding the fact that most local officials consider it appropriate to make significant slices of budgetary information publically available, they experience no significant pressure from the national government and civil society organizations concerning raising transparency. One thing is to "theoretically" consider the delivery of budget and financial information to the local community, but to do it in reality is quite another. Higher transparency needs additional efforts which, as we see from acknowledging "the staff busyness", local officials are not eager to undertake without external pressure. It actually means they lack the incentive to do so. As a result, according to our estimate, the share of ATCs that have a more or less complete folder of open financial and budget information (six and more indexes out of 11 are available on their websites) does not exceed 13 per cent (only 23 out of 175 ATCs in four regions). This measure is very unevenly distributed across the four regions studied.

In a sum, transparency is explicitly acknowledged at the ATC level as a topical issue backed by the rising awareness of local officials and community itself. However, even if ATC heads took transparency seriously and made some respective efforts, it is uncertain whether this alone would suffice for the desired result – a deeper involvement of the community into budgetary decision making. The recent evidence from Romania suggests that even if decisional transparency were increased at the local level, it would not automatically lead to greater citizens' involvement in the decision making process (Radu, 2019). The same is true for Ukraine: the Ukrainian students emphasized that despite slowly growing transparency most ATC community members feel excluded from the budget decision making; this leads to disappointment concerning the ongoing decentralization process (Малиняк, 2019). That is why more attention should be paid to participatory budgeting and fostering civil society institutions in Ukrainian ATCs, which may facilitate both exerting considerable pressure on the local bureaucrats concerning revealing important budget information, and also will facilitate making community members more involved into the local budget process.

7 Conclusion

The ongoing decentralization reform in Ukraine makes it necessary to pay more attention to financial and budget transparency at the local level. There is a great need to assess the transparency at the ATC level in order to understand whether it is sufficient or not, since existing transparency ratings do not cover this type of territorial units. We assume that a transparency measure offered in this study (a 'snap-shot approach') would be useful in order to quickly get an estimate for transparency of a specific ATC. The practical application of this approach would permit an estimate of the existing transparency level at the lowest level of the Ukrainian budget system.

Our analysis has shown that transparency at the level of the newly-formed ATCs in Ukraine is quite low at the moment. ATCs do not derive benefits from possibilities opened by digitalization to provide more financial and budgetary information to citizens, thus informing them about financial issues insufficiently. This is, on the one hand, a historic legacy of the soviet time when local problems including finance did not play a significant role; on the other hand, it is a result of local governments' low accountability and specific revenue composition with prevailing non-local revenues. ATCs do not utilize the new technical possibilities opened by the digital era: as concerns activity in the Internet, local governments are far behind their community members.

This fact means that there is a need to create additional institutional preconditions for the budgetary information to be publically available not only at the national, but also at the local level. Our study has shown a sizeable gap in the need for making local budgetary information public and the real situation with budget transparency. That is why the Ukrainian national government needs to initiate special efforts to provide local governments with respective informational and technical support in re-creating their websites and putting

stronger requirements concerning their content. Not less important would be pressure exerted on local officials from the side of civil society and the community itself to make them more eager to disclose important pieces of budgetary and financial information.

One of the results of our study is the conclusion that ATC transparency level correlates with the size of local budgets; this could mean that increasing local revenues would create an additional incentive for officials to make local finances more open to the public. Shifting down public revenues along with institutional measures and empowerment of communities could have a serious effect on local finance transparency.

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Determinants of Online Local Budget Transparency in Croatia and Slovenia[1]

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ABSTRACT

As a part of the public governance, transparency started to come forward during the New Public Management reforms, mostly for the evaluation of public sector efficiency. This article focuses on online local budget transparency (OLBT) in two neighbouring countries – Croatia and Slovenia. The article is pioneering in a comparative study of the determinants of budget transparency in the Central and Eastern European (CEE) countries, based on a unique database and measure of transparency. The article tests the determinants of OLBT that reflect the accountability of local authorities and a cornerstone for public participation in the budget process. The following methodology was applied: using a data set of 768 Slovenian and Croatian local governments over the 2015–2017 period and testing it against several financial and socio-economic variables, and a random effects panel logistic regression, separately for Croatia, Slovenia, and a pooled sample. The results indicate that greater size of the population, higher administrative capacity and lower unemployment rate in individual local governments significantly contribute to higher levels of OLBT. This study demonstrates the possibility of developing a standardised measure of local budget transparency and using it to investigate the reasons for different levels of transparency in the two – and potentially other – CEE countries. The results of this and similar studies can serve as

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a basis for establishing cohesive local budget transparency policies for different countries and creating a combination of policy instruments to enhance transparency.

Keywords: local self-government, online local budget transparency, panel data analysis, Croatia, Slovenia

JEL: H70, H83

1 Introduction

Traditional public administration theories were not too preoccupied with transparency. However, when economic - especially managerial – ideas became popular, the new public management started to treat it as one of the tools for evaluating the efficiency and effectiveness of public services (Douglas and Meijer, 2016; Grimmelikhuijsen and Meijer, 2014). Usually connected with 'good governance', despite an extensive range of typologies (Lampropoulou and Oikonomou, 2018; Ongaro, 2009; Osborne, 2006), transparency has been determined to be one of the important principles in the new public management. According to the Strategy on Innovation and Good Governance at Local Level (Council of Europe, 2007) one of the principles of good democratic governance is *'Openness and Transparency, to ensure public access to information and facilitate understanding of how local public affairs are conducted'*. In line with that, budget transparency (BT) and citizens' participation have also become to be considered critical elements for efficient public service delivery, government accountability and citizen trust, particularly at local government levels (e.g., OECD, 2017; Pina et al., 2010; Piotrowski and Van Ryzin, 2007).

Transparency is now being mentioned in the strategic documents of two neighbouring countries, Croatia and Slovenia, once constituent republics of the Socialist Federative Republic of Yugoslavia, as one of the principles of good governance and a necessary part of public administration reforms. This research, in line with this endeavour, focuses on online local budget transparency (OLBT) in the two states. Nevertheless, despite the same regulations applying, the levels of OLBT differ among local governments even within the individual countries. This article, then, investigates the determinants of OLBT while keeping in mind the various approaches in the existing literature (e.g., Caba Pérez et al., 2005; Gandía and Archidona, 2008; Gesuele and Metallo, 2017; Lowatcharin and Menifield, 2015), which show the heterogeneity and dependency of different determinants (Alcaide-Muñoz and Rodríguez Bolívar, 2015; Alcaide Muñoz et al., 2017). It has been proved that information and communication technologies (ICT) can improve openness and transparency by using web-based tools to provide better information (Wong and Welch, 2004). However, there is still a relatively small number of studies focusing on online budget transparency (e.g., Caba-Pérez et al., 2008; García-Tabuyo et al., 2016; Laswad et al., 2005; Lowatcharin and Menifield, 2015; Sedmihradská, 2015; Pintea et al., 2013; Pintea, 2014; Styles and Tennyson, 2007).

To establish the determinants of OLBT, it was first necessary to measure it, i.e. to find out how many of five local budget documents that have been identified as crucially important (the year-end report, mid-year report, budget proposal, enacted budget and citizens' budget) 212 Slovenian municipalities and 126 cities and 428 municipalities in Croatia are publishing on their web sites. After that, in order to test the influence of independent variables on the inclination of local government units (LGUs) to publish key local budget documents, a random effects panel logistic regression for 2015-2017 period is used, separately for Croatian and Slovenian LGUs and then for the whole sample. The analysis shows that higher populations, higher administrative capacities and lower unemployment rates in an LGU contribute significantly to greater OLBT. These results are in line with those previously obtained by other researchers. Although the article has some limitations, outlined below, the findings might add to the existing literature, as research of this kind and with such comprehensive data collection is relatively rare in Central and Eastern Europe. It might be significant that similar determinants have similar influences on the LBT in two relatively young, ex-socialist countries to those that have been observed in more established, older public administrations.

The following section presents the theoretical and research background and development of hypotheses for the determinants of OLBT, the third describes the data and the research methodology, the fourth offers results and analysis, and the fifth concludes and summarizes observations and recommendations.

2 Literature review

Definitions of transparency, as well as of budget transparency, can be broader or narrower (Lowatcharin and Menifield, 2015). Fiscal and budget transparency are often used as synonyms (Alt et al, 2006; OECD, 2017), but fiscal transparency is a wider concept than budget transparency (Kopits and Craig, 1998).

There are various theoretical approaches to transparency. The *principal-agent theory* usually describes the information gap between citizens and the government as a major obstacle to effective and constructive public participation. Because of the information gap, the agent has an advantage in persuading citizens (the principal) that everything is done in their best interests (Groenendijk, 1997). Some authors stress the importance of transparency in diminishing the information gap (e.g. Ferejohn, 1999; Laswad et al., 2005; Zimmerman, 1977; Banker and Patton, 1987). According to the *legitimacy theory* (Suchman, 1995; Patten, 1992; Deegan, 2002; De Araújo and Tejedo-Romero, 2016; Alcaide Muñoz et al., 2017), government uses transparency to promote its legitimacy and reputation. Alesina and Perotti (1996) elaborated the *fiscal illusion theory,* which draws on the perception that the citizen (taxpayer) is not capable of evaluating the cost of public programmes. Fiscal transparency helps to overcome that problem by giving citizens more information, and, therefore decreasing the illusion produced by the underestimated costs and overestimated benefits of public spending. All these theories are in line with the notion of transparency as a principle of good governance. However,

it is questionable whether it is enough to establish a principle and to make administrative reforms towards good governance. Hence, the motivation for testing some of the variables that might determine the budget transparency, in this case, OLBT.

2.1 Development of hypotheses

Motivated by the detailed literature review presented in Stanić (2018), and using the theories explained above, five hypotheses were developed, positing residents' income per capita (p.c.), population size, fiscal capacity, administrative capacity and unemployment, the most often used socio-demographic, fiscal and political variables, as determining factors in the achievement of budget transparency, or the reverse.

2.1.1 Residents' income p.c.

According to several authors, residents with higher incomes usually have greater Internet access and experience (Styles and Tennyson, 2007). They are also more demanding in respect of additional public services (Giroux and McLelland, 2003; Piotrowski and Van Ryzin, 2007) and information (Piotrowski and Van Ryzin, 2007). In some research, residents' income had no significant correlation (Guillamón et al., 2011), while other studies (Lowatcharin and Menifield, 2015) showed a significant positive correlation between residents' income p.c. and government transparency. Ott et al. (2018) and Ott et al. (2019) in the analysis of determinants of OLBT for Croatia also showed that residents' income p.c. positively affects OLBT. Therefore, we assumed that:

H1. The higher the residents' income p.c., the greater the OLBT.

2.1.2 Population

Larger LGUs are more often pressured to provide information (Moon and Norris, 2005; Serrano-Cinca et al., 2009), and usually have higher revenues and an IT department (Caba-Pérez et al., 2008). Serrano-Cinca et al. (2009) argue that conflicts of interest are more likely in more populated areas and the advantage of disclosing information is correspondingly greater.

Several authors found a positive and statistically significant relationship between population and data availability (Guillamón et al., 2011; del Sol, 2013; Lowatcharin and Menifield, 2015; De Araújo & Tejedo-Romero, 2016; Ott et al., 2018; Ott et al., 2019; Benčina et al., 2019). Therefore, we assumed that:

H2. As the population rises, the level of OLBT increases.

2.1.3 Fiscal capacity

Fiscal capacity (FC) is the ability to raise revenues (Martinez-Vazquez and Timofeev, 2008). Some other authors use the concept of financial autonomy (Tavares and da Cruz, 2014). Residents' income p.c. is linked to FC, since it implies higher tax and nontax revenues. Alcaide Muñoz et al. (2017) argue that

larger cities are more likely to provide information, since they can afford it and that higher FC is followed by higher pressure from their citizens to justify the use of resources, so agents are keen to show that they act responsibly.

There are various proxies for the FC. Guillamón et al. (2011) used p.c. tax revenues and obtained a positive correlation with financial transparency. Laswad et al. (2005) used general revenues minus intergovernmental transfers, finding no significant correlation with voluntary Internet financial reporting. This study uses operating revenues (excluding grants) as a proxy for FC the variable previously used in Ott et al. (2019) in Croatia that proved that it positively affects OLBT. Therefore, we assumed that:

H3. The higher the fiscal capacity in an LGU, the greater its OLBT.

2.1.4 Administrative capacity

The administrative capacity largely defines the ability to produce budget documents. Tavares and da Cruz (2014) show its influence associating it with a more professional organization and IT educated staff. This paper assumes that LGUs with a larger number of employees can more easily disclose more information.

The proxy for administrative capacity here is the natural logarithm of the annual average number of employees in LGU bodies (based on hours worked). This variable was previously used in Ott et al. (2019) in Croatia and it was proven that it positively affects OLBT. It assumes that LGUs with a larger number of employees have specialized staff able to devote additional time to OLBT. Therefore, we assumed that:

H4. The larger the labour force of an LGU, the greater the OLBT.

2.1.5 Unemployment

As explained in detail in Stanić (2018), it has been argued that lower economic development and the associated higher unemployment rates are damaging to civic engagement, i.e. the demand for greater opportunities to participate in the decision-making diminishes. Some studies have used unemployment as a proxy for an LGU's economic status and found that higher economic status (lower unemployment) positively affects the transparency in public administration (Piotrowski and van Ryzin, 2007). In accordance with these underpinnings, the results largely indicate that higher unemployment rates are detrimental to fiscal transparency (Caamaño-Alegre et al., 2013; De Araújo and Tejedo-Romero, 2016; del Sol, 2013; Tavares and da Cruz, 2014). Thus, the following hypothesis is proposed:

H5. The lower the unemployment, the greater the OLBT.

3 Data and methodology

This section presents the number and types of LGUs in Croatia and Slovenia, their regulation of the local budget transparency, dependent variable and sample, included independent variables; and finally, the model specification.

3.1 Local government and budget transparency in Croatia

Croatia consists of 428 municipalities, 128 cities and 20 counties. According to the Budget Act and Act on the Right of Access to Information, they are all obliged to publish three budget documents – the enacted budget, the year-end report, and mid-year report - on their websites. For the additional two documents – budget proposal and citizen budget – there is no legal obligation, but only a recommendation from the Ministry of Finance. Therefore, in Croatia, three of the five key budget documents should be disclosed mandatorily and the other two voluntarily.

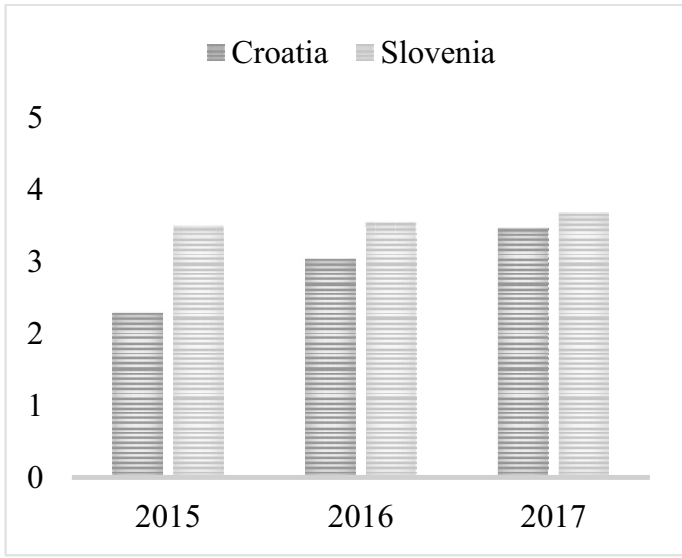
3.2 Local government and budget transparency in Slovenia

Slovenia is divided into 212 municipalities, 11of which have urban status. In accordance with the Public Finance Act, they are legally obliged to publish three key budget documents – budget proposal, enacted budget, and a year-end report. The publication of the remaining two documents – mid-year report and citizen budget – is not statutory obligation. However, since 2016, the Ministry of Public Administration has recommended the publication of all five key documents. Therefore, in Slovenia, it is mandatory to disclose three of the five key budget documents but only voluntary to disclose the other two.

3.3 Dependent variable and sample

The dependent variable is the Open Local Budget Index (OLBI) developed by Ott et al. (2015), as a count data index that shows the availability of five key local budget documents on an LGU's web site. It is calculated annually, e.g. OLBI 2017 includes year-end report 2016, mid-year report 2017, budget proposal, enacted budget and citizen budget 2018. The choice of these five budget documents is based on good international practices suggested by e.g. OECD (2002) and IBP (2016).

Graph 1: Local governments' average annual budget transparency score



Source: Authors' calculations

Graph 1 shows that the average OLBT in Croatia and Slovenia – measured by how many key budget documents are published on their websites – is constantly improving. While there was a marked difference in 2015, when Slovenia had far greater average OLBT (3.49 vs. 2.28), in 2017, the Croatian average OLBT almost caught up with the Slovenian average (3.46 vs. 3.67).

Since in both Croatia and Slovenia three of the five key budget documents are mandatory, and two voluntary, for the purpose of this paper OLBI is transformed into a binary variable. It takes the value of 1 if the LGU has published four or five key budget documents, denoting a transparent LGU, which, in addition to being a statutory obligation, publishes a minimum of one voluntary budget document; and 0 otherwise. In other words, in investigating the determinants of OLBT, this study considers both mandatory and voluntary disclosure.

Table 1. Definition of variables

Variable	Description	Data Source
OLBI	Open Local Budget Index – dummy variable that takes the value 1 if an LGU has published 4 or 5 key budget documents (denoting a transparent LGU), and 0 if an LGU has published 3 or fewer budget documents. The observed documents are budget proposal, enacted budget, citizens' budget, mid-year report, and year-end report (2015-2017).	Ott et al. (2019)
pop	Logarithm of the number of inhabitants (population estimates) of each LGU (2015-2017)	Croatian Bureau of Statistics (2019) Statistical Office of the Republic of Slovenia (2019)
adm_capacity	Logarithm of the average annual number of employees in LGU's bodies (2015-2017)	Ministry of Finance of the Republic of Croatia (2019) Open data portal Slovenia (2019)
unemployment	Logarithm of the unemployment rate in each LGU (2015-2017)	Obtained on request from the Ministry of Regional Development and EU Funds based on Croatian Employment Service data on registered unemployed persons by municipality /city. Statistical Office of the Republic of Slovenia (2019)
gov_wealth	Logarithm of LGU's wealth, proxied by the fiscal capacity p.c., i.e. LGU's own revenues p.c. (operating revenues minus all grants) (2015-2017)	Ministry of Finance of the Republic of Croatia (2019). P.c. values are based on population estimates from Croatian Bureau of Statistics (2019). Ministry of Finance of the Republic of Slovenia (2019)
citizen_wealth	CRO: Logarithm of citizens' wealth in each LGU, proxied by the average residents' income p.c. SLO: Logarithm of citizens' wealth in each LGU, proxied by the average monthly net salary.	Ministry of Regional Development and EU Funds (2019). P.c. values from CBS Statistical Office of the Republic of Slovenia (2019)

Source: Authors

The sample includes 768 LGUs – in Croatia 428 municipalities and 128 cities, and in Slovenia 212 municipalities.

3.4 Independent variables

Some possibly interesting and influential independent variables (e.g. Internet access) were not investigated, as it was not possible to obtain comparable data. Independent variables include internal forces and external pressures that could, in accordance with the above-mentioned transparency theories, explain what determines OLBT. The internal force (feature) variables in this article are the LGU's administrative capacity (*adm_capacity*), proxied by the average annual number of its employees and the LGU's wealth (*gov_wealth*), proxied by its p.c. fiscal capacity (operating revenues other than grants). The external pressure variables are: the LGU's size, i.e. the number of inhabitants (*pop*), describing the demand-side capacity; unemployment rate (*unemployment*), as a proxy for the economic situation in the LGU; and citizens' wealth (*citizen_wealth*), proxied by the income p.c. in Croatian, and net salary in Slovenian LGUs (Table 1).

In order to test the influence of independent variables on the inclination of the LGU to publish key local budget documents, a panel logistic regression for the 2015-2017 period is used, separately for Croatian and Slovenian LGUs, as well as for the total sample.

The model specification is as follows:

$$P\,(y_{it}=1) = \mu_0 + \mu_1 pop_{it} + \mu_2 adm\_capacity_{it} + \mu_3 unemployment_{it} + \mu_4 gov\_wealth_{it} + \mu_5 citizen\_wealth_{it} + \varepsilon_{it}, i = 1, \dots N;\ t = 1, \dots T \quad (1)$$

where P is the probability that an LGU will achieve higher budget transparency levels (publishing 4 or 5 budget documents online, i.e. at least one voluntary document); μ_0 is a constant term; i denotes LGU; t is time; μ are the parameters to be estimated; ε is the error term. Included independent variables are defined above.

4 Results and analysis

Table 2 shows the descriptive statistics - in panel A for the continuous (explanatory) variables and in panel B for the discrete (dependent) variable. The sub-samples of Croatian and Slovenian LGUs show significant differences in certain variables that could have an important impact on OLBT. In particular, Croatian LGUs have a much higher average value for the unemployment rate than the Slovenian do. Regarding the *gov_wealth* variable, proxied by fiscal capacity p.c. (operating revenues other than grants), Slovenian LGUs have on average more than double the amount of Croatian LGUs (820 vs. 372 EUR p.c.).

Table 2: Descriptive statistics

Panel A: continuous variables

	Pooled sample (2,304 obs)				Croatia (1,668 obs)				Slovenia (636 obs)			
Variable	Mean	Std. dev	Min	Max	Mean	Std. Dev	Min	Max	Mean	Std.dev	Min	Max
pop	8,057	32,648	130	803,900	7,423	36,037	130	803,900	9,719	21,278	316	274,261
adm_capacity	23.25	106.36	0	2,785	23.35	121.85	0	2,785	22.99	45.28	2	551
Unemployment (%)	13.98	8.50	1.58	52.68	15.27	9.39	1.58	52.68	10.59	3.82	3.35	24.88
gov_wealth (in EUR p.c.)	439	496	38	8,167	372	391	38	8,167	820	182	339	2,081
citizen_wealth (in EUR p.c.)	2,828	1,407	227	6,892	3,551	914	227	6,892	931	85	704	1,439

Panel B: discrete variable

	Pooled sample (2,304 obs)		Croatia (1,668 obs)		Slovenia (636 obs)	
OLBI	Freq.	Perc.	Freq.	Perc.	Freq.	Perc.
0	1,266	54.95	998	59.83	268	42.14
1	1,038	45.05	670	40.17	368	57.86

Source: Authors' calculations

Before estimating the regression equation, the relationship among covariates is explored. Accordingly, to test the presence of multicollinearity, tables A1, A2 and A3 in Appendix show correlation matrices for Croatia, Slovenia, and the pooled sample, respectively. If the correlation values among covariates are 0.75 or above, there is a multicollinearity issue (Gesuele et al., 2017).

Table A1 shows that the dependent variable *OLBI* has a statistically significant, linear and expected relationship with the independent variables. It also suggests a multicollinearity problem, i.e. a high correlation between *pop* and *adm_capacity* (0.78), which is taken into account in estimating the regression equation, so two models are estimated for the Croatian sample.

With respect to the Slovenian sample, the dependent variable *OLBI* has statistically significant, linear and expected relationships with all the independent variables, with the exception of *gov_wealth* (nonsignificant relationship) and *citizen_wealth* (negative and nonsignificant relationship) (Table A2). There is also a multicollinearity problem between variable *pop* and *adm_capacity* (0.91), which is taken into account in a regression analysis.

Regarding pooled sample, the dependent variable *OLBI* has statistically significant, linear and expected relationships with all the independent variables, with the exception of *citizen_wealth* (a negative, although barely significant, relationship) (Table A3). A multicollinearity issue suggests a high correlation between *pop* and *adm_capacity* (0.81), which is taken into account when estimating the regression equation.

Since the data indicates larger between than within effects, a random effects panel logistic regression is estimated, which allows for modelling heterogeneity across units. The random effects model considers both within and between group variations.

Table 3. Results of the random effect panel logistic regression

	(1)	(2)	(1)	(2)	(1)	(2)
Variable	**Croatia**		**Slovenia**		**Pooled sample**	
pop	***0.98(6.21)		***0.66(3.03)		***0.97(7.92)	
adm_capacity		***0.94(5.52)		***0.79(3.27)		***0.96(7.06)
unemployment	***-1.81(-5.85)	***-2.18(-6.31)	**-1.44(-2.49)	***-1.61(-2.77)	***-1.96(-7.89)	***-2.37(-8.78)
gov_wealth	0.17(0.77)	-0.26(-1.12)	-0.15(-0.15)	-0.81(-0.82)	***0.47(2.71)	0.10(0.54)
citizen_wealth	**1.59(2.22)	**1.63(2.22)	-0.23(-0.11)	-0.43(-0.21)	0.12(0.63)	-0.25(-1.27)
_cons	***-18.06(-3.26)	-9.28(-1.56)	0.82(0.05)	10.64(0.68)	***-7.30(-2.78)	*4.49(1.75)
lnsig2u	1.76	1.86	1.69	1.68	1.74	1.81
Max VIF	2.32	2.26	1.04	1.04	1.67	1.95
Number of obs	1,668	1,566	636	636	2,304	2,202

Source: Authors' calculations

Z-values in parentheses. Significance: ***1%, **5%, *10%.

Note: The number of observations in the Croatian sample is smaller due to the *adm_capacity* variable, since in some small LGUs employees are only registered as volunteers. In these cases, the number of employees is zero, which is why the natural logarithm cannot be measured.

Table 3 shows that higher population, higher administrative capacity and lower unemployment rate in the LGU significantly contribute to greater OLBT. These results are consistent for all three samples and in all the models estimated. Several authors also found that population positively affects local governments' budget/fiscal transparency (De Araújo and Tejedo-Romero, 2016; del Sol, 2013; Guillamón et al., 2011; Styles and Tennyson, 2007; Ott et al., 2018; Ott et al., 2019, Benčina et al., 2019). Explanations are usually given in two directions. First, LGUs with a larger population usually manage more public resources and are therefore faced with greater pressures to account for them (demand-side pressures). Second, larger LGUs can employ more human and material resources and establish an IT division that will also engage in transparency and accountability issues.

Manoharan (2013) found a positive relationship between the number of IT employees and website adoption. These findings are in line with the results obtained in this study, i.e. the greater the number of employees in LGUs (the greater the administrative capacity) the greater their OLBT; as confirmed in the previous study of Croatian LGUs (Ott et al., 2019). LGUs with higher administrative capacities have greater opportunities to produce and publish budget documents in a timely manner; and they often have better educated and more professional staff than smaller LGUs (Tavares and da Cruz, 2017).

The results also show that higher unemployment reduces budget transparency; and this relationship is consistent for all – Croatian, Slovenian, and pooled sample – and in all estimated models. These findings support previous research by (Caamaño-Alegre et al., 2013; De Araújo and Tejedo-Romero, 2016; del Sol, 2013), concluding that a worse economic situation in the LGU (higher unemployment) hinders greater accountability and transparency in local authorities.

Results for variable *gov_wealth* – representing the fiscal capacity of the LGU p.c. – are insignificant, except in the pooled sample in the model with population included, where the results are positive and significant. The same results were previously obtained for Croatia by Ott et al. (2019). This result suggests that higher LGU own revenues (fiscal capacity) enable more space, time, and ability to be more transparent and accountable to citizens (Gandía et al., 2016; Laswad et al., 2005). However, results for this variable are mostly nonsignificant, indicating the need for further research to obtain results that are more robust.

For the the *citizen_wealth* variable, the results are positive and significant only in the Croatian sample as previously proved in Ott et al., (2018) and Ott et al. (2019). This indication of Croatian LGUs with a higher average income p.c. being more likely to publish four or five budget documents than units with smaller *citizen_wealth* is in line with several previous researches (Lowatcharin and Menifield, 2015; Styles and Tennyson, 2007).

5 Conclusion

This research focused on the determinants of OLBT in two neighbouring countries – Slovenia and Croatia. Given the common contextual background and a

similar pace of democratization – e.g. both countries are EU members – one would expect them to have similar levels of OLBT. To see whether this is so, it was first necessary to measure their OLBT levels, i.e. to find out how many of five key local budget documents (the year-end report, mid-year report, budget proposal, enacted budget and citizens' budget) the 212 municipalities in Slovenia and the 128 cities and the 428 municipalities in Croatia publish on their web sites. The measurements showed that the average OLBT in Croatia and Slovenia – measured by how many of the five budget documents are published on their respective websites – although constantly improving are neither satisfactory, nor similar. While there was a marked difference in 2015, when Slovenia had far greater average OLBT (3.49 vs. 2.28), in 2017, the Croatian average OLBT had almost caught up with the Slovenian average (3.46 vs. 3.67).

After establishing the OLBT levels in the two countries, in order to test the influence of various independent variables on the inclination of an LGU to publish key local budget documents, a random effects panel logistic regression for the 2015-2017 period is used, separately for Croatian and Slovenian LGUs and then for the whole sample. The analysis shows that higher population, higher administrative capacity and lower unemployment rate in the LGU significantly contribute to greater OLBT. The results are in line with theoretical transparency underpinnings and several research efforts, indicating that greater population size and higher employment (as demand-side factors), enable citizens to put more pressure on local government and, through various channels, to scrutinize budget information and demand expansions. On the other hand, the greater administrative capacity of a local government (as a supply-side factor), reflects its internal capacity to engage in budget transparency and accountability initiatives. However our hypotheses that residents' income p.c. and LGUs' fiscal capacity significantly positively contribute to greater OLBT can only be partly accepted – they had expected positive sign, but were not significant in all models.

While Slovenian local governments showed a higher OLBT from the outset, Croatian local governments have only reached this level in the last few years. In part, this can be attributed to Slovenia's earlier reform of public administration and the introduction of e-governance, in line with earlier accession to EU and EU requirements. Although OLBT is not a comprehensive measure of budget transparency, it is based on good budget transparency practices, thus providing a basis for greater levels of budget transparency, accountability and public participation. Thus the results indicate that more efforts are needed from both Croatian and Slovenian local governments, as many of them do not even meet the legal requirements of budgetary transparency.

Studies of local budget transparency are of great importance, since they can influence decision making at central government levels, and their results can also trigger, usually through media coverage, positive peer pressure among local governments. Our research shows that legal regulation is obviously a necessary but not a sufficient condition for improving local budget transpar-

ency in these two countries, and that capacity of local governments, population size and unemployment rate are the main triggers for improvement. This article has two main limitations. First, one important feature of budget transparency, the quality of the documents, was not observed; secondly, some variables often used by other researchers (e.g. Internet access) were not investigated. For the former, it would simply be impossible each year to control the quality of five budget documents in 768 LGUs over three years and for the latter, comparable data are missing.

Despite these limitations, the findings could well make a useful addition to the existing body of literature, since the study, with its comprehensive collection of data, is quite rare in Central and Eastern Europe. It might also be significant that, despite the differences in the economic and political environments of these two countries, in the observed period there are nevertheless some common determinants of LBT.

Appendix

Table A1. Correlation matrix for the Croatian sample

	OLBI	pop	adm_ capacity	unempl oyment	gov_ wealth	citizen_ wealth
OLBI	1.000					
pop	0.276	1.000				
adm_capacity	0.220	0.779	1.000			
unemployment	-0.249	-0.041	0.094	1.000		
gov_wealth	0.213	0.110	0.314	-0.475	1.000	
citizen_wealth	0.288	0.298	0.285	-0.624	0.600	1.000

Source: Authors' calculations

Table A2. Correlation matrix for the Slovenian sample

	OLBI	pop	adm_ capacity	unempl oyment	gov_ wealth	citizen_ wealth
OLBI	1.000					
pop	0.172	1.000				
adm_capacity	0.175	0.909	1.000			
unemployment	-0.085	-0.017	0.039	1.000		
gov_wealth	0.004	-0.111	0.096	-0.171	1.000	
citizen_wealth	-0.030	-0.065	-0.035	-0.091	0.037	1.000

Source: Authors' calculations

Table A3. Correlation matrix for the pooled sample

	OLBI	pop	adm_ capacity	unempl oyment	gov_ wealth	citizen_ wealth
OLBI	1.000					
Pop	0.270	1.000				
adm_capacity	0.218	0.811	1.000			
Unemployment	-0.234	-0.071	0.066	1.000		
gov_wealth	0.231	0.195	0.273	-0.455	1.000	
citizen_wealth	-0.052	-0.108	0.004	-0.061	-0.402	1.000

Source: Authors' calculations

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Social Responsibility and Consensus Orientation in Public Governance: a Content Analysis

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ABSTRACT

Over the past two decades, social responsibility (SR) has become a key principle of many private sector entities that aim for business excellence. Similarly, in the public sector, the latest public governance models (PGMs) are based on the selected public governance principles (e.g. consensus orientation, participation, equity and inclusiveness) directed at connecting and including all types of stakeholders in decision-making and carrying out the activities of public sector organisations. Yet, there is insufficient reliable empirical evidence with respect to the relationship between social responsibility and the underlying principles of PGMs. The principal goal of the article is thus to identify the relationship between the concept of social responsibility and consensus orientation, which is one of the main theoretically and practically grounded principles of PGMs. This goal is addressed by applying the QDA Miner software package and analysing the contents of the 100 most relevant scientific papers from the Web of Science database. Specifically, the relationship between occurrence of the 'consensus orientation' principle and SR is identified and quantified, revealing the importance of the latter. Moreover, different PGMs are analysed in terms of consensus orientation and SR enforcement, providing tangible guidelines to help advance theory and practice in the domain of public governance.

Keywords: *consensus orientation, content analysis, literature review, governance models, public sector, social responsibility*

JEL: H83, M14

1 Introduction

Social responsibility (SR) is addressed in numerous theoretical works (Baumgartner, 2014; Cantele and Zardini, 2019; Dahlsrud, 2008; Del Mar Alonso-Almeida and Llach, 2018; Tiba, van Rijnsoever and Hekkert, 2018) and

many organizations are attempting to put it into practice. It is used (sometimes even abused, e.g. in marketing purposes (Kvasić, Cerović and Olgić Draženović, 2017)) in several ways in theory and practice, with a vastly different scope and very dissimilar consequences. In general, social responsibility may be defined as a way of systemic thinking, managing and acting in order to achieve the mission and the strategic and tactical goals of the organization where all activities are directed to coordinating and satisfying the needs and expectations of all of the organization's stakeholders. This approach is wider than philanthropic activities alone and care for the environment on one hand, and includes society as a whole (as an abstract notion) on the other. A systematic and holistic approach to considering and satisfying all stakeholders' interests may prove vital for an organization's financial and nonfinancial performance as well as its long-term development (Mulej, Ženko and Žakelj, 2017; Šarotar Žižek and Mulej, 2013; Tomaževič, 2014).

The above broad definition implies that social responsibility can (must?) also be applied in the public sector, not only the private one (Aristovnik and Jaklič, 2013). Social responsibility concept can be applied to public organizations since they are, like private entities, made up of human beings. The concepts of ethics and social responsibility should apply to both sectors, especially when one notes the public sector in some countries accounts for up to 50 % of GDP (Di Bitetto, Chymis and D'Anselmi, 2015). More importantly, public sector organizations around the world are responsible for physical and social infrastructure as well as the legal environment in which businesses operate (Chymis, D'Anselmi, and Triantopoulos, 2017). Several authors have already studied the social responsibility concept in the public sector (Formánková, Hrdličková and Grabec, 2017; Sangle, 2010; Steurer, Martinuzzi, and Margula, 2012). Chymis, D'Anselmi and Triantopoulos (2016) claim that no business (for- and non-profit) operates in a vacuum, but does so within the institutional environment whose creation is a primary responsibility of the public sector.

Many international organizations seek to increase public sector efficiency and effectiveness although rarely is the term 'responsibility' used in the process, despite being implicit in the literature on economics. When the International Monetary Fund (IMF), Organization for Economic Cooperation and Development (OECD), United Nations (UN), World Economic Forum (WEF) or the World Bank (WB) publish reports guiding public administrations worldwide how to raise their levels of transparency, accountability and integrity, the similarities with the social responsibility jargon are obvious (Chymis, D'Anselmi and Triantopoulos, 2016). In 2005, the OECD published a report on Modernizing Government that highlighted the need to make the public sector more effective and efficient with respect to spending constituents' resources, where one may argue that long-run efficiency and effectiveness come close to the concept of social responsibility (Chymis et al., 2017). While it is beyond doubt that public management must implement the basic social responsibility concepts of accountability and transparency, in practice this refers to the millions of people who are employed in public sector (Chymis et al., 2016).

'Mainstream (Corporate) Social Responsibility ((C)SR)' is a notion confined to for-profit organizations (corporations/enterprises) (Di Bitetto, Chymis and D'Anselmi, 2015). The European Commission says (C)SR is the responsibility of enterprises for their impact on society and it should, therefore, be company-led. Companies can become socially responsible by (1) integrating social, environmental, ethical, consumer, and human rights concerns into their business strategy and operations, and (2) following the law. Public authorities should play a supporting role via voluntary policy measures and, where necessary, complementary regulation (EC, 2019). This definition relates to the concerns of social responsibility only to the challenges facing corporations/enterprises. The other organizations that make up the economy and the social fabric are not mentioned. Is it therefore reasonable to assume that other organizations, e.g. public sector organizations and civil society organizations, are socially responsible per se and hence we do not need socially responsible management and governance in the public sector? The assumption the government is accountable per se is based mostly on the Weberian view, which assumes that organizations work as perfect and rational automata, behaving exactly as they should on paper. In Max Weber's view, the normative and the positive approach are the same, there is no difference between the conditional and the indicative tenses of reality. This is very much what is embodied in administrative law and in any law that specifies what the government should do (Di Bitetto et al., 2015).

Although Weber perceives stability as the chief objective of public organizations, Downs (1967) tends to conceive the high degree of stability in public bureaucracies as a perennial problem because it prevents the public sector from dynamically adapting to changes in society and new conditions for public governance. The Weberian view of the benevolent bureaucrat is unable to explain the irresponsible actions observed within public sector governance and management (Di Bitetto et al., 2015). The advocates of New Public Management (NPM) (Lane, 2000; Osborne and Gaebler, 1993) stressed the need for improved competitive conditions in case of a public-goods provider, i.e. public organizations had to adopt more entrepreneurial mind-sets and tools so as to operate in a more competitive way, to be driven by their mission (offering high-quality services to citizens), to be no longer being driven by bureaucracy, to become results-oriented and customer-driven, thereby empowering citizens/customers, local communities, industry associations, suppliers, media, non-governmental organizations (NGOs) and other stakeholders to become active in policy-setting and implementation. Principal-agent theory (specific for the New Public Management era) explains how public sector managers and employees encounter dilemmas similar to those faced by enterprises' managers and employees. Moreover, the public sector is largely unaffected by the elections that take place, on average, every four years. According to Sørensen and Torfing (2011), NPM has two limitations when seen from a public innovation perspective: (1) it builds a dogmatic assertion that the main source of efficiency-enhancing innovation arises from imitating the competitive logic in the private sector; and (2) it places the responsibility for public sector innovation solely on the shoulders of public managers. These

are some of the reasons explaining why the public sector needs to increase its accountability, transparency and integrity, and become more socially responsible (Chymis et al., 2016).

In recent decades, a new stream of thought has gained ground, composed of hybrid models and revisiting approaches to classical administrative patterns, also suggesting that the dividing line between public and private sectors be reconsidered (Lampropoulou and Oikonomou, 2016). Modern public governance recognizes the need for inclusive and holistic approaches rather than mainly operating in isolation from the environment and the many stakeholders involved in the activities of public sector organizations. Along these lines, alternative governance models started appearing in the 1980s with the aim of enabling a better response to the challenges brought by modern society (Bach and Bordogna, 2011; Fraczkiewicz-Wronka and Wronka-Pospiech, 2018; Ropret, Aristovnik and Kovač, 2018).

As described above, despite public sector organizations having a different primary goal than private sector organizations, in the last few decades the governance models have been becoming ever more similar when the systematic involvement of all stakeholders of an institution is in question (Chymis, D'Anselmi and Triantopoulos, 2016; Author, 2014). Contemporary public governance models are based on different principles. Some principles are connected with social responsibility as defined above. These are, for example: (1) consensus orientation, (2) participation, and (3) equity and inclusiveness. For the purposes of this paper, consensus orientation was selected as the principle most fundamentally connected with the above definition of social responsibility.

Consensus orientation is the governance principle that emerged in public governance models when they became holistic and integrative – the main and most common PGMs including consensus orientation are New Weberian State, Good Governance, Network Governance models, Collaborative Governance models, etc. Pollitt and Bouckaert (2011, p. 19) describe the New Weberian State (NWS) as 'an attempt to modernize traditional bureaucracy by making it more professional, efficient, and citizen-friendly', reflecting 'a more optimistic and trusting attitude towards the state apparatus than the NPM'. NWS builds on the ideas of Max Weber and his rational bureaucracy. According to Bringselius and Thomasson (2017), the central paradigms in the NWS are transparency, performance measurement and stability. The primary aim of NPM reforms is to increase efficiency and flexibility. With the NWS, there is a stronger focus on quality issues, particularly issues relating to legality and equal treatment. This is also why the NWS focuses more on the input and process aspects of organization, whereas NPM concentrates on the output aspects. Good governance has eight major characteristics. It is participatory, consensus-oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It implies a high level of partnership and consensual decision-making among the various stakeholders. This allows

all relevant stakeholders to become involved, thereby enabling society to be more inclusive and collaborative (UN, 2009; Vigoda, 2002).

Sørensen and Torfing (2005) believe a governance network is a relatively stable horizontal articulation of interdependent, yet operationally autonomous actors who interact via negotiations that involve bargaining, deliberation and intense power struggles which occur within a relatively institutionalized framework of contingently articulated rules, norms, knowledge and social imaginaries. It is self-regulating within the limits set by external agencies and which contribute to the production of public purpose in the broad sense of visions, ideas, plans and regulations. The core reasons for the emergence of governance networks are: (1) resource dependencies and the need for more integrated services (Klijn, 2008; Koppenjan and Klijn, 2004); and (2) to achieve more efficient and appropriate solutions by combining the resources and knowledge of many different actors and stakeholders (Frederickson, 2005). Governance networks involve a large number of interdependent actors who interact in order to serve the public purpose (Sørensen and Torfing, 2005). Collaborative public governance models are network-based models with an emphasis on the relations with stakeholders understood as citizens, non-governmental organizations, or entrepreneurs. The main rules governing the exercise of authority are participation and consultation, openness, responsiveness, transparency, accountability, and sustainable development. From the management point of view, the manager must take actions that will ensure the stakeholders' support (Bryson, 2007; Fraczkiewicz-Wronka and Wronka-Pospiech, 2018; McGuire, 2006; Vigoda, 2002). The other contemporary governance models related to Network Theory, which presumes a plurality of co-dependent stakeholders who contribute to the formation of quality public services, are New Public Governance (NPG), Digital Era Governance, etc. (Ropret, et al., 2018).

The foremost goal of the study was to identify and analyse the relationship between the concept of social responsibility and the public governance principle of 'consensus orientation'. Related with the latter, the fields of social responsibility and consensus orientation were also studied in the context of their development and enforcement within public governance models by applying methods of scientific analysis. Thus, the research goal was operationalized based on three research questions:

- RQ1: What are the dynamics regarding the publication frequency over the period of time?
- RQ2: What is the relationship between the occurrence of a consensus orientation and enforcement of social responsibility?
- RQ3: Which PGMs are mainly related to the enforcement of both a consensus orientation and social responsibility?

To address the above research questions, a content analysis (CA) was chosen as the central method for the analysis. This method provides a theory and set of techniques for extracting information from textual data regardless of the discipline. Unlike text analysis (TA), CA aims to quantify and categorize the

content or meaning of certain textual configurations (words, word combinations, sentences etc.). Combining qualitative and quantitative content analysis techniques in this way brings many benefits. For example, quantitative content analysis may be useful as an tool or exploration prior to qualitative coding by allowing one to identify subtle differences in word usage between subgroups of individuals, or to quickly find the most common topics of phrases (Ropret and Aristovnik, 2018). Restricting the analysis to segments associated with specific codes may also be useful for identifying potential words or phrases associated with those codes. One may then use the QDA Miner text retrieval tool to identify other segments to which this code may be assigned. Quantitative content analysis might also prove useful after qualitative coding has been performed (Suerdem, 2014). Following the introduction, the paper consists of a more detailed description of the methods used in the study, a results section, a discussion and a conclusion.

2 Methodology

The primary goal of the research was achieved by following an original methodology that had three consecutive research phases. The first phase consisted of identifying all relevant publications (papers, books/book chapters) in the Web of Science (WoS) database, one of the most respected sources of research literature in the world. Based on 30 keywords, all possibly relevant scientific papers related to public governance models in the fields of public administration, political science and law were downloaded from the WoS database. This led to over 11,000 publications within the timespan 1992 to 2016 being identified. Thus, it was taken into account that papers need at least two to three years after publication to accumulate enough citations for bibliometric analysis to be reliable (Abramo, Cicero & D'Angelo, 2011; Belter, 2015; Wang, 2013). In the second phase, these papers were thoroughly evaluated with a view to narrowing the broad set of papers down to the 100 most relevant ones. This step was facilitated by two complementary indicators – based on the total citation count (global citation score – GCS) and citations per year (GCS/year) – the 100 highest overall ranking WoS papers with a focus on public governance models were identified, downloaded and separated from less relevant ones. This phase provided the input for the third research phase. The latter entailed applying the content analysis method (Ropret and Aristovnik, 2018).

In the next step, a content analysis was performed to address the goal of the paper. The QDA Miner 5.0.11 software package was used as the main tool for the content analysis. QDA Miner is a qualitative data and text analysis (TA) software package for coding textual data and annotating, retrieving and reviewing coded data and documents. Besides its text analysis features, QDA Miner provides a wide range of exploratory tools to determine patterns in coding and relationships between assigned codes and other numerical or categorical variables (Suerdem, 2014). Its seamless integration with WordStat, a quantitative content analysis and text-mining module, gave us the flexibility needed for analysing the text and relating its content to structured information, includ-

ing numerical and categorical data (Ropret and Aristovnik, 2018). As a basis for the analysis, the QDA miner dictionary presented in Table 1 was designed, comprising categories (capital letters) and category keywords (italic letters).

The research goal was operationalized, based on the already presented research questions RQ1 to RQ3. As far as RQ1 is concerned, descriptive statistics were derived from the WoS database and QDA miner, whereas addressing RQ2 and RQ3 required a co-occurrence analysis based on QDA miner proximity plots. The proximity plot was the most accurate way of graphically representing the distance between objects by displaying the measured distance from a selected code to all other codes on a single axis. Therefore, it proved particularly valuable in extracting information on the governance principle and PGM relationship from the huge amount of publications contained in our database.

Table 1: The QDA miner dictionary

PUBLIC GOVERNANCE (SUB)MODELS	SOCIAL RESPONSIBILITY	CONSENSUS ORIENTATION
- Weberian (bureaucracy) - Old Public Administration - NPM (New Public Management) - POST-NPM - NWS (New Weberian State) - Good Governance - Digital-Era - Collaborative Governance - Network Governance - Interactive Governance - Public Service Model - Public Value Model - New Public Service - Holistic Governance - Intelligent Governance - Hybrid Governance - Co-Production	- (Corporate) social responsibility - Socially respons* - Societal responsibility - Societal* respons* - CSR	- Consensus (oriented) - Consensus (orientation) - Consensus-oriented - Consensus-orientation - Consensual

Source: own.

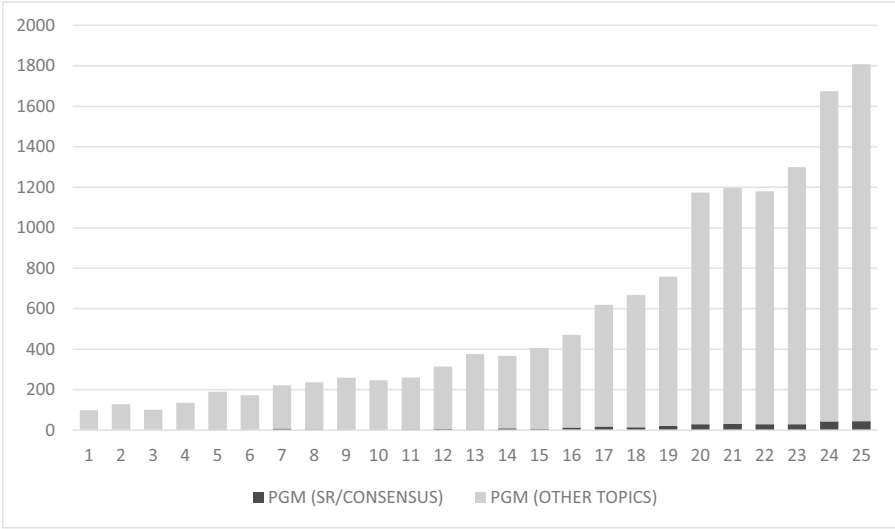
3 Results

The research results are presented in the following order: (1) the dynamics regarding publication frequency over the period of time (subsection 3.1), (2) the relationship between consensus orientation and social responsibility (subsection 3.2), and (3) the role of PGMs in enforcing both a consensus orientation and social responsibility (subsection 3.3).

3.1 Publication frequency

The research results show growing research interest in the topic of public governance models (PGM) (Figure 1). In 1992, less than 100 publications a year were relevant, with the number rising to 259 units in 2000 and even further in 2008 (619) and later on. Among these PGM publications, those where social responsibility (SR) or consensus orientation were identified as elements (in abstract, title, keyword) were growing; namely, up until 1998 three or less publications per year were identified, the number rose to 18 in 2008 and even to 45 in 2016. Yet, in 2016 both SR and consensus-related publications together represent just 2.5% of cases, indicating the quite marginal attention then being paid by researchers. The most covered sources in terms of publication frequency included highly respected journals in the public administration field, underlining the relevance and quality of our methodological approach: International Review of Administrative Sciences, International Journal of Public Sector Management, Public Administration, Public Management Review, International Journal of Public Administration, and Public Administration Review. This reveals the growing attention during the quest to find socially responsible public governance models following the global social and financial crisis in 2008 and the subsequent challenges related to societal (e.g. demographic issues, migration issues, the rise of extremist right-wing parties, populism) and environmental (e.g. pollution, exploitation of natural resources, harming animal and human health) issues, and several others calling for an efficient and effective response by public sector institutions.

Figure 1: Web of Science (WoS) publications on public governance models (1992–2016): number of papers per year



* abscise axis: 1 = 1992, 17 = 2008 and 25 = 2016
Source: Authors' own calculation based on the database created (N = 14,366)

3.2 Relationship between a consensus orientation and enforcement of social responsibility

The co-occurrence analysis (Table 2) indicates the relationship between SR and a consensus orientation based on the occurrence of both terms as defined by the QDA miner dictionary (Table 1). Table 2 shows the calculated values for Jaccard's similarity index (J), which considers the similarity between two operational taxonomic units as the number of attributes shared, divided by the total number of attributes present in either of them (Real, 1998). Based on Jaccard's index values, we immediately notice both SR and consensus orientation demonstrate significant co-occurrence. The result (J = 0.017) indicates that both elements may be properly fostered only when taking their interrelated nature and (possible) synergies derived from the latter into account.

Table 2: The relationship between consensus orientation and social responsibility enforcement in the literature: Jaccard's index (statistically significant results shown (P ≤ 0.05))

Target	Keyword	Co-occurs	Do not	Absent	Jaccard
SOCIAL RESPONSIBILITY	CONSENSUS	11	192	449	0.017

Source: Authors' calculations, based on applied database of most relevant publications (N = 100).

3.3 Role of public governance models in enforcing a consensus orientation and social responsibility

Building on the interrelated nature of both a consensus orientation and social responsibility, as previously indicated, the next step was aimed at identifying the PGMs, which may represent the main drivers, that enforce both of these governance elements (Table 3). The values of Jaccard's similarity index (J) show it is particularly the post-New Public Management governance models that are significantly enforcing a consensus orientation and social responsibility:

– Alternative governance models (J = 0.016),
– Network governance model (J = 0.013),
– New Weberian State (NWS) (J = 0.011).

Table 3: The relationships between PGMs, social responsibility and consensus orientation enforcement in the literature: Jaccard's index (statistically significant results shown (P ≤ 0.05))

Target	Keyword	Co-occurs	Do not	Absent	Jaccard
SOC. RESP. & CONS.	Alternative models	12	270	448	0.016
SOC. RESP. & CONS.	Network Governance	8	135	452	0.013
SOC. RESP. & CONS.	New Weberian State	6	107	454	0.011

Source: Authors' calculations, based on the created database of most relevant publications (N = 100).

The results reveal that pluralistic or Western (post-NPM) governance paradigms may be well suited for enforcing both the social responsibility and consensus-orientation elements, while at the same time the quest for alternative governance paradigms may prove to be particularly rewarding.

4 Discussion

The changing trends seen in the economy, society and the environment over the last decades call for fresh approaches to the ways individuals, businesses, NGOs and public sector organizations function. The focus on research has been on the latter, specifically on public governance models studied by many researchers in the last 25 years. First, the research has shown growing research interest in the topic of public governance models, as indicated in (RQ1). At the same time, the important PGM elements of social responsibility and consensus orientation were revealed to be interrelated, therefore requiring an integrated approach to most successfully fostering both (RQ2). However, the social responsibility and consensus orientation paradigms may relatively be well suited for subjective, pluralistic, or Western (post-New Public Management (post-NPM)) governance paradigms (RQ3). Still, it remains questionable whether such pluralistic models can help effectively tackle administrative challenges in less developed and developing states. In Central and Eastern Europe, for example, there are regional and historical specifics in governance developments such as over-detailed regulation which hinders the resolution of complex administrative issues (like migrations, digitalization, demographic, and environmental changes, etc.). Moreover, it can be observed that most post-NPM authors belong to the Anglo-American-Australasian group of countries, followed by Continental European and Nordic countries (Ropret and Aristovnik, 2018). We must therefore recognize the indication that the shortfall in research concerning other regions may itself limit the reliability of scientific guidelines about implementation. The need for further PGM research within these underrepresented regions is highlighted by the fact that, compared to the good foreign practices of reforming public administration and developing new governance models, comprehensive interdisciplinary approaches are often missing in these countries In addition, the lack of infrastructure, skilled

and ethical professionals and insufficient funding clearly pose further obstacles to effectively tackling social responsibility and consensus orientation in the least developed administrative contexts. Further, good-governance and the related post-NPM governance model research, built on the principle of a plurality of co-dependent stakeholders and sustainable development, still lack reliable evidence on the successful implementation of social responsibility and consensus orientation. This underlines the importance of further PGM research in establishing a basis for public governance characterized by systematically directed interactions between stakeholders as well as preventing and solving conflicts with a view to shared long-term prosperity.

5 Conclusion

All developed countries wish to achieve the effective and efficient socially responsible governance and management of their institutions and projects, yet these issues become even more sensitive when talking about developing countries. Namely, public sector organizations influence many dimensions of citizens' lives, they employ large numbers of people, spend taxpayers' money, cooperate with institutions from other countries and invest in different areas of the economy, society and the environment; that are the key pillars of sustainable development. They should therefore be held accountable for the long-term welfare of a country, and their socially responsible decisions and activities should tend to achieve the consensus of all relevant stakeholders when short- and long-term decisions are being made. This is even more important during periods of crisis like that we faced after 2007/2008. The problems which emerged over the last decades and are accumulating on an exponential scale are so big they can only be decelerated or solved by quick and engaged actions of numerous stakeholders working in close cooperation while being socially responsible and trying to reach consensus while making decisions on future development. The research results presented in the paper reveal that, on average, after 2009 the number of papers discussing social responsibility and consensus orientation in the context of public governance models started to grow, reaching more than twice that level by 2016. Moreover, our analysis clearly underlines the interrelated nature of both a consensus orientation and social responsibility. In this regard, pluralistic (post-NPM) governance paradigms, such as Network Governance and New Weberian State have been indicated to be relatively well suited for enforcing both social responsibility and consensus orientation. The results also reveal that the quest for establishing alternative governance paradigms may prove even more rewarding as regards an integrated approach towards social responsibility and consensus orientation. Such public governance alternatives shall put more focus on hybrid approaches, focused on a strong mutual capacity-building element across the full range of activities, all participating stakeholders being aware of one another's core interests and a culture of joint learning and crosscutting capacity-building (Donner, Theocharidis, & Johansson, 2018). Normally, it is not be possible to effectively address such multidimensional challenges of governance in the short term (Bigg and Wood, 2004). Yet, the

studied papers already provide some qualitative and quantitative evidence, including case studies, meaning there is a growing interest in these topics in both theory and practice. This can fill us with optimism that there is a desire on the national and international levels to make the public sector an important driver of a better future for all of us and future generations as well.

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Inclusion by Co-Production of Social Housing: The Slovak Experience

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ABSTRACT

The field of social housing is one of many subjected to the potentials of co-production. Specifically, the Sustainable Development Goals target 11.1 is "By 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums". The current Slovak "State Housing Policy Concept to 2020", among others, defines specific objectives, e.g. increasing or at least maintaining the same share of public expenditure on housing, introducing a new housing allowance, and supporting the development of the non-profit sector in housing provision. The goal of this article is to investigate to what extent co-production – as joint working of the public, private for profit and private not-for profit sectors – has the capacity to address the gap in the provision of social housing in the Slovak Republic. Using the method of case study, the scale and forms of co-production in social housing are investigated and the key factors and barriers of co-production in this area are analysed. The authors suggest that co-production of social housing is the most efficient method of delivery of social housing, improves sustainability, and helps to include the beneficiaries into society. However, this approach requires extra energy from the stakeholders – especially from public officials – and is thus still rarely used in practice.

Keywords: co-production, social housing, social inclusion, case study, Slovakia

JEL: H44, L31, O18

1 Introduction

The 2030 Agenda for Sustainable Development, adopted by all United Nations Member States in 2015, provides a blueprint for peace and prosperity for people and the planet, now and into the future (United Nations, 2015). The target 11.1 is "By 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums". The simplified explanation of this target might mean that because housing services are public services, so the provision of housing improvement of housing situation should be the ultimate task for the state/self-governments.

However, such expectations cannot in truth become reality. The financial resources of the public sector are always limited and especially in developing countries there is no chance to finance all the costs of housing for the poor from public resources – and such an approach would not be effective for many reasons. Accodrding to Merickova et al. (2015), co-production represents one of the possible solutions – the provision of social housing in such an environment takes place through collaboration with different stakeholders. In this paper, we focus on the participation of different stakeholders in social housing provision at the level of local self-governments and on different forms of co-production, including the relevant drivers and barriers that account for the success or failure of co-production processes.

The goal of this article is to investigate to what extent the co-production (joint working of the public, private for profit and private not-for profit sectors) has the capacity to address the social housing gap in Slovakia (but also in other countries). The paper uses the case study approach as the main method, other methods used are qualitative analysis of relevant documents and databases and structured interviews with key stakeholders. The main sub-goals of this paper are to present the scale and forms of co-production in social housing area at the local level in Slovakia and to define the key factors and barriers of co-production in the social housing area. The paper follows the methodology and results from the LIPSE project (see for example Voorberg et al, 2014). The outline of the paper is as follows – the first part delivers the theoretical framework for co-production in social housing and characterise Slovak housing policy. The core part delivers two case studies about co-production of housing in Slovakia. The final part presents a qualitative analysis of the findings of the case studies and the lessons we can learn from these case studies.

2 Co-production in social housing

Participation of citizens, as final consumers of public services, has an irreplaceable role in the public service delivery process (Nemec et al., 2017) and has a great importance in success rate of this process (Fuglsang, 2008, Von Hippel, 2007). Before the New Public Management (NPM) era the idea was that public services should be dominantly produced and financed by the state (Samuelson, 1954) The NPM changes brought also the idea that public services delivery just means that the state is responsible for the availability of

services, but the modes of production and financing are an open issue, determined by the proper local and time bounded response to questions "How can public services be produced?" and "How can public services be funded?" (Cullis and Jones, 1992 or Osborne and Gaebler, 1993): "public-private-civil sector mix, partnerships, competition and cooperation (Nemec, et al, 2015)". The governance era (Osborne and Brown, 2011) takes one step further - the process of delivery of public services is considered as 1) an open process, with the involvement of end-users in the design and development of goods and services (Chesbrough, 2003) and 2) a change of the relationships between the involved stakeholders (Voorberg, et al, 2014). One of the central elements in this concept is active participation of citizens and grass roots organisations in order to produce social outcomes that really matter, this is known as co-production/co-creation.

Co-production is regarded as a promising concept against austerity, ageing and the erosion of legitimacy of public institutions (Pestoff, 2014). During co-production, a citizen or other non-public actors may serve as "co-initiators", "co-designers" or "co-implementing subjects" (Voorberg et al, 2014). According to Sørensen and Torfing (2011) this kind of public innovation takes place through collaboration with different stakeholders. As a result, innovation is always relative to its context, which consists of elements such as 1) the political and administrative context, 2) the legal culture within the public sector, 3) state governance and civil service tradition and 4) resource allocation and resource dependency (Bekkers, et al, 2013). Key factors of co-production could be divided into being either on the organisation side or the citizen/non-state body side as shown by the Table 1.

Table 1: Drivers of co-production

Key factors on the organisation side	**Key factors on the citizen side**
Compatibility of public organisations with citizen participation	Citizen characteristics (skills, values, education, willingness, etc.)
Open attitude towards citizen participation	Customer/citizen awareness/feeling of ownership/
Presence of clear incentives for co-creation (win/win situation)	Presence of social capital

Source: created by the authors based on Bekkers et al., 2013.

Academic research recently started to deal with the issue of co-production especially in social housing. Adamson (2018) explored the extent to which United Kingdom tenants are engaged in a co-production of additional outcomes result of the co-production relationship. Gruber and Lang (in Adamson, 2018) provide an analysis of the institutional context of housing in Vienna and present the case studies of a particular collaborative housing model, inclu-

ding short case studies of collaborative housing models relevant to the same local context.

Colasanti et al. (2018) analyse the evolution in the provision of public services delivery, with a specific focus on housing policies. They argue that rather than just assisting households with income levels falling below specific thresholds, social housing addresses the broader and more complex areas of vulnerability and that effective social housing projects require that beneficiaries contribute to the implementation of the project itself.

Our paper adds to this discussion – with the use of two case studies identified as examples of good practice where co-production in social housing is being applied.

2.1 Slovak housing policy

Since the establishment of an independent Slovak Republic in 1993, the issue of housing has been addressed in the state's housing policy. Since 1994, six social housing policy concepts have been developed, the latest is from 7 January 2015 for the period to 2020 (Špirková et al., 2009).

The current State Housing Policy Concept to 2020 (Koncepcia štátnej bytovej politiky do roku 2020: https://www.mindop.sk/ministerstvo-1/vystavba-5/bytova-politika/) summarises recent developments in housing policy, outlines priorities for the coming period, and defines the tasks that ministries have to fulfil in order to meet the goals set. The main objective of the concept of state housing policy for 2015-2020 is the sustainable development of housing. Among other goals there is support of the development of the non-governmental organisations (NGOs) in housing services provision.

The direct rules for the provision of housing services are currently regulated in Slovakia by more legislative acts (especially the Act No. 443/2010 Coll. on subsidies for housing development and social housing, the Act No. 182/1993 Coll. on the ownership of flats and non-residential premises, the Act on the State Housing Development Fund No. 607/2003 Coll., and the Act on Housing Loans No. 90/2016 Coll.). Social housing legislation is quite fragmented, which complicates clarity and transparency (Murray Svidroňová et al, 2019).

The Act on subsidies for housing development and social housing defines social housing as "housing acquired through the use of public funds intended for the adequate and humane dwelling of persons who cannot obtain housing by their own actions and fulfil the conditions under this law. Social housing is also housing or accommodation funded by public funds and provided as part of care under specific regulations".

According to the latest Population and Housing Census 2011 (the next is planned for 2021), the total housing stock in Slovakia consisted of 1,994,897 housing units, of which 205,729 units were empty. The results of the census also showed that there were 370 housing units per 1,000 inhabitants, which is the second-lowest ratio in the European Union (EU) after Poland (www.sci-

tanie2011.sk). In 2011, the total housing stock in Slovakia consisted of private housing (90.5%), 6% were rented flats (out of which 3% were rented by municipalities and 3% were rented privately), and 3.5% were owned by housing cooperatives. These data clearly indicate a lack of social housing in Slovakia – most vulnerable groups of the population are not able to afford effective private housing solutions.

The Slovak Republic applies a dual model of delivery of social housing. Social housing is secured through public construction primarily provided by municipalities and from public funding - financed by state resources. The Municipal Act No. 369/1990 Coll., in paragraph 4, defines that municipalities are, among other duties, also responsible: "... to acquire and approve housing development programmes and to cooperate in creating suitable housing conditions in the municipality''. Although social housing is the responsibility of the municipalities, they are unable to satisfy all existing needs because of a lack of finance (Murray Svidroňová et al., 2019).

In this situation, co-production, with involvement of several types of stakeholders is effective, but still a very rarely used solution in the Slovak conditions, especially when dealing with the marginalised Roma population. The United Nations Development Programme in cooperation with the Institute for Roma studies in Slovakia prepared an Atlas of marginalised Roma communities (2013) which estimates that in Slovakia in 2013 from the total number of 402,000 Roma more than 50% live in socially excluded communities. Moreover, 5,000 to 15,000 Roma families in Slovakia live in illegally built huts/shacks, constructed from waste materials, without access to drinking water, electricity, heating and other services – in many cases more than 10 persons live in one small shack.

3 Methods

The goal of this paper is to investigate to what extent the co-production has the capacity to address the gap in provision of social housing in the Slovak Republic. Using the method of case study, the scale and forms of co-production in social housing are investigated, and the key factors and barriers of co-production in this area are analysed.

During our recent research, we were able to find only three clear examples of already realised social housing co-production-based activities: Kojatice, Rankovce and Svaty Anton. The last one is not analysed due to the death of the statutory representative of the organisation in a car accident in 2016, since then the organisation has ceased to operate. In the other two cases, we collected all existing secondary information and conducted twenty interviews with representatives of the organisations as well as the mayors and inhabitants of the municipalities.

Kojatice is a small village in the east of Slovakia with an important proportion of Roma minority, living in very poor housing conditions (15 or 20 persons living in one small, dilapidated house without electricity, water and sewerage).

The goal of this co-production initiative was to build social houses for marginalised groups of citizens. No specific event sparked this initiative; it was just the idea of a small group of people volunteering in an NGO "People in Need" how to respond to the long-term need to support a vulnerable group of citizens.

The preparation for the social housing project started in 2005 – it was very important to build up relationships with social workers and subsequently through them with the Roma citizens because of the high level of distrust between Roma citizens and the majority of the population. The project itself started in 2011; the first houses were finished in summer 2013, the final number of finished houses was eight (Nemec & Svidroňová, 2015).

The main principle of the project is an individual approach and personal commitment of initiators and beneficiaries: young volunteering architects in communication with Roma citizens created plans and technical documentation for the construction of houses based on the Roma requirements and ideas. Within the first stage of the programme the workshop took place, where 16 volunteer architects and students of architecture prepared feasibility studies on how to improve the housing conditions of Roma families. New structures and refurbishments were proposed according to the needs and wishes of the participating families. The architects worked in teams directly with the clients and the results were presented to the residents of the village during the final presentation (People in Need, http://www.kojatice.sk/uploads/file/Komunitne%20centrum/HousingProgram_A&V.pdf).

Those Roma, who had decided to participate, were trained in construction work to be able to participate directly in the construction of their houses. Roma were involved also in financing – first, for one year they saved money in a joint fund (each family approx. 2,000€). After this, in the following years they were involved in a microcredit system - this system provided all of them an interest-free loan between 1,000 – 1,400€ to support financing of construction of the houses (this loan is paid back monthly in 20 or 30 € instalments). In total, the financial contribution of participating Roma was approx. 3,300 €. Total cost of one house is around 10,000 € of which two thirds are funded by NGOs and municipality (municipality provides land and only very limited direct funding) and the rest of the sum is paid by the Roma citizens. A specific training on financial literacy was offered to the Roma citizens, to help them to manage their finance, to be able to pay off the loans (Nemec & Svidroňová, 2015).

The main initiator of this project was the Slovak citizen association People in Need (www.peopleinneed.sk), which deals with social cohesion, humanitarian aid and human rights protection. Some volunteer members of this organisation studied architecture and they came up with the idea of building social houses for a marginalised group of citizens. These architecture students have the obligation to deliver practical work as a part of their final exams and they decided to go for the idea of helping to improve the poor living standard in the huts of Roma citizens in the east of Slovakia. The other core stakeholders of the co-production initiative were the municipality of Kojatice and its mayor and other NGOs, namely ETP Slovakia and Pontis Foundation. The mu-

nicipality provided very limited funding but they gave the land for the housing (otherwise, building the houses on the plots of land would have been illegal). The NGOs ETP and Pontis Foundation helped with funding and with setting up the micro-loan programme (know-how of the ETP organisation which is an initiator of co-production in the second analysed case).

The Rankovce case is very similar to Kojatice, but slightly different. Rankovce is also a small village in the east of Slovakia with an important proportion of Roma minority, living in small, dilapidated houses without electricity, water and sewerage (Nemec & Svidroňová, 2015).

This initiative of building social houses for marginalised groups of citizens was started by the NGO ETP Slovakia, which has been operating in Slovakia since 1992. Similar to the NGO People in Need (Kojatice case) ETP Slovakia also works with disadvantaged groups, especially from segregated Roma communities, as well as refugees. However, the start of this initiative was "more organised", because of being directly connected to the NGO's mission. The first specific enabling factor in this case is the fact that one of ETP Slovakia's programmes is the development of housing for those families living in unsatisfactory conditions and to improve the quality and conditions of housing by themselves with the help of a construction "teacher". The second specific enabling factor is the fact that ETP Slovakia runs a community centre in Rankovce (Murray Svidroňová et al, 2019).

Since January 2013, ETP Slovakia, in cooperation with local self-government, field social workers and the local association "For a Better Life", have supported sixteen Rankovce families (the number of participating families increased to 30 during the life of the programme) in a similar way to that described in the Kojatice case. ETP Slovakia provided coordination, construction plans and its Savings and Micro-Loan Programme. Roma participated via self-construction and finance. The municipality provided cheap land and general support to the project. The total cost of one house is around 12,000 €, of which one-third is funded by NGOs and sponsors (the main sponsor was the company Holcim providing in-kind material for the construction), and the rest of the sum is paid by the Roma citizens. The saving programme helps them to save around 400 € and the microloan programme provides an interest-free loan of around 6,000 € to finance the building of the houses. As a bonus for timely payment of the instalments, they can get up to 1,200 € bonus from the NGO. The project received the European Commission Award for Best Projects of Building a Social Society in 2014 ((Nemec & Svidroňová, 2015; Murray Svidroňová et al, 2019).

4 Results

To be able to evaluate the core aspects of two successful social housing projects in Slovakia, we organised more than twenty interviews with all stakeholder participants (Roma, inhabitants of villages, municipal mayors and NGO representatives) and academic experts. The aim was to better understand the

factors and barriers, intervention logics (see Voorberg et al, 2015) and social impacts of this initiative

4.1 Main project drivers and realisation barriers

According to the results from the interviews, the core driver for both cases was the fact that innovative and comprehensive solutions to housing problems by combining education, employment, financial inclusion and housing construction was proposed – this fact motivated all involved stakeholders to support the initiative.

Another core driver is the availability of needed financial resources. The main enabler was the existence of the ETP Slovakia Savings and Micro-Loan Programme, providing the chance for Roma to save and to borrow under specific financial conditions.

In the case of Rankovce, the fact that ETP Slovakia was already running a community centre in the village before the project started was a critical success factor – the co-operation of all actors was significantly simpler (higher level of trust) and the chance to get sponsors was higher.

The biggest barrier in both projects was the distrust of Roma to the proposal. In the Kojatice case, this issue was solved with the help of social workers who had been working with these people for a longer time and also thanks to the attitudes of participating students of architecture. The social workers understand the mentality of Roma and their assistance was a big help. Many visits and special communication skills were required to earn the trust of the Roma. Students consulted with Roma building plans and tried to motivate them to co-product for their future better life. In Rankovce, the main initiator ETP Slovakia was much better known from the beginning thanks to the local community centre.

A specific barrier was the problems in obtaining building permits. Protracted dialogues with the Building Office, with the help of other partners (especially the mayor), were necessary to solve this issue in both cases.

In Kojatice the initial dissatisfaction in particular on the part of the local non-Roma community with the idea of building the social houses represented another specific barrier. Some Kojatice citizens were not happy that the mayor was ready to work with and to help to only a part of the community. This barrier was solved via intensive dialogue and promotion of the co-production initiative.

The specific barrier for both projects was the need to finance the Savings and Micro-Loan Programme managed by ETP Slovakia (involved in financing of both cases). Because this programme provided interest free loans, it cannot be self-financing and involvement of donors is necessary.

4.2 Intervention logics

Based on the analysis of investigated cases we first summarise the role of different actors who participated in the selected cases (Tables 2 and 3). We describe their role in three stages based on three types of co-production: initiatior, designer and implementer.

Table 2: Role of actors: Kojatice

	Project initiation	Project design	Project implementation
Non-organised citizen	Yes	Yes	Yes
NGO	Yes	Yes	Yes
Private sector	No	No	No
Municipality	No	Partly	Yes

Source: authors.

Table 3: Role of actors: Rankovce

	Project initiation	Project design	Project implementation
Non-organised citizen	Yes	Yes	Yes
NGO	Yes	Yes	Yes
Private sector	No	No	Partly
Municipality	Partly	Yes	Yes

Source: authors based on Merickova et al., 2015.

4.3 Social impacts

The fact that providing social housing is the core inclusion factor for marginalised groups is already confirmed by academic studies and practical experiments (first well-known project of this type started in Los Angeles in 1988) – available affordable quality housing means better health, increased responsibility, improves children's school attendance and new working experience improves the chance for employment (Nemec & Svidroňová, 2015). However, our cases represent "one step-forward" – social housing is provided via co-production. The responses from interviews clearly show that this approach delivers multiplicative effects.

The evaluated projects represent cases of improved effectiveness, efficiency, equity, fairness, but also public trust and public participation. The standard of living improved as the direct project output, and the style of living of Roma changed as the long-term outcome. A sense of responsibility and ownership has been created, changing future Roma lives. The statements of interviewees support these observed impacts:

"I believe that this project is a clear signal that it is necessary to take a chance and seize the opportunities, to actively participate. For the coexistence of Roma and non-Roma communities the participation of Roma in the construction work was very beneficial."

Former student – one of the project initiators, Rankovce case

"Better hygiene thanks to running water, not to be ashamed of their homes, better conditions for studying and working – that all helps to integrate Roma into society."

Former student – one of the project initiators, Rankovce case

"The acceptable housing, working experience when helping to build the house and financial responsibility for part of its financing are impetuses for positive changes of the Roma citizens' life style."

Former student – one of the project initiators, Rankovce case

"Specific project outcomes are improved public space, improved image of the municipality and improved social relations in the region and new forms of co-operation between different NGOs, new ways of involving foundations which helps them to improve their activities in the field of social cohesion, humanitarian aid and human rights protection."

Academic expert, Kojatice case

"For local government the initiative brought solutions to housing problems for its citizens."

Head of the local council, Kojatice case

5 Discussion

In general, the Sovak public sector has a rather low interest in innovations in public services provision (e.g. Murgasova, 2014, Kožiak &Suchý, 2014). In such situations the third sector (civic sector, NGOs or grass root organisations) is more often the source for social innovations (Škarabelová & Vaceková, 2013), especially in rural areas (Valentinov & Vaceková, 2015).

In this paper, we discussed co-production-based innovations in the sector of welfare, namely social housing, in Slovakia. In the cases analysed, cooperation between the third and the public sector was demonstrated in the case of social housing in the villages of Rankovce and Kojatice. NGOs provide micro-loans as well as financial and social education for the population. The involvement of the Roma themselves in sharing the financial costs of construction as well as the building work creates a sense of co-ownership, and these houses are not

as quickly destroyed as is the case with allocated state-owned flats (Murray Svidroňová et al. 2019). We consider these initiatives a good basis on which to build and develop the provision of housing services by the third sector through the implementation of properly selected recommendations.

Taking all the above into account, the obvious question arises – "Why the number of similar activities is really limited in Slovakia (and in similar countries, too)? The response should be based on the following trade-off. Co-productive housing provision is on the one hand more efficient (decreases costs), delivers more sustainable results (the notion of public value becomes more tangible with co-production - Mikušová Meričková and Svidroňová, 2014: self-help builders are seen to develop a sense of co-ownership of the home, and, after repaying the micro-loan, they acquire the house as their own property) and supports inclusion of marginalised groups. However, co-productive housing provision also needs extra effort from all the stakeholders. Such efforts are expected on the part of participating NGOs, sponsors or volunteers; however, they also represent extra workload for public officials involved (building social housing with support from state grants and allocating flats is a simpler approach compared to co-production). With this, the core enabler is local will – especially the attitudes of the local mayor who represents the municipality. This statement can be very simply documented – together with the successful experiment in Rankovce ETP Slovakia tried to realise the same activity in other Slovak municipalities. However, that attempt failed, simply because the municipal leaderships were not ready to co-operate.

6 Conclusion

Based on our analysis of the social housing cases, it is clear that all respondents are positive about evaluation of the outcomes. The main outcome is a better standard of living of the Roma citizens (as Nemec & Svidroňová, 2015, pointed out: learning active participation, developing manual skills by building their houses and basic education in financial literacy). Also the municipalities feel, that the co-production process improves delivery of public service of housing for which the municipality is responsible. Analysed cases of social housing projects help to decrease costs and thus have a minimal burden to the public budget. Among other outcomes there are improved public spaces (newly built houses look much better than the huts), better social relations in the municipalities and new forms of co-operation between various non-governmental organisations and other key players (i.e. building of social capital).

Improved self-responsibility of the Roma citizens is the critical issue – involved Roma citizens were educated in financial literacy and gained other skills through self-help home construction. In the case of Rankovce, this involvement of Roma helped eleven of them to find a permanent job thanks to the skills they acquired in the self-construction activities. This is clear evidence of the fact that co-production in social housing has a large potential to support inclusion of marginalised groups into society.

At the end of this paper we need to mention that the validity of an in-depth, but small-scale study may be limited. Despite this, the results presented in in this study should assist a multi-level approach analysis focused on interaction between the individuals and the organisations. Future research on co-production should also focus on comparative analysis between sectors and/or countries. This paper serves as a basis for a deeper analysis of provision of social housing services by the NGOs, including the use of quantitative methods such as value for money or cost benefit analysis, to analyse a higher efficiency of social housing provided by the NGOs.

For policy makers the paper proposes that because social housing target groups normally also need other types of services (such as lessons on how to find a job, how to manage finances, and in some cases lessons on basic hygienic habits and how to take care of the allocated housing) these services should be set up and offered in all cases where social housing is provided. Such an approach also ensures regular monitoring of the situation of social housing and helps with social inclusion of the Roma citizens (Murray Svidroňová, et al., 2017; Suchalová & Staroňová, 2010).

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Povzetki (*Summaries in Slovenian Language*)

1. Uspešnost in učinkovitost upravnega pritožbenega postopka: študija primera davčnih sporov v Romuniji

Octavian Moldovan, Gabriela Bucătariu

Namen prispevka je oceniti uspešnost in učinkovitost (interne) upravne pritožbe v davčnih zadevah v Romuniji v primerjavi z dlje trajajočo in dražjo tožbo na sodišče zoper upravno odločbo, ki nalaga davčno obveznost. Za oceno uspešnosti in učinkovitosti upravnih pritožb smo analizirali podatke iz poročil in dokumentov romunske nacionalne agencije za finančno upravo (NAFA), glede kazalnikov, povezanih z učinkovitostjo, ter meril uspešnosti, kot so poravnave v sporih in višina pobranega davka. Poleg tega smo podatke o rezultatih upravnega postopka primerjali z rezultati sodnega postopka glede na število ugodenih tožb, ki so davčno obveznost odpravile. Rezultati kažejo, da je bil upravni postopek vsaj v obdobju 2013–2017 tako neučinkovit kot neuspešen, saj je bilo v povprečju v korist pritožnikov rešenih manj kot 7 % davčnih sporov. Poleg tega so bili omenjeni postopki zelo zamudni – čeprav bi bilo treba spore rešiti v 45 dneh, je bil odgovor poslan komaj po 70 dneh. Zato upravni postopek pogosto velja zgolj za odskočno desko do nadaljnjih sodnih postopkov in ne ponuja možnosti zadovoljive rešitve in s tem zmanjšanja obremenitev sodišč. Presenetljivo je tudi mnenje davčnih zavezancev, da so sodišča ugodnejša oz. učinkovitejša, saj je več kot polovica tožb, vloženih zoper davčne odločbe, rešenih v korist zavezancev oz. so davčne obveznosti odpravljene. Učinkovitost predhodnega upravnega postopka je bila nadalje analizirana z vidika različnih akterjev, ki imajo neposreden ali posreden legitimni interes v postopku. To so (i) sodišča, ki bi, če bi bil postopek učinkovit, morala imeti oz. bi lahko imela korist od zmanjšanega obsega dela, (ii) davčni zavezanci – vlagatelji upravnih pritožb, ki bi tako pridobili alternativo dlje trajajočim in dragim sodnim tožbam, in (iii) davčni organi, ki izdajajo odmerne upravne akte ali so se dolžni odzvati na pritožbe. Dejstvo, da je ta postopek obvezen predhodnik sodnega in ne alternativno sredstvo za reševanje sporov, bistveno zmanjšuje njegovo učinkovitost in uspešnost. Rezultati lahko služijo kot podlaga za analizo in primerjavo podatkov v drugih državah s podobnimi pravnimi in davčnimi sistemi.

Ključne besede: upravni pritožbeni postopek, sodni postopek, davčni spori, uspešnost, učinkovitost, davčna/finančna uprava, Romunija

2. Pričakovanja in praksa načela enakega dostopa do informacij v danski lokalni upravi

Pernille Boye Koch

Članek predstavlja empirično študijo izvrševanja in učinkovitosti zakonov o prostem dostopu do javnih informacij (FOIA) v danskih občinah. Čeprav so nordijske države znane po transparentnem delovanju javne uprave, so empirično utemeljene študije o dostopu do informacij redke. S pomočjo 33 študentov javne uprave smo razposlali 146 preprostih zahtev in zajeli 74,5 % vseh danskih občin. Glavni namen terenskega eksperimenta je bil preizkusiti pravno načelo nevtralnosti identitete in enakega obravnavanja, saj je bil profil prosilcev raznolik: prvi niz prosilcev je predstavljal »preproste« identitete, drugi sklop pa »kvalificirane« identitete. Spraševali smo po dveh vrstah informacij, pri čemer je bilo razkritje ene vrste bolj sporno kot razkritje druge. Študija je proučila tudi razlike v času obravnave primerov, verjetnost zavrnitve, oblike obveščanja itd. Rezultati študije so pokazali, da občine zahteve po dostopu do informacij načeloma obravnavajo brez težav in v zakonsko določenih rokih, razlik v obravnavi prosilcev glede na njihov status in kvalifikacije ni bilo opaziti. So pa podatki pokazali, da se zahteve po »spornih« informacijah obdelujejo dlje. Študija daje podlago za prihodnje terenske eksperimente v zvezi z zakonom o prostem dostopu do javnih informacij. V zadnjem delu članka so predstavljene tudi splošne koristi vključenosti študentov v raziskovalne procese.

Ključne besede: transparentnost, dostop do informacij, enak dostop, zakon o prostem dostopu do javnih informacij (FOIA), izvrševanje, občine, Danska

3. Lokalna samouprava na Madžarskem: nedavne spremembe skozi pogled Srednje Evrope

Csaba Lentner, Szilárd Hegedűs

Članek omogoča pregled regulativnega okolja madžarskega sistema lokalne samouprave na podlagi metod pravne dinamike in ekonomskih analiz v zgodovinski perspektivi dogodkov po drugi svetovni vojni. Izhodišče analize je leto 1947, ki ga zaznamuje začetek gospodarstva sovjetskega tipa na Madžarskem. Sledi podrobna študija ureditve in razvoja lokalne samouprave vse od njenih začetkov po spremembi režima v začetku devetdesetih let prejšnjega stoletja, s krajšo primerjavo s sosednjimi post-sovjetskimi državami. Ekonomska analiza se osredotoča na obdobje po pristopu Madžarske k Evropski uniji – obdobje, ki je pomenilo izjemno priložnost za madžarske lokalne samouprave, vendar je na koncu privedlo v bankrot. V članku so podani podrobni razlogi za netipično naravo zadolženosti madžarske lokalne samouprave in dejavniki, ki so vplivali na ta neugoden razvoj. Nadalje so opisani postopek konsolidacije dolgov in bistveni elementi novega regulativnega okolja, ustvarjenega po letu 2011. Gibanje dolžniškega portfelja se v kratki mednarodni primerjavi analizira na primerih Slovenije, Poljske, Slovaške in Češke kot primerljivih srednjeevropskih držav, da bi še dodatno dokazali netipičnost finančnega upravljanja ma-

džarskih lokalnih samouprav, tj. neskladnost s pravili in ne vedno trdna proračunska disciplina. Raziskava, na kateri temelji ta prispevek, se osredotoča na vpliv madžarske ureditve samouprave na finančno vzdržnost finančnega upravljanja lokalnih samouprav. Študija je potrdila prvotno hipotezo, da so nepremišljena pravila upravljanja podjetij, pomanjkljivosti v nadzornem sistemu in pretirano zadolževanje v tuji valuti privedli do bankrota številnih lokalnih samouprav in posledično ogrozili ustrezno izvajanje javnih storitev.

Ključne besede: primerjalna analiza, lokalna samouprava, zadolženost, javne finance, Madžarska, gospodarstva Srednje Evrope

4. Intenzivnost sodnega nadzora nad nadzornimi sklepi Evropske centralne banke

Andrea Magliari

Nekaj let po vzpostavitvi enotnega mehanizma nadzora je Splošno sodišče Evropske unije v svoji novi nadzorni vlogi prvič razveljavilo sklepe, ki jih je sprejela Evropska centralna banka (ECB). Omenjene sodbe so še posebej zanimive, saj omogočajo predhodno proučitev intenzivnosti sodnega nadzora nad diskrecijsko izbiro ECB na področju bančnega nadzora. V članku se ugotavlja, da zgodnja sodna praksa Splošnega sodišča nakazuje na zanimiv razvoj dogodkov in na odločenost izvajanja sodnega nadzora, ki kljub strogemu spoštovanju standarda »omejenega nadzora« dopušča oblikovanje sodnih tehnik za zagotovitev natančnejšega nadzora nad diskrecijsko pravico ECB. Kljub temu, da so zadeve, s katerimi se ukvarjajo sodniki EU, nove, je na podlagi te študije mogoče na eni strani predvideti postopno uskladitev nadzora nad nadzornimi sklepi s tistimi, ki se pojavljajo v zvezi s sklepi Komisije, ki zadevajo konkurenco, po drugi strani pa je mogoče opaziti odmik od manj zavezujočega pristopa, ki se je uveljavil na področju monetarne politike.

Ključne besede: kompleksna ekonomska ocena, Sodišče Evropske unije, Evropska centralna banka, nadzorni sklepi, intenzivnost sodnega nadzora, stopnja vzvoda, stopnja diskrecije

5. Reforma javnega sektorja z vidika novega javnega upravljanja: pregled in bibliometrična analiza

Marko Ropret, Aleksander Aristovnik

Namen članka je oceniti vpliv reforme javnega sektorja na akademsko literaturo z vidika post novega javnega upravljanja oz. post-New Public Management (post-NPM). Čeprav je bilo opravljenih več študij modelov javnega upravljanja glede post-NPM in njegovih vplivov na reformo javnega sektorja, pa analiza literature o post-NPM nakazuje na pomanjkanje študij, ki bi dovolj obsežno proučile različne možne modele javnega upravljanja, zlasti v državah Srednje in Vzhodne Evrope. Za učinkovito reševanje tega raziskovalnega problema je bila opravljena bibliometrična analiza z naslednjimi tremi cilji: (i) študija razvoja literature o modelih javnega upravljanja, (ii) opredelitev osrednjih publikacij in

avtorjev na podlagi pogostosti objav in (iii) analiza mreže citatov (historiograf), ki prikazuje odnose med najbolj pogosto citiranimi publikacijami. Analiza je vključevala identifikacijo 16.374 publikacij v podatkovni bazi Web of Science, ki smo jih zožili na 100 najbolj citiranih med letoma 1994 in 2017, ter uporabo programske opreme za bibliometrično analizo HistCite, ki zajema opisno statistiko, bibliometrične kazalnike in analizo historiografskega citiranja. Rezultati raziskav kažejo na vse večje raziskovalno zanimanje za to temo, kar dokazujejo tudi bibliometrični kazalniki. Poleg tega so bile opažene pomembne razlike glede pokritosti in razširjenosti posameznih post-NPM modelov. Večina publikacij se namreč osredotoča na paradigmo upravljanja in poznejše ponovno kritično razmišljanje, na kar kažejo številni predlogi za posodobitev post-NPM. Poleg tega smo pokazali, da je takšno ocenjevanje upravljanja in s tem povezanih doktrin lahko pristransko v prid subjektivnim, pluralističnim zahodnim idejam o upravljanju, kar bi najverjetneje omejilo njihov vpliv v Srednji in Vzhodni Evropi ter v več drugih regijah. Zato je treba v literaturi o post-NPM upoštevati tudi posebnosti posameznih regij na področju upravljanja (postsocializem, Rechtsstaat kulturo, članstvo v EU, majhnost držav itd.).

Ključne besede: javna uprava, modeli javnega upravljanja, bibliometrija, historiografija, Web of Science, Srednja in Vzhodna Evropa

6. Vpliv načela pravne države kot temeljnega načela javnega upravljanja na razlago upravnega prava na Češkem

Jana Janderová

Načelo pravne države je temeljno načelo in jedro zahodnih demokracij in njihovega javnega upravljanja. Njegova osnovna vrednost je v omejevanju oblasti. Načelo pravne države deluje kot interpretativni koncept v večini kontekstov izvajanja javnih nalog v EU in državah članicah, nadzor nad delovanjem upravnih organov pa izvajajo sodišča. Vendar teleološka argumentacija s temeljnimi načeli glede na dolgo tradicijo formalističnega pristopa v večini držav ni značilna za vse pravosodne in upravne organe v Srednji in Vzhodni Evropi. Članek analizira, ali se je pristop v zadnjih tridesetih letih spremenil in do katere stopnje se načelo pravne države uporablja za razlago upravnopravnih določb s strani čeških sodišč. Ker sodni praksi češkega ustavnega sodišča in češkega vrhovnega upravnega sodišča temeljita na argumentih zakonitosti in sorazmernosti kot ključnih elementih pravne države, smo njune primere analizirali s primerjalno metodo. Članek opredeljuje splošno težnjo, da v pravno zapletenih primerih jezikovna razlaga prehaja v interpretacijo vrednot, vključno s pravno državo. Večina analiziranih primerov razkriva, da tako ustavno kot vrhovno upravno sodišče formalistični interpretaciji nista naklonjena. Kljub temu so bila ugotovljena manjša odstopanja v njihovem dojemanju načel zakonitosti in sorazmernosti, in sicer v razpravi o intenzivnosti nadzora upravnih sodišč nad dejanskimi in diskrecijskimi odločitvami upravnih organov. Vendar imajo omenjena odstopanja tudi koristne učinke, saj se tako obe načeli še na-

prej razvijata zahvaljujoč izmenjavi stališč med sodišči. Podobne raziskave bi lahko opravili tudi za druge primerljive države v regiji.

Ključne besede: pravna država, upravno sodstvo, dobro upravljanje, zakonitost, sorazmernost, razlaga, Češka

7. Načelo transparentnosti v okviru ukrajinske decentralizacije

Sergii Slukhai, Liudmyla Demydenko, Yuliia Nakonechna, Tetiana Borshchenko

Po Revoluciji dostojanstva (2013–2014) je nova ukrajinska vlada uvedla številne reforme, med katerimi je tudi zaenkrat uspešna decentralizacija. Ta pomeni združevanje posameznih ozemeljskih enot ter prerazporeditev javnih prihodkov in izdatkov v prid novoustanovljenih združenih ozemeljskih skupnosti. Namen članka je analizirati, ali je v okviru decentralizacije možno uresničevanje načela transparentnosti proračuna. Študija skuša zapolniti obstoječo vrzel v raziskavi transparentnosti javnega sektorja v Ukrajini, v tem primeru z osnovno upravno ravnijo omejeno na velika mesta in regije. Avtorji so ocenjevali transparentnost proračuna v novo ustanovljenih ozemeljskih skupnostih v štirih ukrajinskih regijah s pomočjo poenostavljene metodologije (t. i. ocena posnetka) z 11 ukrepi, ki jih je mogoče enostavno namestiti na spletne strani omenjenih skupnosti. Da bi ugotovili razloge za določeno stopnjo transparentnosti, je bila med predstojniki izvedena anketa. Ugotovitve kažejo, da je transparentnost proračuna v novo ustanovljenih ozemeljskih skupnostih na splošno precej nizka, regije pa se med seboj pomembno razlikujejo. Ugotavljamo, da lokalni uradniki precenjujejo obstoječo stopnjo transparentnosti proračuna v svojih skupnostih in si ne prizadevajo za njeno zvišanje. Pomen članka je v utemeljitvi potrebe po transparentnosti proračuna kot prednostne naloge za lokalne uradnike, pa tudi v podrobni navedbi potrebnih dejavnosti države in lokalne skupnosti na tem področju.

Ključne besede: združena ozemeljska skupnost, decentralizacija, finančna transparentnost, Ukrajina

8. Transparentnost lokalnih proračunov na spletu na Hrvaškem in v Sloveniji

Katarina Ott, Mihaela Bronić, Branko Stanić, Maja Klun, Jože Benčina

V okviru javnega upravljanja se med reformami, ki temeljijo na novem javnem upravljanju (NPM), vse bolj uveljavlja transparentnost, zlasti pri ocenjevanju učinkovitosti javnega sektorja. Članek se osredotoča na transparentnost lokalnih proračunov na spletu v dveh sosednjih državah – na Hrvaškem in v Sloveniji. Gre za pionirski članek v obliki primerjalne študije determinant transparentnosti proračunov v državah Srednje in Vzhodne Evrope (SVE), ki temelji na unikatni enotni bazi podatkov in merjenju transparentnosti na tej podlagi.

Članek proučuje determinante transparentnosti proračunov, ki odražajo odgovornost lokalnih oblasti in predstavljajo temelj sodelovanja javnosti v proračunskem postopku. Uporabljena je bila naslednja metodologija: obdelava podatkov 768 slovenskih in hrvaških lokalnih uprav v obdobju 2015–2017 in njihova primerjava z več finančnimi in družbeno-ekonomskimi spremenljivkami ter logistična regresija naključnih učinkov, ločeno za Hrvaško in Slovenijo ter združeno za obe skupaj. Rezultati kažejo, da večje število prebivalcev, višja upravna zmogljivost in nižja stopnja brezposelnosti v posameznih lokalnih upravah pomembno prispevajo k višji ravni transparentnosti lokalnih proračunov na spletu. Študija prikazuje možnost razvoja standardiziranega merjenja transparentnosti lokalnih proračunov in njegove uporabe za proučevanje razlogov za različne stopnje transparentnosti v dveh – in potencialno drugih – državah SVE. Rezultati te in podobnih študij lahko služijo kot podlaga za razvoj kohezivne politike transparentnosti lokalnih proračunov za različne države in kombinacije političnih instrumentov za povečanje transparentnosti.

Ključne besede: *lokalna samouprava, transparentnost lokalnih proračunov na spletu, panelna analiza podatkov, Hrvaška, Slovenija*

9. Družbena odgovornost in usmerjenost k soglasju v javnem upravljanju: analiza vsebine

Nina Tomaževič

V zadnjih dveh desetletjih je postala družbena odgovornost ključno načelo številnih subjektov zasebnega sektorja, ki si prizadevajo za poslovno odličnost. Podobno so tudi v javnem sektorju najnovejši modeli javnega upravljanja zasnovani na izbranih načelih javnega upravljanja (npr. usmerjenost k soglasju, participacija, enakopravnost in vključenost), usmerjenih v povezovanje in vključevanje vseh vrst deležnikov v odločanje in izvajanje dejavnosti organizacij javnega sektorja. Žal pa ni dovolj zanesljivih empiričnih dokazov o razmerju med družbeno odgovornostjo in temeljnimi načeli javnega upravljanja. Glavni cilj prispevka je torej ugotoviti razmerje med konceptom družbene odgovornosti in usmerjenostjo k soglasju, ki je eno glavnih teoretično in praktično utemeljenih načel javnega upravljanja. Ta cilj je naslovljen z uporabo programskega paketa QDA Miner in metodo analizo vsebine 100 najpomembnejših znanstvenih člankov iz baze podatkov Web of Science. Posebej je opredeljen in izmerjen odnos med načeloma usmerjenosti k soglasju in družbene odgovornosti, ki nakazuje na pomen slednje. Poleg tega so bili analizirani različni modeli javnega upravljanja z vidika uveljavljanja usmerjenosti k soglasju in družbene odgovornosti, kar daje oprijemljive smernice za nadaljnji razvoj teorije in prakse na področju javnega upravljanja.

Ključne besede: *usmerjenost k soglasju, metoda vsebine analize, pregled literature, modeli upravljanja, javni sektor, družbena odgovornost*

10. Vključevanje prek koprodukcije pri socialnih stanovanjih: izkušnja Slovaške

Maria Murray Svidronova, Beata Mikušová Meričková, Juraj Nemec

Področje socialnih stanovanj je eno izmed tistih, kjer se lahko izkoristi potencial koprodukcije. Cilj trajnostnega razvoja št. 11.1 je namreč »do leta 2030 vsem zagotoviti dostop do ustreznega, varnega in cenovno sprejemljivega prebivališča in osnovnih storitev ter komunalno urediti siromašne mestne četrti«. Trenutni slovaški Koncept državne stanovanjske politike do leta 2020 med drugim določa tudi, da je treba povečati ali vsaj ohraniti enak delež javnih izdatkov za stanovanja, uvesti nov stanovanjski dodatek in podpirati razvoj neprofitnega sektorja pri zagotavljanju stanovanj. Cilj članka je ugotoviti, v kolikšni meri lahko koprodukcija – razumljena kot skupno delovanje javnega, zasebnega in neprofitnega sektorja – odpravi vrzeli v zagotavljanju socialnih stanovanj na Slovaškem. S pomočjo metode študije primerov raziskujemo obseg in oblike koprodukcije pri socialnih stanovanjih ter analiziramo ključne dejavnike in ovire na tem področju. Po mnenju avtorjev je koprodukcija socialnih stanovanj najučinkovitejša metoda zagotavljanja tovrstnih načinov nastanitve, ki izboljšuje trajnost in prispeva k vključevanju upravičencev v družbo. Vendar ta pristop zahteva dodatno energijo vseh deležnikov, zlasti javnih uslužbencev, zato se v praksi še vedno redko uporablja.

Ključne besede: koprodukcija, socialna stanovanja, socialna vključenost, študija primera, Slovaška

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